



**ABDUCTION,
VIOLENCE AND
SECRET
RECORDINGS:**

**WHEN FAMILY
LAW CASES TURN
CRIMINAL**

**ProVisors Lawyers and
Legal Professionals Affinity Group
April 10, 2015**



DEBRA FRANK

Law Office of Debra Frank
(310) 277-5121
dfrank@debrafranklaw.com

DMITRY GORIN

Eisner Gorin LLP
(818) 781-1570
DG@keglawyers.com

NINETTE TOOSBURY

Los Angeles Police Department,
West Valley Area Detectives

Domestic Violence



A pattern of abusive behavior in any relationship

One partner tries to gain or maintain power and control over another intimate partner

Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions influences another person

Behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Source: *Eve Foundation* www.evefoundation.org

California Domestic Violence Statistics

The National Intimate Partner and Sexual Violence Survey estimates that

1 in 3

California women will experience rape, physical violence, and/or stalking by an intimate partner in their lifetime.

In 2011, California law enforcement received

158,548

domestic violence-related calls.

The National Network to End Domestic Violence
2011 domestic violence census found that, in a 24-
hour period, California domestic violence programs
served

5,363

women and children; there were an additional

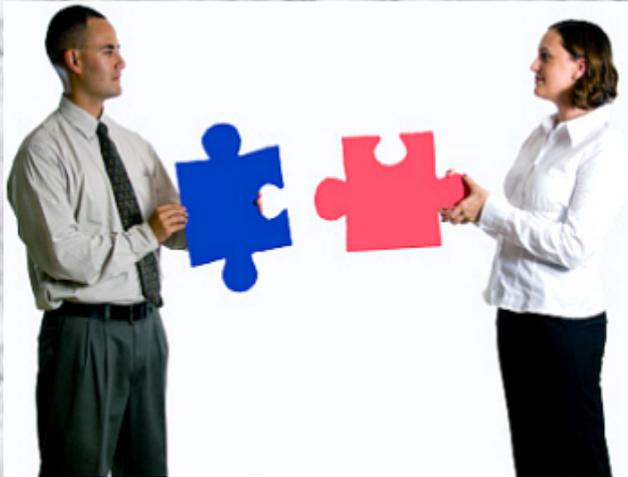
924

requests for services that were unmet

Source: Foundation Funding to Address Domestic Violence in California April 2014

FAMILY LAW PERSPECTIVE

California's Domestic Violence Prevention Act



"The purpose of this division is to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence."

Family Code Section 6220

PROTECTED PARTIES

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

- A spouse or former spouse
- A cohabitant or former cohabitant
- A person with whom the respondent is having or has had a dating or engagement relationship
- A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent
- A child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected
- Any other person related by consanguinity or affinity within the second degree



Acts Of Abuse

"Abuse" means any of the following:

- Intentionally or recklessly cause or attempt to cause bodily injury
- Sexual assault
- Place person in reasonable apprehension of imminent serious bodily injury to that person or to another
- Engage in any behavior that has been or could be enjoined under Section 6320
- Abuse is not limited to the actual infliction of physical injury or assault



He says
it won't
happen
again

Acts Of Abuse (cont.)



- Molesting
- Attacking
- Striking
- Stalking
- Sexually assaulting
- Credibly impersonating as described in Section 528.5 of the Penal Code
- Falsely personating as described in Penal Code Section 529
- Harassing
- Telephoning, including making annoying telephone calls as described in Penal Code Section 653m
- 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

Impersonation to Harm or Defraud



- ❑ Knowingly and without consent impersonate another person through or on the Internet or other electronic means
- ❑ "Other electronic means" includes opening an e-mail account or an account or profile on a social network site like Facebook in another person's name
- ❑ Impersonation is done for purposes of harming, intimidating, threatening, or defrauding another

Sample Impersonation Allegations

10. On or about May 9, 2013, Defendant created an online profile that appeared to be Jane's on the online dating site OkCupid (www.okcupid.com). The profile used a variation of Jane's first name that was identical to the Twitter username she was using at that time, and included suggestive photographs of Jane. In response to certain multiple choice questions posed by OkCupid, Defendant impersonated Jane and gave sexually suggestive responses.

11. Through this OkCupid profile Defendant impersonated Jane and encouraged users to send sexual images of themselves to Jane. He distributed Jane's mobile phone number to users to accomplish this. Defendant also encouraged users to visit Jane for sex; upon information and belief, Defendant distributed Jane's home address to accomplish this.

. . .

13. On or about May 10, 2013, Defendant created a profile on the pornography website xHamster (www.xhamster.com) in a name that was very similar to Jane's name. Defendant uploaded at least one sexually explicit video of Jane to xHamster, so that it was immediately available to anyone with an internet connection.

. . .

35. Jane is informed and believes that Defendant knowingly and without Jane's consent credibly impersonated Jane through or on a website for the purposes of harming, intimidating, threatening, or defrauding Jane.

36. Defendant created profiles on several websites, including, but not limited to, Adultspace and OkCupid, and through these profiles credibly impersonated Jane. During interactions, Defendant solicited men for sex with Jane and posted Jane's personal information online. Others would have reasonably believed—and in fact did reasonably believe—that these online profiles were actually created and operated by Jane.

37. As a result of Defendant's creation of these online profiles, Jane was substantially harmed. Jane is entitled to compensatory damages, injunctive relief, and other equitable relief under California Penal Code section 528.5.

False Personation

The crime of false personation is committed when:

- You pretend to be some one other than yourself in that person's public or private capacity and
- You cause the person whom you are impersonating to become
- liable in a lawsuit or exposed to prosecution or
- become obligated to pay money or
- You gain some benefit from pretending to be that other person



EXAMPLES

- You present yourself as someone else and cash a check made out to that person
- You are pulled over for speeding and provide another person's name and identification when questioned by the police
- You knowingly give a false name to the police or use the identity of someone else on any police report or other official or financial report

False Personation and the Web

Ex parte orders can be an important element in a survivor's overall plan to increase safety and prevent future abuse.

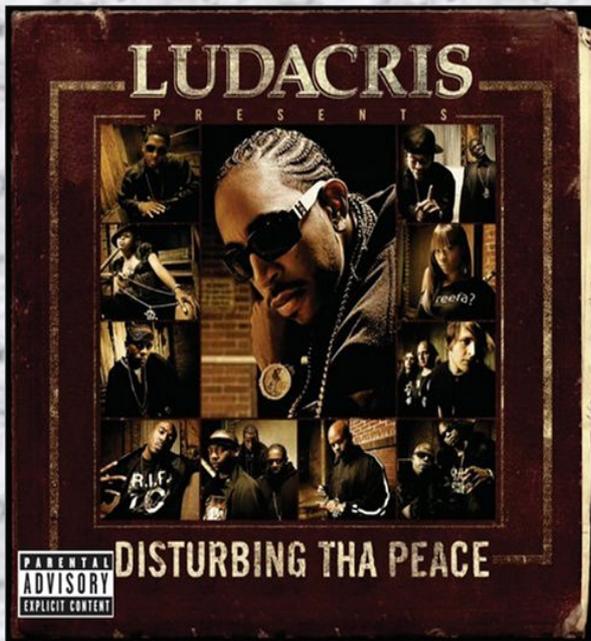
Adding false impersonation to these orders addresses a tactic commonly used by abusers.

Abusers will use knowledge of a victim's passwords to lock them out of their internet accounts, including email, social media and other accounts. Losing access to these accounts can have a dramatic impact on a survivor's daily life where so much information is transmitted online, Abusers will often use their access to the victim's social networking sites and email accounts to pose private, intimate photographs to shame and intimidate a survivor.

Source: California Partnership to End Domestic Violence



Disturbing the Peace

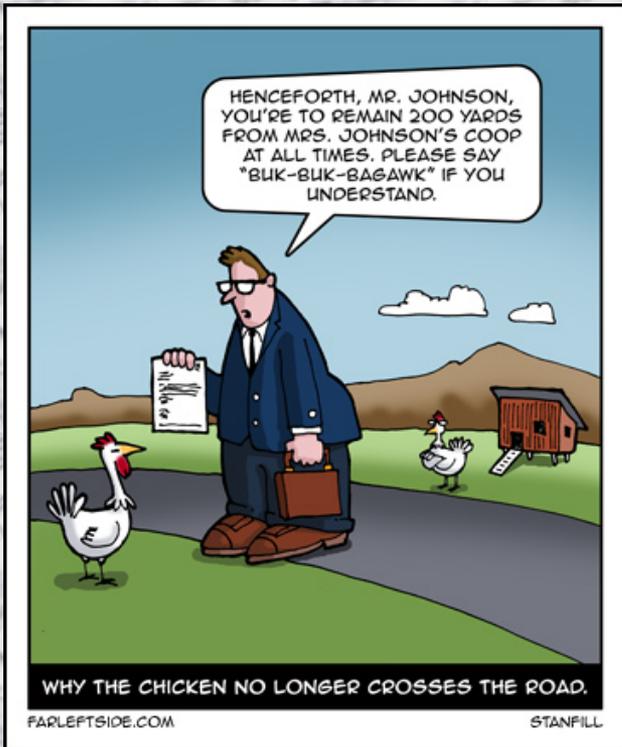


After P ended their relationship, defendant continued to email and text P, including inappropriate sexual innuendoes and even showed up at P's home and refused to leave. P obtained a two-year no contact DV TRO. The court held that D's conduct constituted domestic abuse.

"The plain meaning of the phrase "disturbing the peace of the other party in family code section 6320 may be properly understood as "conduct that destroys the mental or emotional calm of the other party"

Burquet v. Brumbaugh (2014) 223 Cal.App.4d 1140

REMEDIES – RESTRAINING ORDER



An order may be issued under this part, with or without notice, to restrain any person for the purpose specified in Section 6220

The affidavit or testimony and any additional information provided to the court under Section 6306 must show, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.

The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order.

DATABASE SEARCHES



Criminal Records

Instantly Search Millions of Public Records & Resources
Using Our Public Record Databases

All Public Records In One Site
Search any record you're looking for in 1 minute

Step 1 of 4 BEGIN YOUR ALL-IN-ONE NATIONWIDE PUBLIC BACKGROUND CHECK BELOW	
Criminal Search Court Record Search Inmate Record Search Marriage Record Search Death Record Search Obituary Search Cemetery Search	Birth Record Search Phone Number Search Address Search Bankruptcy Search Military Record Search and more!
First Name: <input type="text"/>	Last Name: <input type="text"/>
<input type="button" value="Search All States"/>	<input type="button" value="Search All Counties"/>
<input type="button" value="Start Your Search"/>	

Begin Searching public records of people all across the United States by doing a Public Record Search today! You too can have instant access to gain new found knowledge on millions of individuals across the US.

Prior to a hearing to issue or deny an order, the court must ensure that a search is or has been conducted to determine if the subject of the proposed order

- has any prior criminal conviction for a violent felony
- has a serious felony
- has any misdemeanor conviction involving domestic violence, weapons, or other violence; has any outstanding warrant
- is currently on parole or probation
- has a registered firearm; or has any prior restraining order or
- has any violation of a prior restraining order

Family Code Section 6306

Ex Parte Restraining Orders

Civil Harassment -100

- Personal Conduct
- Stay Away Orders
- Guns or Other Firearms
- Lawyers' Fees & Costs

CH-140 Restraining Order After Hearing to Stop Harassment

1 Your name (person asking for protection): _____
Your address (skip this if you have a lawyer): (If you want your address to be private, give a mailing address instead): _____
City: _____ State: _____ Zip: _____
Your telephone (optional): (_____) _____
Your lawyer (if you have one): (Name, address, telephone number, and State Bar number): _____

2 Name of person to be restrained: _____

Description:
Sex: M F Height: _____ Weight: _____ Race: _____
Hair Color: _____ Eye Color: _____ Age: _____ Date of Birth: _____

3 **Hearing**
There was a hearing:
on (date): _____ at (time): _____ a.m. p.m. Dept.: _____ Rm.: _____
(Name of judicial officer) _____ made the orders at the hearing.
These people were at the hearing:
a. Plaintiff (the person in ①) c. Plaintiff's lawyer (name): _____
b. Defendant (the person in ②) d. Defendant's lawyer (name): _____

4 **This Is a Court Order**
You must obey all the orders indicated below. If you do not obey this Order, you can be arrested and charged with a crime. And you may have to go to jail, pay a fine of up to \$1,000, or both.

5 **Expiration Date**
This Order, except for an award of lawyer's fees, expires at:
(time): _____ a.m. p.m. or midnight on (date): _____
If no date is present, this Order expires three years from the date of issuance.

This is a Court Order.

Ex Parte Restraining Orders (cont.)

Domestic Violence – 100 Family Law

DV-120 Answer to Temporary Restraining Order

1. Name of Person who served the order (printed name): _____

2. Your name: Paul B. Young
 Your address (stop this 2 yrs. after a divorce. If you want your address in public, give a mailing address instead):
 City: _____ State: _____ Zip: _____
 Your telephone (optional): _____
 Your lawyer (if you have one): (Name, address, telephone number, and State Bar number)
 Duany Stewart (415719)
 2040 Broadway, Suite 300
 Oakland, CA 94612

3. Give the judge your answers to DV-100:

Personal Conduct Orders
 do I do not agree to the order requested.

Stay-Away Order
 do I do not agree to the order requested.

Move-Out Order
 do I do not agree to the order requested.

Child Custody
 I do not agree as to the custody order requested.
 I do not agree as to the order listed in DV-100.
 I do not agree for the following reasons (write separately): _____

Visitation
 I do not agree to the visitation order requested.
 I do not agree for the following reasons (write separately): _____

Child Support
 I do not agree to the order requested.
 I agree to pay child support as requested.
 You must fill out Form FD-150 or FD-151.

Spousal Support
 I do not agree to the order requested.
 Whether or not you agree, you must fill out Form FD-150.

FILED
 ALAMEDA COUNTY
 APR 05 2014
 CLERK OF THE SUPERIOR COURT
 By: _____
 A. K. DIVALDO, CLERK
 Superior Court of California, County of Alameda
 Name: C. Davidson Austin, Clerk
 Court Address:
 1212 Fulton Street
 Oakland, CA 94612, Dept 2
 Court Phone Number:
 415.778.2000
 KF1156374

Answer to Temporary Restraining Order (Domestic Violence Prevention) DV-120 (Rev. 1/12)

- Personal Conduct
- Stay Away Orders
- Move-Out Orders
- Guns or Other Firearms
- Record Unlawful Communications
- Care of Animals
- Child Custody and Visitation
- Child Support
- Property Control
- Debt Payment
- Property Restraint
- Spousal Support
- Insurance
- Lawyers' Fees
- Payment for Costs & Services
- Batterer Intervention Program
- Lawyer's Fees & Costs

Exclusion from Residence

The court may issue an ex parte order to exclude a party from the

- family dwelling
- dwelling of the other party
- common dwelling of both parties, or
- dwelling of the person with care, custody, and control of a child to be protected from domestic violence for the period of time and conditions determined by the court

Applies regardless of which party holds legal or equitable title or is the lessee of the dwelling.

Don't let the door hit you on the way out, Ah, hell, who am I kidding? I hope you fall down the stairs on your way out.



someecards
user card

PROPERTY CONTROL



The court may issue an ex parte order determining the temporary use, possession, and control of 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. (Ad Stats 1993, C 219)

Family Code Section 6324

Denial of Child Custody

If a court finds a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody or against the child or the child's siblings within the previous five years, a rebuttable presumption exists that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child

This presumption may only be rebutted by a preponderance of the evidence.

Family Code Section 3044





It appears that the court was under the misimpression that the presumption contained in section 3044 comes into play only upon the issuance of a restraining order. However, the presumption applies whenever there is a finding that one parent committed an act of domestic violence against another parent, a child, or a child's siblings within the past five years.

(§3044, subd. (a) ["Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years "].) Whether a restraining order is issued as a result of the domestic violence thus has no bearing on the applicability of the statutory presumption to the issue of custody

Rebuttable Presumption Against Award of Spousal Support

Dissolution of marriage where there is a criminal conviction for an act of domestic violence by one spouse against the other entered by the court within five years prior to the filing of the dissolution proceeding, or at any time thereafter

Rebuttable presumption affecting the burden of proof that any award of temporary or permanent spousal support to the abusive spouse otherwise awardable pursuant to the standards of Family Code section 4325 this part should not be made.

1285.70

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Date of Filing, and Address)		FOR COURT USE ONLY
TELEPHONE NO. FAX NO. ATTORNEY FOR (Name) SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS MAILING ADDRESS CITY AND ZIP CODE BRANCH NAME		
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARTY:		
<input type="checkbox"/> Modification <input type="checkbox"/> Child Support <input type="checkbox"/> Spousal or Family Support		
WAGE AND EARNINGS ASSIGNMENT ORDER <input type="checkbox"/> Modification <input type="checkbox"/> Child Support <input type="checkbox"/> Spousal or Family Support		CASE NUMBER

TO THE PAYOR: This is a court order. You must withhold a portion of the earnings of (Obligor's name and date of birth) and pay as directed below. (An explanation of this order is printed on the reverse.)

THE COURT ORDERS YOU TO

- Pay part of the earnings of the employee or other person ordered to pay support as follows:

a. <input type="checkbox"/> \$	per month current child support	d. <input type="checkbox"/> \$	per month child support arrearages
b. <input type="checkbox"/> \$	per month current spousal support	e. <input type="checkbox"/> \$	per month spousal support arrearages
c. <input type="checkbox"/> \$	per month current family support	f. <input type="checkbox"/> \$	per month family support arrearages
- TOTAL DEDUCTIONS PER MONTH: \$
- The payments ordered under items 1a, 1b, and 1c shall be paid to (name, address):
- The payments ordered under item 1d, 1e, and 1f shall be paid to (name, address):
- The payments ordered under item 1 shall continue until further written notice from the payee or the court.
- This order modifies an existing order. **The amount you must withhold may have changed.** The existing order continues in effect until this modification is effective.
- This order affects all earnings payable beginning as soon as possible but not later than 10 days after you receive it.
- Give the Obligor a copy of this order and the blank *Request for Hearing Regarding Wage and Earnings Assignment* (form 1299.28) within 10 days.
- Other (specify):
- For the purposes of this order, the arrearages are set as follows:

Amount	As of (date)
a. <input type="checkbox"/> Child support:	
b. <input type="checkbox"/> Spousal support:	
c. <input type="checkbox"/> Family support:	

Date: _____ JUDICIAL OFFICE: _____ WEST GROUP

 (Instructions and information on reverse) Family Code, § 5008
 Form Approved by Rule 1095.70 Code of Civil Procedure, § 102.001
 JUDICIAL COURTS OF CALIFORNIA 15 U.S.C. §§ 9072-1973
 1285.70 (Rev. July 1, 1998)

WAGE AND EARNINGS ASSIGNMENT ORDER
 (Family Law—Domestic Violence Prevention—Uniform Parentage)

Here we must determine whether the family court erred in terminating spousal support to a wife where the wife pleaded no contest to and was convicted of an act of domestic violence before enactment of section 4325, but where the husband thereafter entered into a stipulated judgment providing for spousal support to the wife in ignorance of section 4325. Mary contends her ex-husband, cannot assert the presumption of section 4325, arguing section 4325 should not be applied retroactively, the doctrine of res judicata prevents modification of the support provisions of the stipulated judgment, and Anand is barred from attacking the stipulated judgment by the doctrines of waiver and equitable estoppel.

We conclude section 4325 must be given retroactive application, the stipulated judgment was modifiable, and the doctrines of res judicata, waiver, and equitable estoppel did not bar application of the presumption of section 4325.

Marriage of Kelkar (2014) 229 Cal.App.4th 833

CRIMINAL LAW PERSPECTIVE

ABDUCTED CHILDREN RETURN TO LOS ANGELES WITH THEIR FATHERS

BY BRENDA GAZZAR, LOS ANGELES DAILY NEWS

POSTED: 12/28/13, 5:48 PM PST |

[HTTP://WWW.DAILYNEWS.COM/SOCIAL-AFFAIRS/20131228/ABDUCTED-CHILDREN-RETURN-TO-LOS-ANGELES-WITH-THEIR-FATHERS](http://www.dailynews.com/social-affairs/20131228/abducted-children-return-to-los-angeles-with-their-fathers)

Maria Pfeifer, 32, was the focus of an international manhunt involving the FBI, Interpol and local authorities after police say she took her boys on what started as an authorized trip to Central Europe in June of last year, until she didn't return. The former Hollywood resident, who had an international arrest warrant against her, was arrested on Dec. 19 at the children's school in the French town of Divonne les Bains near the Swiss border.

At French court hearings Thursday attended by Pfeifer and her two ex-husbands, former Hollywood Records president Robert Pfeifer of Laurel Canyon and voiceover agent Larry Hummel of Beverly Hills, a judge ordered the children to be returned to their fathers, police said.

The Los Angeles County District Attorney's Office in August filed felony criminal charges against the Slovakian woman, a legal U.S. resident, for two counts of "child detention with right to custody" of Sasha Hummel, 4, and his half-brother Jerry Pfeifer. The D.A.'s Office is now pursuing extradition of the mother, who is currently out on bail, and federal officials believe she may return to the U.S. voluntarily, said LAPD Officer Michael Morris, an investigator with the Hollywood Division's Major Assault Crimes Unit.

"This is still in prosecution, but whatever happens is going to be up to the (District Attorney) and that's going to be up to the court system," Morris, accompanied by an FBI agent, said at the airport Saturday. Maria Pfeifer, who had shared custody of the boys at the time, was given permission by a court to travel with her children to the Czech Republic and Slovakia from June 1 to July 1, 2012, but eventually made excuses about her return date, according to police. The fathers filed child concealment complaints when they realized they were not coming home. Following the alleged abductions, a local court awarded both fathers sole legal and physical custody of their sons.

At their French school in Divonne les Bains, Sasha and Jerry were enrolled under false identities — Elie Skoda and Milosh Skoda respectively — and were called by their classmates by their new first names, according to the French ruling. They also went through a physical transformation, including growing their hair long, which could have led to misunderstandings about their gender, the ruling said.

Since the mother and her children left the U.S., she visited different areas of several countries but mainly France and Germany, settling down in Divonne les Bains in February of this year, according to the ruling, which cited evidence obtained by the FBI.

Maria Pfeifer argued that her escape was dictated by violence — Sasha had suffered from his father shortly before their departure — something the father said is a lie — and that the dad was psychologically fragile. But the court found that "no evidence has been produced that Sasha was in any danger at the time from his father," the French ruling stated. The judge found that the boy was likely to find emotional security with his father.

In a U.S. Federal District Court charge filed by FBI Special Agent Michael Hess against Maria Pfeifer in September seeking an international arrest warrant, Hess said the mother had stated in an email to a relative that Larry Hummel had threatened to take her to court to take the boy away from her just as Robert Pfeifer had done.

Robert Pfeifer, now 58, was arrested by police in 2004 on suspicion of misdemeanor battery involving Maria Pfeifer but no charges were ever filed, according to LAPD. The two have had a joint custody arrangement for years. Robert Pfeifer also was linked to the case of Hollywood private eye Anthony Pellicano and sentenced in 2009 to time served and four months home confinement for hiring Pellicano — who is serving a 15-year prison sentence for racketeering and other charges — to wiretap an ex-girlfriend.

Child Abduction – Violation of Custody or Visitation Right



Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars (\$1,000), or both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years, a fine not exceeding ten thousand dollars (\$10,000), or both that fine and imprisonment.

Penal Code Section 278.5

CALJIC 9.71

CHILD ABDUCTION—VIOLATION OF CUSTODY OR VISITATION RIGHT

(Penal Code § 278.5)

[Defendant is accused [in Count[s] _____] of having violated section 278.5 of the Penal Code, a crime.]

Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right of visitation, is guilty of a violation of Penal Code section 278.5, a crime.

In order to prove this crime, each of the following elements must be proved:

- 1. [_____, was a lawful custodian of a child;]
[_____ had a right of visitation with a child;]**
- 2. The [defendant] [(other person)] took, enticed away, kept, withheld, or concealed that child from the [lawful custodian] [person with a right of visitation];**
- 3. The person who took, enticed away, kept, withheld, or concealed the child thereby maliciously deprived a [lawful custodian of a right to custody] [person of a right of visitation].**

Defense to Child Abduction: Protection From Immediate Injury

1252. Defense to Child Abduction: Protection From Immediate Injury (Pen. Code, § 278.7)

The defendant did not maliciously deprive a (lawful custodian of a right to custody/ [or] person of a right to visitation) if the defendant:

1. Had a right to custody of the child when (he/she) abducted the child;
2. Had a good faith and reasonable belief when abducting the child that the child would suffer immediate bodily injury or emotional harm if left with the other parent;
3. Made a report to the district attorney's office in the county where the child lived within a reasonable time after the abduction;
4. Began a custody proceeding in an appropriate court within a reasonable time after the abduction;

AND

5. Informed the district attorney's office of any change of address or telephone number for (himself/herself) and the child.

To *abduct* means to take, entice away, keep, withhold, or conceal.

The *right to custody* means the right to physical care, custody, and control of the child because of a court order or under the law.

Someone acts *maliciously* when he or she intentionally does a wrongful act or when he or she acts with the unlawful intent to disturb, defraud, annoy, or injure someone else.

[One way a child may suffer *emotional harm* is if he or she has a parent who has committed domestic violence against the parent accused of abducting the child. Acts of "domestic violence" include, but are not limited to (1) sexual assault; (2) causing or attempting to cause bodily injury, either intentionally or recklessly; or (3) causing a person to reasonably fear imminent serious bodily injury to himself or herself or another.]

[The report to the district attorney must include the defendant's name, the defendant's or child's current address and telephone number, and the reasons the child was abducted.]

[A reasonable time within which to make a report to the district attorney's office is at least 10 days from when the defendant took the child.]

[A reasonable time to begin a custody proceeding is at least 30 days

KIDNAPPING

CALCRIM No. 1252

from the time the defendant took the child.]

The People have the burden of proving beyond a reasonable doubt that the defendant maliciously deprived a (lawful custodian of a right to custody/ [or] person of a right to visitation). If the People have not met this burden, you must find the defendant not guilty of _____ <insert crime charged>.

New January 2006

BENCH NOTES

Instructional Duty

The court has a *sua sponte* duty to instruct on this defense if the defendant is relying on it, or if there is substantial evidence supporting the defense and the defense is not inconsistent with the defendant's theory of the case. (See *People v. Mehaisin* (2002) 101 Cal.App.4th 958, 965 [124 Cal.Rptr.2d 683]; *People v. Sedeno* (1974) 10 Cal.3d 703, 715–716 [112 Cal.Rptr. 1, 518 P.2d 913] [duty to instruct on defenses], disapproved on other grounds in *People v. Flannel* (1979) 25 Cal.3d 668, 684–685, fn. 12 [160 Cal.Rptr. 84, 603 P.2d 1] and in *People v. Breverman* (1998) 19 Cal.4th 142, 163, fn. 10, 164–178 [77 Cal.Rptr.2d 870, 960 P.2d 1094].)

Give on request the bracketed paragraph regarding "emotional harm" and "domestic violence" if there is evidence that the defendant had been a victim of domestic violence committed by the other parent. (See Pen. Code, §§ 278.7(b), 277(j); Fam. Code, §§ 6203, 6211.)

If there is issue about whether the defendant made a report to the district attorney's office or began custody proceedings within a reasonable time after the abduction, give either or both of the final two bracketed paragraphs on request. (See Pen. Code, § 278.7(c)(1), (2).)

AUTHORITY

- Elements of Defense. Pen. Code, § 278.7.
- Abduct Defined. Pen. Code, § 277(k).
- Court Order or Custody Order Defined. Pen. Code, § 277(b).
- Domestic Violence Defined. Pen. Code, § 277(j); see Fam. Code, §§ 6203, 6211.
- Person Defined. Pen. Code, § 277(i) [includes parent or parent's agent].
- Right to Custody Defined. Pen. Code, § 277(e); see *People v. Mehaisin* (2002) 101 Cal.App.4th 958, 964 [124 Cal.Rptr.2d 683] [liberal visitation period does not constitute right to custody].

Secondary Sources

1 Witkin & Epstein, California Criminal Law (3d ed. 2000) Crimes Against the Person, § 292.

Domestic Violence Under the California Penal Code

Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.

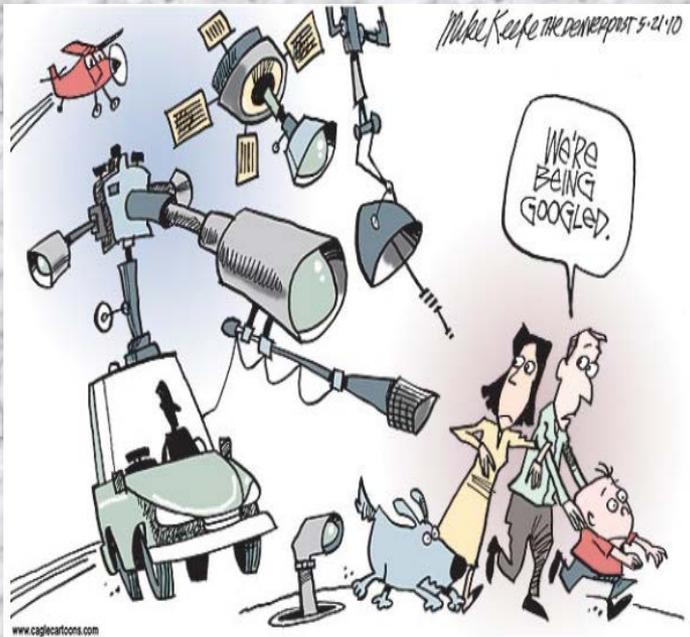
Penal Code § 273.5

Every person who willfully [and unlawfully] inflicts upon a person who is [[his][her][former] spouse] [a [former] cohabitant] [, or] [the mother] [or] [father] of [his][her] child], corporal injury resulting in a traumatic condition is guilty of a violation of section 273.5 subdivision (a) of the Penal Code, a crime.

In order to prove this crime, each of the following elements must be proved:

1. A person inflicted bodily injury upon [[his] [her] [former] spouse] [a [former] cohabitant] [the [mother] [or] [father] of [his] [her] child];
2. The infliction of bodily injury was willful [and unlawful]; and
3. The bodily injury resulted in a traumatic condition.

Invasion of Privacy



"All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

Cal. Const., Art. I, section 1.

Every person who, intentionally and without the consent of all parties to a confidential communication, by means of any electronic amplifying or recording device, eavesdrops upon or records the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio, shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment. If the person has previously been convicted of a violation of this section or Section 631, 632.5, 632.6, 632.7, or 636, the person shall be punished by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

Penal Code § 632

Invasion of Privacy (cont.)



Nothing in Section 631, 632, 632.5, 632.6, or 632.7 prohibits one party to a confidential communication from recording the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of Section 653m. Nothing in Section 631, 632, 632.5, 632.6, or 632.7 renders any evidence so obtained inadmissible in a prosecution for extortion, kidnapping, bribery, any felony involving violence against the person, a violation of Section 653m, or any crime in connection therewith

Summing Up



- ❑ Domestic violence is a pervasive public safety and public health problem that affects all people
- ❑ Every person has a right to be safe and free from violence and abuse
- ❑ Domestic violence includes behaviors that exercise control and power over victims, including physical, financial and emotional control, etc.
- ❑ Civil protective orders are most effective when they offer comprehensive relief and are consistently enforced
- ❑ The effective issuance and enforcement of civil protective orders are of paramount importance in California