

ORANGE COUNTY SUPERIOR COURT
FAMILY LAW
VETERANS' DOMESTIC
VIOLENCE
DIVERSION PROGRAM

Veterans & Their Families in California Courts

UCLA Luskin School of Public Affairs

November 10, 2015



Supervising Judge Lon Hurwitz
Family Law Division

What is “Abuse” within standard of law for “domestic violence”

Family Code (FC) 6320 says “Abuse” is:

- Intentionally or recklessly causing or attempting bodily injury;
- Sexual assault;
- Placing a person in reasonable apprehension of imminent serious bodily injury to self or another;
- Any behavior that could be enjoined under FC 6320.

What is “Abuse” - continued

FC 6320 behavior that can be

“enjoined” includes:

- Molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting either directly or indirectly, by mail or otherwise, coming within a specified distance, disturbing the peace

“Abuse” - continued..

- Definition of “Abuse” under FC 6203 is very broad, and does not require physical injury.
- Statute also does not refer to “recent” acts of abuse, but “past act or acts of abuse”.

Request For DV Orders (RO)

- When a Temporary Restraining Order (TRO) is issued, the alleged Perpetrator is registered into the California Law Enforcement Telecommunications System (CLETS); a statewide system which allows an individual's criminal history to be accessed. All DV Orders, **whether criminal or civil**, must, by federal and state law, be entered into CLETS. FC 6380(b).

Request For DV Orders-cont.

- Ownership, possession or access re firearms and ammunition is prohibited while a protective Order is in effect under many State and Federal statutes. FC 6389, Penal Code 12021. Order is effective upon issuance of an EPO, TRO, OAH, or CPO.

What is a DV Hearing?

- A full evidentiary hearing.
- Court is also required to consider:
 - Criminal history of Responding Party (RP) (FC 6306);
 - History of abuse of child (FC 3011), which can include written reports, etc.; and
 - History of abuse by RP upon Moving Party (alleging party in this civil action) (FC 6300).

The DV Hearing-cont.

- To issue orders, Court must find:
- That DV occurred within the meaning of FC 6203 and 6320;
- That the MP was the victim;
- That the RP was the perpetrator;
- That the DV did not occur in self defense.

The DV Hearing-cont.

- Once DV “Finding” is made, Court can issue Restraining Orders After Hearing (OAH) for up to 5 years initially, renewable by MP if renewal is requested before expiration of the initial orders, and reasonable apprehension of future abuse is shown. FC 6345; Ritchie v. Konrad (2004) 115 Cal. App. 4th 1275.

The DV Hearing-cont.

- Court can issue orders made in TRO and custody, visitation, & financial support orders;
- exclusive use/possession orders;
- orders to attend classes (Batterers Intervention Program (BIP), Anger Management, Parenting classes);
- orders prohibiting consumption of drugs/alcohol; and
- orders for drug or alcohol testing.

Effects of DV “Finding”

- Immediately after a “finding” of DV is made by the Judge, MP and RP are provided copies of the OAH in Court (unless RP failed to appear, in which case RP will have to be served); if RP is present, Review Hearing is set to ensure enrollment in BIP and compliance with Orders; and the OAH are input into the CLETS system.

Ramifications of DV Finding on Restrained Party

- Presumption of no child custody for 5 years. FC 3044.
- In CLETS for 10 years, so when a prospective employer runs a criminal history search, even though no criminal conviction or even criminal court involvement, a DV “Finding” will be seen.

Ramifications of DV “Finding”-cont.

- Effectively (though not statutorily) prevented from becoming a Doctor, Lawyer, Police Officer, Firefighter, Bus Driver, Airline Pilot, Security Guard, Teacher, Military Officer, etc.
- Cannot own/possess any firearm or ammunition under State DVPA (FC 6389) and Federal VAWA for duration of OAH.

Ramifications of a DV “Finding” - cont.

- Exception to Firearms prohibition under FC 6389(h) is not an exception under Violence Against Women Act (VAWA).
- (-- In non-VAWA situations, an exception to the firearm prohibition can be made IF a firearm is a condition of employment, employer is unable to reassign R/P, firearm is only in R/P possession during work, and with a psych evaluation for peace officer as prerequisite)

Ramifications of a DV “Finding” - cont.

- Presumption that an abusive spouse shall not be entitled to receive spousal/partner support from the victim spouse. FC 4320(i), (m); FC 4325.

What happens with a “No DV Finding”?

- If the Court makes a finding that no DV occurred, it has **no** jurisdiction under the DV case to issue *any* orders; unless the Parties wish to stipulate to the entry of specific orders.

The Orange County Family Law Domestic Violence Veterans Program-Genesis & Eligibility

- No history of DV prior to first deployment
- Servicemember returns from deployment(s)
- Significant other was left in charge of household at time of deployment
- Servicemember returns with undiagnosed PTS/TBI; significant other receives no counseling prior to servicemember's return re PTS/TBI symptomology
- Clash with victim requesting protection.

The OC Family Law Domestic Violence Veteran's Program -- cont

- Victim seeks Temporary Restraining Order (TRO) which can be issued by the Court without a “Finding” of DV for 21 to 25 days;
- Hearing is set after said 21 to 25 days to determine if DV occurred.
- If the Court makes a “Finding” that DV occurred, Restraining Orders After Hearing (ROAH) are issued for 1 to 5 years-renewable for life under the California Domestic Violence Prevention Act.

The OC Family Law Domestic Violence Veterans' Program- Ramifications of a DV "Finding"

- In CLETS for years
- Employer Crim Hx search will reveal "Finding"
- Effectively prevented from occupations
- Presumption of no child custody under FC 3044
- No firearm/ammunition possession
- Orders are "one size fits all" - no consideration of PTS or TBI issues
- Precludes enlistment in National Guard & Reserves

The OC Family Law DV Vet Program-Usual Fact situation

- No history of DV prior to deployment
- On return, Servicemember may have PTS or TBI issues resulting in clash/incident(s) with significant other or children that creates request for a R.O.
- PTS or TBI usually undiagnosed and/or substance abuse issues involved
- Usually before any criminal involvement

The OC Family Law DV Vet Program-Background

- In 2009, OC Court approached the Veteran's Administration with the concept of a Veteran Program in Family Law DV cases designed to avoid a "Finding" of DV by the Court.
- Program to be separate from the Veterans Court, which is based on a post-conviction Criminal Model
- Meetings held with VA, Orange County Health Services Agency Vet Reps, and the Court.
- Program began in June 2010 with case manager support

OC Family Law DV Vet Program Goals

- To address PTS/TBI/Substance issues;
- To stop problem(s) before situation escalates to criminal stage;
- To reintegrate the Service member with the Family;
- To protect the Victim(s) during the process;
- To fashion a remedy that does not irreparably damage the Service member's ability to transition to a civilian occupation and support the Family.

OC Family Law DV Vet Program (Parameters)

- Alleged perpetrator is identified as a servicemember with no pre-deployment history of DV;
- The Parties are advised at the Hearing of the ramifications of a DV “Finding” by a Judge;
- The Parties are offered the option of an extension of the TRO, without a “finding” of DV, but with the same protections as if there was a DV “Finding” and a R.O A.H. was issued, for a period of 1 year

OC Family Law DV Vet

Program-Parameters (cont.)

- The servicemember agrees to allow the O.C.H.S.A. Vet Liaison Officer to act as a case manager; to be assessed for PTS/TBI and/or substance/alcohol issues; and to attend counseling, anger management, parenting and/or any other courses that treating professional may recommend;
- The Vet Liaison Officer determines what Vet services the servicemember is eligible for (i.e.: Vet Hospital, Vet Center, etc.) and coordinates servicemember's appointments/progress;

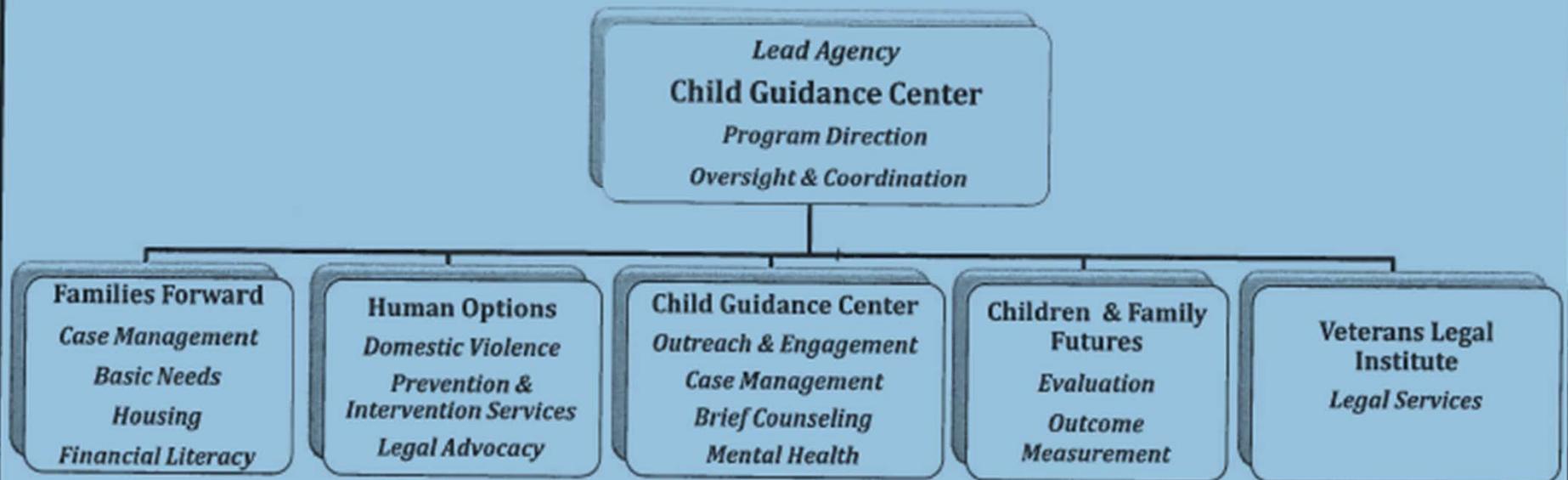
OC Family Law DV Vet Program-Parameters (cont.)

- The Court holds 90 day Review Hearings to monitor servicemember's progress; compliance with TRO; to receive progress reports from the case manager and treating physical/therapist; and to establish reintegration with the children.
- Goal is that after 1 year, if victim now feels comfortable and there were no violations of the TRO, case is dropped, with understanding that if there are any new incidences, a new request for restraining orders can be made. If 1 year insufficient, Court can extend TRO.

Strong Families, Strong Children (SFSC)

A Partnership to Support Veteran Families in Orange County

Organizational Chart



As of Fall 2015 much-needed services for families have been added to support ALL parties in the Vet DV Diversion Program model

Preliminary Outcomes

- Of the 85 veterans, only 12 were able to be identified as actually going through the diversion program
- In these 85 cases, 29 had Restraining Orders Granted (TROs extended); 47 were not granted; 9 data unavailable
- These 47 were most often not granted due to alleging party withdrawing complaint; in 2 cases in which this occurred, the alleging party filed a new complaint within the timeframe observed.

Preliminary Outcome Data

- Among these 85 veterans, there were 135 children – ranging in age from less than one to 18 y/o.
- Veterans ages ranged from 21 to 68 years old
- TROs were extended from 12 months to 60 months
- Of the 12 cases in “diversion”, no reoffenses occurred within timeframe observed
- Evaluation of outcomes is ongoing