RESOLUTION 02-01-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend sections 6340 and 6345 of the Family Code, to read as follows:

§ 6340

(a)(1) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. If the court makes any order for custody, visitation, or support, that order shall survive the termination of any protective order. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(2) (A) If at the time of a hearing with respect to an order issued pursuant to this part based on an ex parte temporary restraining order, the court determines that, after diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the restrained party is evading service or cannot be located, the court may permit an alternative method of service designed to give reasonable notice of the action to the respondent. Alternative methods of service include, but are not limited to, the following:

(i) Service by publication pursuant to the standards set forth in Section 415.50 of the Code of Civil Procedure.

(ii) Service by first-class mail sent to the respondent at the most current address for the respondent that is available to the court or delivering a copy of the pleadings and orders at the respondent's home or place of employment, pursuant to the standards set forth in Sections 415.20 to 415.40, inclusive, of the Code of Civil Procedure.

(iii) Service by electronic mail or other electronic technology.

(B) If the court permits an alternative method of service under this paragraph, the court shall grant a continuance to allow for the alternative service pursuant to Section 245.

(b) The court shall, upon denying a petition under this part, provide a brief statement of the reasons for the decision in writing or on the record. A decision stating "denied" is insufficient.

(c) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

§ 6345

(a) In the discretion of the court, the personal conduct, stay-away, and residence exclusion orders contained in a court order issued after notice and a hearing under this article may have a duration of not more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. After notice and a hearing, and subject to the provisions of Family Code Section 6340(a)(2)(A), these orders may be renewed, upon the request of a party,

either for five or more years, or permanently, at the discretion of the court, without a showing of further abuse since the issuance of the original order. Renewals and subsequent renewals shall be subject to termination, modification, or subsequent renewal by further order of the court either on written stipulation filed with the court or on the motion of a party. The request for renewal may be brought at any time within the three months before the expiration of the orders.

(b) Notwithstanding subdivision (a), the duration of any orders, other than the protective orders described in subdivision (a), that are also contained in a court order issued after notice and a hearing under this article, 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.

(c) The failure to state the expiration date on the face of the form creates an order with a duration of three years from the date of issuance.

(d) If an action is filed for the purpose of terminating or modifying a protective order prior to the expiration date specified in the order by a party other than the protected party, the party who is protected by the order shall be given notice, pursuant to subdivision (b) of Section 1005 of the Code of Civil Procedure, of the proceeding by personal service or, if the protected party has satisfied the requirements of Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, by service on the Secretary of State. If the party who is protected by the order cannot be notified prior to the hearing for modification or termination of the protective order, the court shall deny the motion to modify or terminate the order without prejudice or continue the hearing until the party who is protected can be properly noticed and may, upon a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive the right to notice if the protected party is physically present in court and does not challenge the sufficiency of the notice.

(e) On or before January 1, 2025, the Judicial Council shall create one or more specific forms for the purpose of requesting a modification of an existing restraining order.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Rebecca L. Fischer, Stacy Horth-Neubert, Karen Suri, Elizabeth Erickson, Stephanie Bailiff, Vanessa Adriance, Mark Alan Hart, Phyllis Kupferstein, Shaun Dabby Jacobs, Noelle M. Natoli, Natashia Saunders

STATEMENT OF REASONS

The Problem (including Existing Law):

In the past decade, California law has been amended to permit electronic service of process of certain types of requests for protective orders when personal service cannot be effectuated because the opposing party is evading service. Amendments to the service provisions of other types of protective orders have expanded the circumstances under which alternative service may be made to instances where the requesting party otherwise has not been able to

locate the opposing party following diligent attempts. However, neither of these amendments have been incorporated into provisions relating to requests to issue or renew protective orders under the Domestic Violence Prevention Act (DVPA), leaving three separate gaps in the protections for domestic violence survivors.

First, the DVPA rules regarding service of requests to obtain or renew protective orders have not been amended to provide for alternative service when the party simply cannot be located, despite being adopted for other types of protective orders. *Compare* Fam. Code § 6340(a)(2)(A) (DVPA restraining orders and renewals) *with* CCP § 5.27.6(m)(2) (Civil Harassment Restraining Orders); Welf. & Inst. Code § 15657.03(k)(2) (elder abuse protective orders). This omission is particularly glaring because the DVPA does permit alternative service of requests to terminate or modify a protective order made by the restrained party. *See* Fam. Code § 6345(d) (court may specify "another method of service of process that is reasonably designed to afford actual notice" upon a showing of "good cause" when the protective party cannot be personally served).

Second, the DVPA rules regarding service of requests to renew protective orders have not been amended to allow for alternative service provisions of process when the party to be served is "evading" service of process. *See* Fam. Code § 6345(a).

Third, the DVPA has not been amended to permit alternative service by electronic means for requests to obtain or renew protective orders, even though such provisions have been adopted elsewhere. *Compare* Fam. Code § 6340(a)(2)(A) (no provision for electronic service) with Civ. Proc. Code § 413.30(a)(1) (allowing electronic service of summons).

The Solution:

The proposed changes update the DVPA to include all three types of amendments to service of process rules adopted in other sections of California law, and therefore will increase consistency across existing California law related to protective orders, increase protections for those experiencing domestic violence, and ensure service is achieved in a manner likely to achieve actual notice consistent with the goals of permitting alternative service of process.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None

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RESOLUTION 02-02-2026

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend section 362.4 of the Welfare and Institutions Code, to read as follows:

§ 362.4
(a) If the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue a protective order as provided for in Section 213.5 or as defined in Section 6218 of the Family Code, and an order determining the custody of, or visitation with, the child.
(b) In making an order under this section, the juvenile court shall consider whether either parent has perpetrated domestic violence within the previous five years against the other party, the child, or against the child or child's siblings.
(1) For purposes of this section, a person has "perpetrated domestic violence" when the person is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in behavior involving, but not limited to, threatening, striking, harassing, destroying personal property, or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Family Code Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.
(2) For purposes of this section, a finding by the court that a person has "perpetrated domestic violence" may be based upon, among other things, and not limited to:
(i) Evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of a crime against the other party that comes within the definition of domestic violence contained in Family Code Section 6211of abuse contained in Family Code Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 273.5, 422, or 646.9 of, or former Section 262 of, the Penal Code;
(ii) An order by the juvenile court sustaining a petition under WIC Section 300 based on the domestic violence perpetrated by one parent;
(iii) A restraining order by the juvenile court protecting the child or the other parent pursuant to Section 213.5
(c) Upon a finding by the dependency court that one of the parents has perpetrated domestic violence, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is not in the best interest of the child. When the presumption applies, the court shall not order sole or joint physical or legal custody of a child to a person found to have perpetrated domestic violence absent findings on the record that:

(1) The perpetrator has successfully rebutted the presumption under the factors set forth in Family Code Section 3044 (b) or
(2) An award of sole legal or sole physical custody to the other parent would be detrimental to the minor child.
(d) When allegations of abuse by a parent pursuant to paragraph (b) have been brought to the attention of the court and the court makes an order for sole or joint custody or unsupervised visitation to that parent, the court shall state its reasons in writing or on the record that the order is in the best interest of the child and protects the safety of the parties and the child. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Family Code Section 6323.
(e) When a finding about a parent pursuant to paragraph (c) has been made, the court shall ensure that any order regarding custody or visitation, including pursuant to stipulation, is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (c) of Family Code Section 6323.
(f) ~~(b)~~ Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.
(g)~~(c)~~ If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.
~~(d)~~ (h) The clerk of the superior court shall, upon the filing of any juvenile court custody order, send a copy of the order with the case number by first-class mail or by electronic means pursuant to Section 212.5 to the juvenile court and to the parents at the address listed on the order.
~~(e)~~ (i) The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

(Proposed new language underlined; language to be deleted stricken)

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STATEMENT OF REASONS

The Problem (including Existing Law):

Both dependency courts and family courts are required to make custodial decisions based on the best interest of the child(ren). However, over the years, the Family Code – but not the Welf. & Inst. Code applicable to dependency courts -- has been amended to require consideration of a parent's recent history of domestic violence when making custody decisions. *See* Fam. Code §§ 3011(a)(2), 3011(a)(5)(A), 3044 & 6323(a)(2)(A). Because of the detrimental impact on children of exposure to domestic violence and the continued safety risks abuse poses to children and parents after separation, the Family Code imposes a presumption that where there has been a judicial finding of domestic violence within the past five years, joint custody to both parents or sole custody to the alleged perpetrator is not in the best interest of the child(ren). *Id.* § 3044. Similarly, family courts are required to consider both allegations and findings of domestic violence when making orders for visitation. *Id.* §§ 3011(a)(5)(A) & 6323(c).

Such provisions have not been adopted in Welf. & Inst. Code, however, even when the dependency court terminates jurisdiction over a child and the case may be transferred to family court. Further, courts have repeatedly held that the Civil and Family Codes are not applicable in dependency court unless expressly stated and therefore the Section 3044 presumption does not apply. *See e.g., In re C.M.* (2019) 38 Cal. App.5th 101. When terminating jurisdiction and entering custody orders prior to transferring the case to family court, dependency courts are instead directed to consider the totality of the circumstances. See *In re Jennifer R.* (1993) 14 Cal. App. 4th 704, 712.

In practice, this leads to final orders of joint legal or physical custody with visitation schedules issued by dependency courts that do not adequately address domestic violence, its lingering impacts, or the potential safety issues that remain even the parents' relationship has ended, relying on cooperation and continued communication between the parents. In a relationship with domestic violence, joint custody orders and unspecific visitation orders that depend on cooperation between the parents are particularly problematic because they increase the opportunities for abuse under the guise of making custodial arrangements and are nearly impossible to enforce with the police if there is a safety issue impacting the child(ren).

<u>The Solution</u>:

Modifying WIC Section 362.4 to require dependency courts at the termination of jurisdiction stage to consider the history of domestic violence and to mandate specified visitation orders when there have been allegations of abuse will help protect children, decrease safety risks to parents, and decrease the need for parents to return court to clarify court orders. The modification still permits dependency court orders to consider other factors when determining custody and visitation, including substance abuse or failure to follow court orders, but the amendments encourage consistency in orders and better protects children.

IMPACT STATEMENT

This resolution does not affect any other law, statute, or rule.

CURRENT OR PRIOR RELATED LEGISLATION

None

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