

Assembly Bill No. 2148

CHAPTER 472

An act to amend Sections 2030, 2031, 6340, 6341, and 6344 of, and to add Sections 3121 and 7605 to, the Family Code, relating to family law.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2148, Diaz. Family law proceedings.

(1) Existing law authorizes the court, in dissolution of marriage, nullity of marriage, or legal separation proceedings, to order any party, except a governmental entity, to pay the amount reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding, subject to augmentation or modification from time to time and before entry of judgment.

This bill would enact similar provisions that would apply in actions for the exclusive custody of a child and specified child custody and visitation proceedings. The bill would also permit, for purposes of the proposed provisions and the provision of existing law described above, a party who lacks the financial ability to hire an attorney to request the court to order the other party to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner. The bill would make related changes.

(2) Under existing law, during dissolution of marriage, nullity of marriage, or legal separation proceedings, an application for a temporary order making, augmenting, or modifying an award of attorney's fees or costs shall be made by a motion on notice or an order to show cause.

This bill would enact similar provisions that would apply in actions for the exclusive custody of a child and specified child custody and visitation proceedings. The bill would require, for purposes of the proposed provisions and the provision of existing law described above, the court to rule on an application for a temporary order for attorney's fees within 15 days of the hearing on the motion or order to show cause.

(3) Under existing law relating to the prevention of domestic violence, the court may issue various types of ex parte orders enjoining a party from contacting, molesting, attacking, striking, stalking, threatening, sexually assaulting, and engaging in other specified behavior.

This bill would require the court to consider whether the failure to make any of those orders in specified cases would jeopardize the safety of the petitioner, as specified. The bill would also require the Judicial Council to provide notice of this provision on related Judicial Council forms.

(4) Existing law authorizes the court, in domestic violence proceedings, to issue an order for support of a minor child if the respondent is the child's presumed father after notice and a hearing.

This bill would specify that the court may, if requested by the petitioner, make such an order, as specified. The bill would also require the court, after notice and a hearing, to order the respondent to pay an authorized amount of spousal support if the parties are married to each other and no spousal support order exists. The bill would also specify that such an order would be without prejudice.

(5) Existing law relating to domestic violence proceedings authorizes the court to issue an order for the payment of attorney's fees and costs of the prevailing party.

This bill would require the court, in any action in which the petitioner is the prevailing party and cannot afford to pay attorney's fees and costs, if appropriate based on the parties' respective abilities to pay, to order that the respondent pay petitioner's attorney's fees and costs.

The people of the State of California do enact as follows:

SECTION 1. Section 2030 of the Family Code is amended to read:

2030. (a) (1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(2) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon, (A) the respective incomes and needs of the parties, and (B) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.



(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

SEC. 2. Section 2031 of the Family Code is amended to read:

2031. (a) (1) Except as provided in subdivision (b), during the pendency of a proceeding for dissolution of marriage, for nullity of marriage, for legal separation of the parties, or any proceeding subsequent to entry of a related judgment, an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs or both shall be made by motion on notice or by an order to show cause.

(2) The court shall rule on an application within 15 days of the hearing on the motion or order to show cause.

(b) An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 3. Section 3121 is added to the Family Code, to read:

3121. (a) In any proceeding pursuant to Section 3120, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the



financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in Section 3120, or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in paragraph (g), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in Section 3120.

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 4. Section 6340 of the Family Code is amended to read:

6340. (a) 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. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) 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.

SEC. 5. Section 6341 of the Family Code is amended to read:

6341. (a) If the parties are married to each other and no other child support order exists or if there is a presumption under Section 7611 that the respondent is the natural father of a minor child and the child is in



the custody of the petitioner, after notice and a hearing, the court may, if requested by the petitioner, order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to Division 9 (commencing with Section 3500) or the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). 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 child support is requested, including safety concerns related to the financial needs of the petitioner and the children. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) An order issued pursuant to subdivision (a) of this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(c) If the parties are married to each other and no spousal support order exists, after notice and a hearing, the court may order the respondent to pay spousal support in an amount, if any, that would otherwise be authorized in an action pursuant to Part 1 (commencing with Section 3500) or Part 3 (commencing with Section 4300) of Division 9. 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, including safety concerns related to the financial needs of the petitioner. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(d) An order issued pursuant to subdivision (c) shall be without prejudice in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties.

SEC. 6. Section 6344 of the Family Code is amended to read:

6344. (a) After notice and a hearing, the court may issue an order for the payment of attorney's fees and costs of the prevailing party.

(b) In any action in which the petitioner is the prevailing party and cannot afford to pay for the attorney's fees and costs, the court shall, if appropriate based on the parties' respective abilities to pay, order that the respondent pay petitioner's attorney's fees and costs for commencing and maintaining the proceeding. Whether the respondent shall be ordered to pay attorney's fees and costs for the prevailing petitioner, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay.

SEC. 7. Section 7605 is added to the Family Code, to read:



7605. (a) In any proceeding to establish physical or legal custody of a child or a visitation order under this part, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in subdivision (a), or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in paragraph (g), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in subdivision (a).

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

