

**ASSEMBLY BILL**

**No. 2089**

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**Introduced by Assembly Member Quirk**

February 20, 2014

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An act to amend Sections 6203, 6300, 6301, 6305, 6340, and 6345 of, and to repeal and add Section 6220 of, the Family Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2089, as introduced, Quirk. Domestic violence: protective orders.

The Domestic Violence Prevention Act authorizes a judicial officer to issue a protective order after notice and a hearing for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, based on an affidavit showing reasonable proof of past abuse. The act defines domestic violence as abuse perpetrated against specified persons, and further defines abuse within that context. Under existing law, failure to state the expiration date of the order, as specified, creates an order with a duration of 3 years from the date of issuance. Existing law requires, under certain circumstances, the clerk of the court to submit the proof of service of a protective order directly into the Department of Justice Domestic Violation Restraining Order System.

This bill would instead authorize the issuance of a protective order after notice and a hearing for the purpose of providing expeditious and effective protection from abuse to ensure that the lives of domestic violence victims and their children will be as safe, secure, and uninterrupted as possible. The bill would provide that these orders may be issued on the basis of evidence of past abuse, without any showing that the wrongful acts will be continued or repeated. The bill would

prohibit the court from denying an order solely because of the length of time between an act of abuse and the filing of the petition for the restraining order. The bill would also require the trial court to state its reasons for denying a protective order in writing or on the record, if a statement of decision is not requested. The bill would provide that failure to state the expiration date of the order creates an order with a duration of 5 years from the date of issuance.

Existing law authorizes the court to issue a mutual order enjoining the parties from specific acts of abuse if both parties personally appear, each party presents written evidence of abuse or domestic violence, and the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

This bill would instead authorize the issuance of a mutual order if neither party acted as the dominant aggressor. The bill would direct the court, in identifying the dominant aggressor, to consider the intent of the law to protect victims of domestic violence from continuing abuse, the threats creating fear of physical injury, the history of domestic violence between the persons involved, and whether either person involved acted in self-defense.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Every person has a right to be safe and free from violence
- 4 and abuse in his or her home and intimate relationships.
- 5 (b) Domestic violence is a pervasive public safety and public
- 6 health problem that affects people of all income levels, cultures,
- 7 religions, ages, ethnic backgrounds, sexual orientations, and
- 8 neighborhoods.
- 9 (c) Domestic violence is not limited to actual and threatened
- 10 physical acts of violence, but also includes sexual abuse, stalking,
- 11 psychological and emotional abuse, financial control, property
- 12 control, and other behaviors by the abuser that are designed to
- 13 exert coercive control and power over the victim.
- 14 (d) There is a positive correlation between domestic violence
- 15 and child abuse, and children, even when they are not physically

1 assaulted, suffer deep and lasting emotional, health, and behavioral  
2 effects from exposure to domestic violence.

3 (e) Domestic violence victims face significant barriers to safely  
4 leaving an abusive relationship, including, but not limited to, a  
5 risk of retaliation and escalated violence by the abuser, concerns  
6 over the safety and custody of their children, an impending loss  
7 of financial support and housing, the responsibility for other  
8 household members and pets, and difficulties accessing legal and  
9 community systems to seek protection from abuse.

10 (f) Studies have shown that obtaining a civil protective order  
11 against an abuser can increase a victim's safety, decrease a victim's  
12 fear of future harm, and improve a victim's overall sense of well  
13 being and self-esteem.

14 (g) Because the issuance of civil protective orders often results  
15 in declines in domestic violence, public money spent on protective  
16 order intervention produces significant cost savings to society,  
17 including decreasing victims' time off from work, property loss,  
18 use of health services, and use of community, legal, and criminal  
19 justice interventions.

20 (h) Civil protective orders are most effective when they offer  
21 comprehensive relief to address the various barriers victims face  
22 when safely separating from an abuser, are specific in their terms,  
23 and are consistently enforced.

24 (i) For these reasons, the effective issuance and enforcement of  
25 civil protective orders are of paramount importance in the State  
26 of California as a means for promoting safety, reducing violence  
27 and abuse, and preventing serious injury and death.

28 SEC. 2. Section 6203 of the Family Code is amended to read:

29 6203. (a) For purposes of this act, "abuse" means any of the  
30 following:

31 ~~(a)~~

32 (1) Intentionally or recklessly to cause or attempt to cause bodily  
33 injury.

34 ~~(b)~~

35 (2) Sexual assault.

36 ~~(c)~~

37 (3) To place a person in reasonable apprehension of imminent  
38 serious bodily injury to that person or to another.

39 ~~(d)~~

1 (4) To engage in any behavior that has been or could be enjoined  
2 pursuant to Section 6320.

3 (b) *Abuse is not limited to the actual infliction of physical injury*  
4 *or assault.*

5 SEC. 3. Section 6220 of the Family Code is repealed.

6 ~~6220. The purposes of this division are to prevent the~~  
7 ~~recurrence of acts of violence and sexual abuse and to provide for~~  
8 ~~a separation of the persons involved in the domestic violence for~~  
9 ~~a period sufficient to enable these persons to seek a resolution of~~  
10 ~~the causes of the violence.~~

11 SEC. 4. Section 6220 is added to the Family Code, to read:

12 6220. The purpose of this division is to provide expeditious  
13 and effective protection from abuse to ensure that the lives of  
14 domestic violence victims and their children will be as safe, secure,  
15 and uninterrupted as possible.

16 SEC. 5. Section 6300 of the Family Code is amended to read:

17 6300. (a) An order may be issued under this part, with or  
18 without notice, to restrain any person for the purpose of ~~preventing~~  
19 ~~a recurrence of domestic violence and ensuring a period of~~  
20 ~~separation of the persons involved specified in Section 6220, if an~~  
21 affidavit or, if necessary, an affidavit and any additional  
22 information provided to the court pursuant to Section 6306, shows,  
23 to the satisfaction of the court, reasonable proof of a past act or  
24 acts of abuse. *The court may issue an order under this part based*  
25 *solely on the affidavit or testimony of the person requesting the*  
26 *restraining order.*

27 (b) *An order under this part may be issued on the basis of*  
28 *evidence of past abuse, without any showing that the wrongful*  
29 *acts will be continued or repeated.*

30 SEC. 6. Section 6301 of the Family Code is amended to read:

31 6301. (a) An order under this part may be granted to any person  
32 described in Section 6211, including a minor pursuant to  
33 subdivision (b) of Section 372 of the Code of Civil Procedure.

34 (b) The right to petition for relief shall not be denied because  
35 the petitioner has vacated the household to avoid abuse, and in the  
36 case of a marital relationship, notwithstanding that a petition for  
37 dissolution of marriage, for nullity of marriage, or for legal  
38 separation of the parties has not been filed.

1 (c) *The court shall not deny an order under this part solely*  
2 *because of the length of time between an act of abuse and the filing*  
3 *of the petition for the restraining order.*

4 SEC. 7. Section 6305 of the Family Code is amended to read:

5 6305. (a) The court ~~may~~ *shall* not issue a mutual order  
6 enjoining the parties from specific acts of abuse described in  
7 Section 6320 ~~(a)~~ *unless both parties of the following apply:*

8 (1) *Both parties* personally appear and each party presents  
9 written evidence of abuse or domestic ~~violence~~ *and (b) the violence.*

10 (2) *The court makes detailed findings of fact indicating that*  
11 ~~both parties acted primarily as aggressors~~ *neither party acted as*  
12 *a dominant aggressor and that neither party acted primarily in*  
13 *self-defense.*

14 (b) *For purposes of subdivision (a), the dominant aggressor is*  
15 *the person determined to be the most significant aggressor. In*  
16 *identifying the dominant aggressor, the court shall consider the*  
17 *intent of the law to protect victims of domestic violence from*  
18 *continuing abuse, the threats creating fear of physical injury, the*  
19 *history of domestic violence between the persons involved, and*  
20 *whether either person involved acted in self-defense.*

21 SEC. 8. Section 6340 of the Family Code is amended to read:

22 6340. (a) The court may issue any of the orders described in  
23 Article 1 (commencing with Section 6320) after notice and a  
24 hearing. When determining whether to make any orders under this  
25 subdivision, the court shall consider whether failure to make any  
26 of these orders may jeopardize the safety of the petitioner and the  
27 children for whom the custody or visitation orders are sought. If  
28 the court makes any order for custody, visitation, or support, that  
29 order shall survive the termination of any protective order. The  
30 Judicial Council shall provide notice of this provision on any  
31 Judicial Council forms related to this subdivision.

32 (b) *The court shall, upon the request of any party, issue a*  
33 *statement of decision explaining the factual and legal basis for its*  
34 *decision under this part pursuant to Section 632 of the Code of*  
35 *Civil Procedure. If neither party requests a statement of decision,*  
36 *and the trial court denies a petition under this part, it shall state*  
37 *its reasons in writing or on the record.*

38 ~~(b)~~

39 (c) The court may issue an order described in Section 6321  
40 excluding a person from a dwelling if the court finds that physical

1 or emotional harm would otherwise result to the other party, to a  
2 person under the care, custody, and control of the other party, or  
3 to a minor child of the parties or of the other party.

4 SEC. 9. Section 6345 of the Family Code is amended to read:

5 6345. (a) In the discretion of the court, the personal conduct,  
6 stay-away, and residence exclusion orders contained in a court  
7 order issued after notice and a hearing under this article may have  
8 a duration of not more than five years, subject to termination or  
9 modification by further order of the court either on written  
10 stipulation filed with the court or on the motion of a party. These  
11 orders may be renewed, upon the request of a party, either for five  
12 years or permanently, without a showing of any further abuse since  
13 the issuance of the original order, subject to termination or  
14 modification by further order of the court either on written  
15 stipulation filed with the court or on the motion of a party. The  
16 request for renewal may be brought at any time within the three  
17 months before the expiration of the orders.

18 (b) Notwithstanding subdivision (a), the duration of any orders,  
19 other than the protective orders described in subdivision (a), that  
20 are also contained in a court order issued after notice and a hearing  
21 under this article, including, but not limited to, orders for custody,  
22 visitation, support, and disposition of property, shall be governed  
23 by the law relating to those specific subjects.

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

27 (d) If an action is filed for the purpose of terminating or  
28 modifying a protective order prior to the expiration date specified  
29 in the order by a party other than the protected party, the party  
30 who is protected by the order shall be given notice, pursuant to  
31 subdivision (b) of Section 1005 of the Code of Civil Procedure,  
32 of the proceeding by personal service or, if the protected party has  
33 satisfied the requirements of Chapter 3.1 (commencing with  
34 Section 6205) of Division 7 of Title 1 of the Government Code,  
35 by service on the Secretary of State. If the party who is protected  
36 by the order cannot be notified prior to the hearing for modification  
37 or termination of the protective order, the court shall deny the  
38 motion to modify or terminate the order without prejudice or  
39 continue the hearing until the party who is protected can be  
40 properly noticed and may, upon a showing of good cause, specify

1 another method for service of process that is reasonably designed  
2 to afford actual notice to the protected party. The protected party  
3 may waive his or her right to notice if he or she is physically  
4 present in court and does not challenge the sufficiency of the notice.

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