

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2089

Introduced by Assembly Member Quirk

February 20, 2014

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 amended, 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 *based in whole or in part on the length of time between the issuance of a certain ex parte order and a hearing on a certain order that may be issued, or on the absence of abuse during that time. The bill would also prohibit a court, if the last incidence of abuse occurred five years or less before the filing of a petition for an order, from denying the order solely because of the length of time between an act the last incidence 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.~~ *record.* 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~~ *both parties* acted as ~~the~~ *a* 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.~~ *provide that use of the term “dominant aggressor” is not intended to impact decisional law regarding these provisions and that decisional law should apply equally to these provisions as they refer to “dominant aggressor” in place of “primary aggressor.”*

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.

1 (b) Domestic violence is a pervasive public safety and public
2 health problem that affects people of all income levels, cultures,
3 religions, ages, ethnic backgrounds, sexual orientations, and
4 neighborhoods.

5 (c) Domestic violence is not limited to actual and threatened
6 physical acts of violence, but also includes sexual abuse, stalking,
7 psychological and emotional abuse, financial control, property
8 control, and other behaviors by the abuser that are designed to
9 exert coercive control and power over the victim.

10 (d) There is a positive correlation between domestic violence
11 and child abuse, and children, even when they are not physically
12 assaulted, suffer deep and lasting emotional, health, and behavioral
13 effects from exposure to domestic violence.

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

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

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

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

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

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

1 6203. (a) For purposes of this act, “abuse” means any of the
2 following:

3 (1) Intentionally or recklessly to cause or attempt to cause bodily
4 injury.

5 (2) Sexual assault.

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

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

10 (b) Abuse is not limited to the actual infliction of physical injury
11 or assault.

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

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

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

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

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

39 (c) The court shall not deny an order under this part ~~solely~~
40 ~~because of the length of time between an act of abuse and the filing~~

1 ~~of the petition for the restraining order.~~ *based in whole or in part*
2 *on the length of time between the issuance of an ex parte order*
3 *pursuant to Article 1 (commencing with Section 6320) of Chapter*
4 *2 and a hearing on an order that may be issued pursuant to Article*
5 *2 (commencing with Section 6340) of Chapter 2, or on the absence*
6 *of abuse during that time.*

7 *(d) (1) If the last incidence of abuse occurred five years or less*
8 *before the filing of a petition for an order under this part, a court*
9 *shall not deny the order solely because of the length of time*
10 *between the last incidence of abuse and the filing of the petition*
11 *for the order.*

12 *(2) If the last incidence of abuse occurred more than five years*
13 *before the filing of a petition for an order under this part, a court*
14 *may issue the order for the purposes specified in Section 6220.*

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

16 6305. (a) The court shall not issue a mutual order enjoining
17 the parties from specific acts of abuse described in Section 6320
18 unless both of the following apply:

19 (1) Both parties personally appear and each party presents
20 written evidence of abuse or domestic violence.

21 (2) The court makes detailed findings of fact indicating that
22 ~~neither party~~ *both parties* acted as a dominant aggressor and that
23 neither party acted primarily in self-defense.

24 (b) ~~For purposes of subdivision (a), the dominant aggressor is~~
25 ~~the person determined to be the most significant aggressor. In~~
26 ~~identifying the dominant aggressor, the court shall consider the~~
27 ~~intent of the law to protect victims of domestic violence from~~
28 ~~continuing abuse, the threats creating fear of physical injury, the~~
29 ~~history of domestic violence between the persons involved, and~~
30 ~~whether either person involved acted in self-defense. “dominant~~
31 ~~aggressor” has the same meaning as described in paragraph (3)~~
32 ~~of subdivision (c) of Section 836 of the Penal Code.~~

33 (c) *The amendments made to this section by the act that added*
34 *this subdivision are not intended to impact any existing decisional*
35 *law regarding this section, and that decisional law should apply*
36 *equally to this section as it refers to “dominant aggressor” in*
37 *place of “primary aggressor.”*

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

39 6340. (a) The court may issue any of the orders described in
40 Article 1 (commencing with Section 6320) after notice and a

1 hearing. When determining whether to make any orders under this
2 subdivision, the court shall consider whether failure to make any
3 of these orders may jeopardize the safety of the petitioner and the
4 children for whom the custody or visitation orders are sought. If
5 the court makes any order for custody, visitation, or support, that
6 order shall survive the termination of any protective order. The
7 Judicial Council shall provide notice of this provision on any
8 Judicial Council forms related to this subdivision.

9 (b) ~~The court shall, upon the request of any party, issue a~~
10 ~~statement of decision explaining the factual and legal basis for its~~
11 ~~decision under this part pursuant to Section 632 of the Code of~~
12 ~~Civil Procedure. If neither party requests a statement of decision,~~
13 ~~and the trial court denies *approving or denying* a petition under~~
14 ~~this part, it shall state its reasons in writing or on the record.~~

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

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

21 6345. (a) In the discretion of the court, the personal conduct,
22 stay-away, and residence exclusion orders contained in a court
23 order issued after notice and a hearing under this article may have
24 a duration of not more than five years, subject to termination or
25 modification by further order of the court either on written
26 stipulation filed with the court or on the motion of a party. These
27 orders may be renewed, upon the request of a party, either for five
28 years or permanently, without a showing of any further abuse since
29 the issuance of the original order, subject to termination or
30 modification by further order of the court either on written
31 stipulation filed with the court or on the motion of a party. The
32 request for renewal may be brought at any time within the three
33 months before the expiration of the orders.

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

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

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