

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN SENATE MAY 28, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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, 6220, 6300, 6301, 6305, ~~6340, and 6345~~ of, and to repeal and add Section 6220 of, and 6340 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 sexual abuse* 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; preventing acts of domestic violence, abuse, and sexual abuse and ensuring a period of separation of the persons involved. 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, and that that, in determining whether to grant or deny a protective order, the length of time since the most recent act of abuse is not, by itself, determinative. The bill would also require the trial court to state its reasons for denying a protective order in writing or on the 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; provide a brief statement of the reasons for its decision to issue or deny a protective order either in writing or on the record.~~

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 both parties acted as a dominant aggressor. The bill would 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.” provide that, for the purposes of these provisions, a court should consider specified provisions relating to dominant aggressors in determining if both parties acted primarily as aggressors.~~

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,

1 religions, ages, ethnic backgrounds, sexual orientations, and  
2 neighborhoods.

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

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

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

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

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

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

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

37 SEC. 2. Section 6203 of the Family Code is amended to read:  
38 6203. (a) For purposes of this act, "abuse" means any of the  
39 following:

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

3 (2) Sexual assault.

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

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

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

10 ~~SEC. 3. Section 6220 of the Family Code is repealed.~~

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. 3. Section 6220 of the Family Code is amended to read:*

17 6220. The ~~purposes~~ *purpose* of this division ~~are~~ *is* to prevent  
18 ~~the recurrence of acts of violence~~ *domestic violence, abuse, and*  
19 *sexual abuse* and to provide for a separation of the persons involved  
20 in the domestic violence for a period sufficient to enable these  
21 persons to seek a resolution of the causes of the violence.

22 ~~SEC. 5.~~

23 *SEC. 4. Section 6300 of the Family Code is amended to read:*

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

32 ~~(b) An order under this part may be issued on the basis of  
33 evidence of past abuse, without any showing that the wrongful  
34 acts will be continued or repeated.~~

35 ~~SEC. 6.~~

36 *SEC. 5. Section 6301 of the Family Code is amended to read:*

37 6301. (a) An order under this part may be granted to any person  
38 described in Section 6211, including a minor pursuant to  
39 subdivision (b) of Section 372 of the Code of Civil Procedure.

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

6 (c) The length of time since the most recent act of abuse is not,  
7 by itself, determinative. The court shall consider the totality of the  
8 circumstances in determining whether a petition for relief will be  
9 granted or denied.

10 ~~SEC. 7.~~

11 *SEC. 6.* Section 6305 of the Family Code is amended to read:

12 6305. (a) The court shall not issue a mutual order enjoining  
13 the parties from specific acts of abuse described in Section 6320  
14 unless both of the following apply:

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

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

20 (b) For purposes of subdivision (a), in determining if both parties  
21 acted primarily as aggressors, the court shall consider the  
22 provisions concerning dominant aggressors set forth in paragraph  
23 (3) of subdivision (c) of Section 836 of the Penal Code.

24 ~~(e) The amendments made to this section by the act that added  
25 this subdivision are not intended to impact any existing decisional  
26 law regarding this section, and that decisional law should apply  
27 equally to this section as it refers to "dominant aggressor" in place  
28 of "primary aggressor."~~

29 ~~SEC. 8.~~

30 *SEC. 7.* Section 6340 of the Family Code is amended to read:

31 6340. (a) The court may issue any of the orders described in  
32 Article 1 (commencing with Section 6320) after notice and a  
33 hearing. When determining whether to make any orders under this  
34 subdivision, the court shall consider whether failure to make any  
35 of these orders may jeopardize the safety of the petitioner and the  
36 children for whom the custody or visitation orders are sought. If  
37 the court makes any order for custody, visitation, or support, that  
38 order shall survive the termination of any protective order. The  
39 Judicial Council shall provide notice of this provision on any  
40 Judicial Council forms related to this subdivision.

1 (b) The court shall, upon approving or denying a petition under  
2 this part, ~~state its reasons in writing or on the record. provide a~~  
3 ~~brief statement of the reasons for the decision in writing or on the~~  
4 ~~record. A decision stating “granted” or “denied” is insufficient.~~

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

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

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

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

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

33 (d) ~~If an action is filed for the purpose of terminating or~~  
34 ~~modifying a protective order prior to the expiration date specified~~  
35 ~~in the order by a party other than the protected party, the party~~  
36 ~~who is protected by the order shall be given notice, pursuant to~~  
37 ~~subdivision (b) of Section 1005 of the Code of Civil Procedure,~~  
38 ~~of the proceeding by personal service or, if the protected party has~~  
39 ~~satisfied the requirements of Chapter 3.1 (commencing with~~  
40 ~~Section 6205) of Division 7 of Title 1 of the Government Code,~~

1 ~~by service on the Secretary of State. If the party who is protected~~  
2 ~~by the order cannot be notified prior to the hearing for modification~~  
3 ~~or termination of the protective order, the court shall deny the~~  
4 ~~motion to modify or terminate the order without prejudice or~~  
5 ~~continue the hearing until the party who is protected can be~~  
6 ~~properly noticed and may, upon a showing of good cause, specify~~  
7 ~~another method for service of process that is reasonably designed~~  
8 ~~to afford actual notice to the protected party. The protected party~~  
9 ~~may waive his or her right to notice if he or she is physically~~  
10 ~~present in court and does not challenge the sufficiency of the notice.~~

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