

ASSEMBLY BILL

No. 935

Introduced by Assembly Member Speier

February 22, 1995

An act to amend Sections 6300, 6320, and 6345 of, and to add Section 240.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 935, as introduced, Speier. Family law: restraining orders.

(1) Under existing law, the superior court has jurisdiction in proceedings under the Family Code. Existing law provides for the issuance of ex parte temporary restraining orders in specified actions and proceedings under the Family Code.

This bill would authorize a judge of the municipal court to issue such an order when a judge of the superior court is not available. The bill would require the applicant for the order to set forth in the affidavit in support of the application for the order the reasons that relief could not be obtained in a timely manner from a judge of the superior court. The bill would provide that jurisdiction for the hearing to determine whether a permanent order should be granted and all subsequent proceedings shall be in the superior court.

(2) Existing provisions of the Domestic Violence Prevention Act provide for the issuance of emergency protective orders, and provides that other protective orders may be issued to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved, if an affidavit

shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.

This bill would provide that the affidavit may be attached to, and refer to, an emergency protective order for the purpose of showing proof of a past act or acts of abuse.

(3) An existing provision of the Domestic Violence Prevention Act authorizes the issuance of an order enjoining a party from contacting, molesting, attacking, striking, threatening, sexually assaulting, battering, telephoning, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, as specified. Existing law provides for the registration and enforcement of domestic violence protective orders, including the reporting of data to the Department of Justice.

This bill would authorize an order described above to enjoin a party from causing damage to property of the other party or harassing or stalking the other party, as specified. The bill would impose a state-mandated local program by requiring increased duties of local officials with regard to the registration and enforcement of these orders.

(4) Under existing law, a domestic violence protective order issued after notice and a hearing may have a duration of not more than 3 years, except as provided.

This bill would provide that such an order may have a duration of not more than 10 years. The bill would state the intent of the Legislature that the length of such an order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. The bill would provide that the duration of the order may be longer than 5 years only in an extreme case, as specified.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.



This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 SECTION 1. Section 240.5 is added to the Family
2 Code, to read:

3 240.5. Notwithstanding Section 200, a judge of the
4 municipal court may issue an order described in Section
5 240 when a judge of the superior court is not available. In
6 such a case, the applicant for the order shall set forth in
7 the affidavit in support of the application for the order the
8 reasons that relief could not be obtained in a timely
9 manner from a judge of the superior court. Jurisdiction
10 for the hearing described in Section 242 and all
11 subsequent proceedings shall be in the superior court.

12 SEC. 2. Section 6300 of the Family Code is amended
13 to read:

14 6300. An order may be issued under this part, with or
15 without notice, to restrain any person for the purpose of
16 preventing a recurrence of domestic violence and
17 ensuring a period of separation of the persons involved,
18 if an affidavit shows, to the satisfaction of the court,
19 reasonable proof of a past act or acts of abuse. *The*
20 *affidavit may be attached to, and refer to, an emergency*
21 *protective order issued pursuant to Part 4 (commencing*
22 *with Section 6240) for the purpose of showing proof of a*
23 *past act or acts of abuse.*

24 SEC. 3. Section 6320 of the Family Code is amended
25 to read:

26 6320. The court may issue an ex parte order enjoining
27 a party from contacting, molesting, attacking, striking,
28 threatening, sexually assaulting, battering, *causing*
29 *damage to property of,* telephoning, contacting
30 repeatedly by mail with the intent to harass, *harassing, as*
31 *defined in subdivision (b) of Section 527.6 of the Code of*



1 *Civil Procedure, stalking, as defined in Section 646.9 of*
 2 *the Penal Code, or disturbing the peace of the other*
 3 *party, and, in the discretion of the court, on a showing of*
 4 *good cause, of other named family and household*
 5 *members.*

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

8 6345. (a) In the discretion of the court, an order
 9 issued after notice and a hearing under this article may
 10 have a duration of not more than ~~three~~ 10 years, unless
 11 otherwise terminated or extended by further order of the
 12 court either on written stipulation filed with the court or
 13 on the motion of a party. *It is the intent of the Legislature*
 14 *that the length of any order issued under this article be*
 15 *based upon the seriousness of the facts before the court,*
 16 *the probability of future violations, and the safety of the*
 17 *victim and his or her immediate family. The duration of*
 18 *the order may be longer than five years only in an*
 19 *extreme case where a longer duration is necessary to*
 20 *protect the safety of the victim or his or her immediate*
 21 *family.*

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

25 (c) Nothing in this section prohibits parties, by written
 26 stipulation, from creating an order with a permanent
 27 duration.

28 SEC. 5. Notwithstanding Section 17610 of the
 29 Government Code, if the Commission on State Mandates
 30 determines that this act contains costs mandated by the
 31 state, reimbursement to local agencies and school
 32 districts for those costs shall be made pursuant to Part 7
 33 (commencing with Section 17500) of Division 4 of Title
 34 2 of the Government Code. If the statewide cost of the
 35 claim for reimbursement does not exceed one million
 36 dollars (\$1,000,000), reimbursement shall be made from
 37 the State Mandates Claims Fund.

38 Notwithstanding Section 17580 of the Government
 39 Code, unless otherwise specified, the provisions of this act



1 shall become operative on the same date that the act
2 takes effect pursuant to the California Constitution.

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