

Introduced by Senator Solis

February 21, 1995

An act to amend Section 6305 of the Family Code, and to amend Sections 836 and 13701 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 591, as introduced, Solis. Domestic violence.

(1) Existing law prohibits a court from issuing a mutual restraining order, as specified, unless both parties personally appear and each party presents written evidence of abuse or domestic violence, unless both parties waive the latter requirement.

This bill would eliminate the waiver provision and prohibit a court from issuing a mutual restraining order unless both parties personally appear and present written evidence of abuse or violence and the court finds that both parties acted primarily as aggressors and neither party acted primarily in self-defense.

(2) Under existing law, a peace officer responding to a call alleging a violation of a specified protective order, who has reasonable cause to believe that a person has violated the order, is authorized to arrest the person without a warrant and take the person into custody.

This bill would expand the definition of a protective order for these purposes and would require the officer to make the arrest. Because the bill would impose additional duties on local law enforcement officers, the bill would impose a state-mandated local program.

(3) Existing law requires law enforcement agencies to adopt and implement written policies and standards for officers' responses to domestic violence calls.

This bill would require these local policies to encourage the arrest of domestic violence offenders, discourage dual arrests of offenders and victims, and encourage officers to make reasonable efforts to determine the primary aggressor in any incident. By requiring local law enforcement agencies to revise these policies, this bill would impose a state-mandated local program

(4) 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 6305 of the Family Code is
2 amended to read:
3 6305. The court may not issue a mutual order
4 enjoining the parties from specific acts of abuse described
5 in Section 6320 (a) unless both parties personally appear
6 and each party presents written evidence of abuse or
7 domestic violence *and (b) the court makes detailed*
8 *findings of fact indicating that both parties acted*
9 *primarily as aggressors and that neither party acted*
10 *primarily in self-defense. In this case, written evidence is*
11 ~~not required if both parties agree that this requirement~~
12 ~~does not apply.~~



1 SEC. 2. Section 836 of the Penal Code is amended to
2 read:

3 836. (a) A peace officer may arrest a person in
4 obedience to a warrant, or, pursuant to the authority
5 granted to him or her by Chapter 4.5 (commencing with
6 Section 830) of Title 3 of Part 2, without a warrant, may
7 arrest a person whenever any of the following
8 circumstances occur:

9 (1) The officer has reasonable cause to believe that the
10 person to be arrested has committed a public offense in
11 the officer's presence.

12 (2) The person arrested has committed a felony,
13 although not in the officer's presence.

14 (3) The officer has reasonable cause to believe that the
15 person to be arrested has committed a felony, whether or
16 not a felony, in fact, has been committed.

17 (b) Any time a peace officer is called out on a domestic
18 call, it shall be mandatory that the officer make a good
19 faith effort to inform the victim of his or her right to make
20 a citizen's arrest. This information shall include advising
21 the victim how to safely execute the arrest.

22 (c) (1) When a peace officer is responding to a call
23 alleging a violation of a protective order issued under
24 *Chapter 4 (commencing with Section 2040) of Part 1 of*
25 *Division 6, Division 10 (commencing with Section 6200),*
26 *or Chapter 6 (commencing with Section 7700) of Part 3*
27 *of Division 12, of the Family Code, or Section 136.2 of this*
28 *code, and the peace officer has reasonable cause to*
29 *believe that the person against whom the order is issued*
30 *has notice of the order and has committed an act in*
31 *violation of the order, the officer ~~may~~ shall arrest the*
32 *person without a warrant and take that person into*
33 *custody whether or not the violation occurred in the*
34 *presence of the arresting officer. The officer shall, as soon*
35 *as possible after the arrest, confirm with the appropriate*
36 *authorities that a true copy of the protective order has*
37 *been filed, unless the victim provides the officer with a*
38 *copy of the protective order.*

39 (2) The person against whom a protective order has
40 been issued shall be deemed to have notice of the order



1 if the victim presents to the officer proof of service of the
2 order, the officer confirms with the appropriate
3 authorities that a true copy of the proof of service is on
4 file, or the person against whom the protective order was
5 issued was present at the protective order hearing or was
6 informed by a peace officer of the contents of the
7 protective order.

8 (3) In situations where mutual protective orders have
9 been issued under Division 10 (commencing with Section
10 6200) of the Family Code, liability for arrest under this
11 subdivision applies only to those persons who are
12 reasonably believed to have been the primary aggressor.
13 In those situations, prior to making an arrest under this
14 subdivision, the peace officer shall make reasonable
15 efforts to identify, and may arrest, the primary aggressor
16 involved in the incident. The primary aggressor is the
17 person determined to be the most significant, rather than
18 the first, aggressor. In identifying the primary aggressor,
19 an officer shall consider (A) the intent of the law to
20 protect victims of domestic violence from continuing
21 abuse, (B) the threats creating fear of physical injury, (C)
22 the history of domestic violence between the persons
23 involved, and (D) whether either person involved acted
24 in self-defense.

25 SEC. 3. Section 13701 of the Penal Code is amended
26 to read:

27 13701. Every law enforcement agency in this state
28 shall develop, adopt, and implement written policies and
29 standards for officers' response to domestic violence calls
30 by January 1, 1986. These policies shall reflect that
31 domestic violence is alleged criminal conduct. Further,
32 they shall reflect existing policy that a request for
33 assistance in a situation involving domestic violence is the
34 same as any other request for assistance where violence
35 has occurred. *These policies shall encourage the arrest of*
36 *domestic violence offenders if there is probable cause*
37 *that an offense has been committed. These policies shall*
38 *discourage dual arrests of offender and victim. Peace*
39 *officers shall make reasonable efforts to identify the*
40 *primary aggressor in any incident. The primary aggressor*



1 *is the person determined to be the most significant,*
2 *rather than the first, aggressor. In identifying the primary*
3 *aggressor, an officer shall consider the intent of the law*
4 *to protect victims of domestic violence from continuing*
5 *abuse, the threats creating fear of physical injury, the*
6 *history of domestic violence between the persons*
7 *involved, and whether either person acted in*
8 *self-defense. These existing local policies and those*
9 *developed shall be in writing and shall be available to the*
10 *public upon request and shall include specific standards*
11 *for the following:*

12 (a) Felony arrests.

13 (b) Misdemeanor arrests.

14 (c) Use of citizen arrests.

15 (d) Verification and enforcement of temporary
16 restraining orders when (1) the suspect is present and (2)
17 when the suspect has fled.

18 (e) Verification and enforcement of stay-away orders.

19 (f) Cite and release policies.

20 (g) Emergency assistance to victims, such as medical
21 care, transportation to a shelter, and police standbys for
22 removing personal property.

23 (h) Assisting victims in pursuing criminal options,
24 such as giving the victim the report number and directing
25 the victim to the proper investigation unit.

26 (i) Furnishing written notice to victims at the scene,
27 including, but not limited to, all of the following
28 information:

29 (1) (A) A statement informing the victim that
30 despite official restraint of the person alleged to have
31 committed domestic violence, the restrained person may
32 be released at any time.

33 (B) A statement that, “For further information about
34 a shelter you may contact ____.”

35 (C) A statement that, “For information about other
36 services in the community, where available, you may
37 contact ____.”

38 (2) A statement informing the victim of domestic
39 violence that he or she can ask the district attorney to file
40 a criminal complaint.



1 (3) A statement informing the victim of the right to go
2 to the superior court and file a petition requesting any of
3 the following orders for relief:

4 (A) An order restraining the attacker from abusing
5 the victim and other family members.

6 (B) An order directing the attacker to leave the
7 household.

8 (C) An order preventing the attacker from entering
9 the residence, school, business, or place of employment
10 of the victim.

11 (D) An order awarding the victim or the other parent
12 custody of or visitation with a minor child or children.

13 (E) An order restraining the attacker from molesting
14 or interfering with minor children in the custody of the
15 victim.

16 (F) An order directing the party not granted custody
17 to pay support of minor children, if that party has a legal
18 obligation to do so.

19 (G) An order directing the defendant to make
20 specified debit payments coming due while the order is
21 in effect.

22 (H) An order directing that either or both parties
23 participate in counseling.

24 (4) A statement informing the victim of the right to
25 file a civil suit for losses suffered as a result of the abuse,
26 including medical expenses, loss of earnings, and other
27 expenses for injuries sustained and damage to property,
28 and any other related expenses incurred by the victim or
29 any agency that shelters the victim.

30 (5) In the case of an alleged violation of Section 261,
31 261.5, 262, 286, 288a, or 289, a “Victims of Domestic
32 Violence” card which shall include, but is not limited to,
33 the following information:

34 (A) The names and locations of rape victim counseling
35 centers within the county, including those centers
36 specified in Section 13837, and their 24-hour counseling
37 service telephone numbers.

38 (B) A simple statement on the proper procedures for
39 a victim to follow after a sexual assault.



1 (C) A statement that sexual assault by a person who is
2 known to the victim, including sexual assault by a person
3 who is the spouse of the victim, is a crime.

4 (j) Writing of reports.

5 In the development of these policies and standards,
6 each local department is encouraged to consult with
7 domestic violence experts, such as the staff of the local
8 shelter for battered women and their children.
9 Departments may utilize the response guidelines
10 developed by the commission in developing local policies.

11 SEC. 4. Notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains costs mandated by the
14 state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund.

21 Notwithstanding Section 17580 of the Government
22 Code, unless otherwise specified, the provisions of this act
23 shall become operative on the same date that the act
24 takes effect pursuant to the California Constitution.

