

Senate Bill No. 591

CHAPTER 246

An act to amend Sections 2047, 6305, and 7720 of the Family Code, and to amend Section 13701 of the Penal Code, relating to domestic violence.

[Approved by Governor August 1, 1995. Filed with
Secretary of State August 1, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 591, Solis. Domestic violence.

(1) Existing law contains provisions governing the issuance of protective orders and other domestic violence prevention orders. 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 protective 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) 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, require the arrest of offenders, absent exigent circumstances, if there is probable cause that specified protective orders have been violated, discourage, when appropriate, but not prohibit, dual arrests, and encourage officers to make reasonable efforts to determine the primary aggressor in any incident. The bill would require these arrest policies to be developed, adopted, and implemented by July 1, 1996. By requiring local law enforcement agencies to revise these policies, this bill would impose a state-mandated local program.

(3) 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.

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

SECTION 1. Section 2047 of the Family Code is amended to read:

2047. (a) After notice and a hearing, the court may issue a protective order, as defined in Section 6218, and any other restraining order as provided in Article 2 (commencing with Section 6340) of Chapter 2 of Part 4 of Division 10.

(b) The court may not issue a mutual protective order pursuant to subdivision (a) unless it meets the requirements of Section 6305.

SEC. 2. Section 6305 of the Family Code is amended to read:

6305. The court may not issue a mutual order enjoining the parties from specific acts of abuse described in Section 6320 (a) unless both parties personally appear and each party presents written evidence of abuse or domestic violence and (b) the court makes detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.

SEC. 3. Section 7720 of the Family Code is amended to read:

7720. (a) After notice and a hearing, the court may issue a protective order as defined in Section 6218 and any other restraining order as provided in Article 2 (commencing with Section 6340) of Chapter 2 of Part 4 of Division 10.

(b) The court may not issue a mutual protective order pursuant to subdivision (a) unless it meets the requirements of Section 6305.

SEC. 4. Section 13701 of the Penal Code is amended to read:

13701. (a) Every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers' responses to domestic violence calls by January 1, 1986. These policies shall reflect that domestic violence is alleged criminal conduct. Further, they shall reflect existing policy that a request for assistance in a situation involving domestic violence is the same as any other request for assistance where violence has occurred.

(b) The written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. These policies also shall require the arrest of an offender, absent exigent circumstances, if there is probable cause that a protective order issued under Chapter 4 (commencing with Section 2040) of Part 1 of Division 6, Division 10 (commencing with Section 6200), or Chapter 6 (commencing with Section 7700) of Part 3 of Division 12, of the Family Code, or Section 136.2 of this code, has been violated. These policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the primary aggressor in any incident. The primary aggressor is the person determined to be the most significant, rather than the first, aggressor. In identifying the primary aggressor, an



officer shall 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 acted in self-defense. These arrest policies shall be developed, adopted, and implemented by July 1, 1996. Notwithstanding subdivision (d), law enforcement agencies shall develop these policies with the input of local domestic violence agencies.

(c) These existing local policies and those developed shall be in writing and shall be available to the public upon request and shall include specific standards for the following:

- (1) Felony arrests.
- (2) Misdemeanor arrests.
- (3) Use of citizen arrests.
- (4) Verification and enforcement of temporary restraining orders when (A) the suspect is present and (B) the suspect has fled.
- (5) Verification and enforcement of stay-away orders.
- (6) Cite and release policies.
- (7) Emergency assistance to victims, such as medical care, transportation to a shelter, and police standbys for removing personal property.
- (8) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit.
- (9) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
 - (A) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time.
 - (B) A statement that, "For further information about a shelter you may contact ____."
 - (C) A statement that, "For information about other services in the community, where available, you may contact ____."
 - (D) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint.
 - (E) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
 - (i) An order restraining the attacker from abusing the victim and other family members.
 - (ii) An order directing the attacker to leave the household.
 - (iii) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim.
 - (iv) An order awarding the victim or the other parent custody of or visitation with a minor child or children.
 - (v) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim.



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

(vii) An order directing the defendant to make specified debit payments coming due while the order is in effect.

(viii) An order directing that either or both parties participate in counseling.

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

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

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

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

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

(10) Writing of reports.

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

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

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

