

Legal Update: Beyond the Bench, 2015
Hon. Mark Juhas, Superior Court of Los Angeles County

AB-536 Domestic violence: protective orders.(2015-2016)

SECTION 1.

Section 6305 of the Family Code is amended to read:

6305.

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

(1) Both parties personally appear and each party presents written evidence of abuse or domestic ~~violence~~. *violence in an application for relief using a mandatory Judicial Council restraining order application form. For purposes of this paragraph, written evidence of abuse or domestic violence in a responsive pleading does not satisfy the party's obligation to present written evidence of abuse or domestic violence. By July 1, 2016, the Judicial Council shall modify forms as necessary to provide notice of this information.*

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

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

AB 1081, Quirk. Protective orders.

(1) Existing law provides the procedure by which a temporary restraining order and an injunction prohibiting harassment or abuse may be sought by, or on behalf of, specified persons. Existing law requires the petitioner seeking the restraining order to personally serve the person against whom the temporary restraining order and injunction are sought, known as the respondent, with notice of hearing within 5 days of the hearing on the petition, as specified. If the petitioner files a declaration with the court that he or she could not serve the respondent within the time required, existing law authorizes the court to reissue an order that was dissolved by the court for failure to serve the respondent. Existing law provides that a reissued order will remain in effect until the date of the hearing, and requires that the reissued order state the date that the order expires.

This bill would permit either party to request a continuance of the hearing, as specified, which the court would be required to grant on a showing of good cause. The bill would permit the request to be made in writing before or at the hearing or orally at the hearing, and would additionally authorize the court to grant a continuance on its own motion. If the court grants a continuance, the bill would require that any temporary restraining order that had previously been granted remain in effect until the conclusion of the continued hearing, and would authorize the court to modify or terminate any temporary restraining order.

(2) Existing law provides that a person who has suffered harassment, defined as unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose, may seek a temporary restraining order and an injunction prohibiting harassment. If issued, the injunction would be in effect for

a period of up to 5 years and may be renewed for another period of up to 5 years. Under existing law, however, the notice of the hearing must notify the respondent that, if he or she does not attend the hearing on the petition, the court may make orders against him or her that could last up to 3 years.

This bill would modify the requirements for the notice to a respondent so that the respondent is warned that, if he or she does not attend the hearing, the court may make orders against him or her that could last up to 5 years.

(3) In a matter in which a temporary restraining order or order after hearing prohibiting harassment or abuse is sought under specified provisions of the Uniform Interstate Family Support Act, existing law provides that a respondent is entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition.

This bill would, in a matter in which a civil harassment, workplace violence, or elder or dependent adult abuse temporary restraining order or order after hearing prohibiting harassment or abuse is sought, provide that the respondent would be entitled, as a matter of course, to one continuance for a reasonable period, to respond to the petition.

This bill would incorporate additional changes to Section 527.6 of the Code of Civil Procedure and Section 213.5 of the Welfare and Institutions Code, proposed by AB 494, that would become operative only if AB 494 and this bill are both chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

This bill would incorporate additional changes to Section 15657.03 of the Welfare and Institutions Code, proposed by AB 494 and SB 196, that would become operative only if this bill and either or both of those bills are chaptered and become effective on or before January 1, 2016, and this bill is chaptered last.

AB-439 Protective orders: batterer's program.(2015-2016)

SECTION 1.

Section 6343 of the Family Code is amended to read:

6343.

(a) After notice and a hearing, the court may issue an order requiring the restrained party to participate in a batterer's program approved by the probation department as provided in Section 1203.097 of the Penal Code.

(b) (1) Commencing July 1, 2016, if the court orders a restrained party to participate in a batterer's program pursuant to subdivision (a), the restrained party shall do all of the following:

(A) Register for the program by the deadline ordered by the court. If no deadline is ordered by the court, the restrained party shall register no later than 30 days from the date the order was issued.

(B) At the time of enrollment, sign all necessary program consent forms for the program to release proof of enrollment, attendance records, and completion or termination reports to the court and the protected party, or his or her attorney. The court and the protected party may provide to the program a fax number or mailing address for purposes of receiving proof of enrollment, attendance records, and completion or termination reports.

(C) Provide the court and the protected party with the name, address, and telephone number of the program.

(2) By July 1, 2016, the Judicial Council shall revise or promulgate forms as necessary to effectuate this subdivision.

~~(b)~~ (c) The courts shall, in consultation with local domestic violence shelters and programs, develop a resource list of referrals to appropriate community domestic violence programs and services to be provided to each applicant for an order under this section.

SB-28 Spousal support factors: domestic violence.(2015-2016)

SECTION 1.

Section 4320 of the Family Code is amended to read:

4320.

In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

(c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living.

(d) The needs of each party based on the standard of living established during the marriage.

(e) The obligations and assets, including the separate property, of each party.

(f) The duration of the marriage.

(g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.

(h) The age and health of the parties.

(i) Documented ~~evidence of~~ *evidence, including a plea of nolo contendere, of* any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated

against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.

(j) The immediate and specific tax consequences to each party.

(k) The balance of the hardships to each party.

(l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in Section 4336, a “reasonable period of time” for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court’s discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, Section 4336, and the circumstances of the parties.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325.

(n) Any other factors the court determines are just and equitable.

AB 418, Chiu. Tenancy: termination: victims of violent crime.

Existing law, until January 1, 2016, authorizes a tenant to notify the landlord in writing that he or she or a household member, as defined, was a victim of an act of domestic violence or sexual assault and that the tenant intends to terminate the tenancy. Existing law requires that the tenant attach to the notice to terminate a tenancy a copy of a temporary restraining order or protective order that protects the tenant or household member from further domestic violence or sexual assault or to attach a report by a peace officer stating that the tenant or household member has filed a report alleging he or she or the household member is a victim of domestic violence or sexual assault.

Existing law authorizes the use of a tenant’s security deposit to compensate a landlord for a tenant’s default in the payment of rent. Existing law provides that existing law governing security deposits applies to these terminations.

This bill would extend these provisions indefinitely and would reduce the time limit for a tenant to give a notice of intent to vacate to the landlord under these provisions from 30 days to 14 days.