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AB-2694 Domestic violence: ex parte orders. (2017-2018)

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Assembly Bill No. 2694

CHAPTER 219

An act to amend Sections 6300, 6326, and 6340 of the Family Code, relating to protective orders.

[Approved by Governor August 27, 2018. Filed with Secretary of State August 27, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2694, Rubio. Domestic violence: ex parte orders.

Existing law authorizes a court to issue various ex parte orders, including, among other orders, orders enjoining a party from assaulting, contacting, coming within a specified distance of, or disturbing the peace of the other party, or excluding a party from a dwelling or enjoining a party from specified behavior that the court determines is necessary to effectuate these orders.

This bill would prohibit a petition for an ex parte order for the purposes described above from being denied solely because the other party was not provided with notice. The bill would also authorize, if at the time of a hearing with respect to an order based on an ex parte temporary restraining order the court determines that, after diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the restrained party is evading service, the court to permit an alternative method of service designed to give reasonable notice of the action to the respondent, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6300 of the Family Code is amended to read:

6300. (a) An order may be issued under this part to restrain any person for the purpose specified in Section 6220, if an affidavit or testimony and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse. The court may issue an order under this part based solely on the affidavit or testimony of the person requesting the restraining order.

(b) An ex parte restraining order issued pursuant to Article 1 (commencing with Section 6320) shall not be denied solely because the other party was not provided with notice.

SEC. 2. Section 6326 of the Family Code is amended to read:

6326. An ex parte order under this article shall be issued or denied on the same day that the application is submitted to the court, unless the application is filed too late in the day to permit effective review, in which case the order shall be issued or denied on the next day of judicial business in sufficient time for the order to be filed that day with the clerk of the court. A petition for an ex parte order pursuant to this article shall not be denied solely because the other party was not provided with notice.

SEC. 3. Section 6340 of the Family Code is amended to read:

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

(2) (A) If at the time of a hearing with respect to an order issued pursuant to this part based on an ex parte temporary restraining order, the court determines that, after diligent effort, the petitioner has been unable to accomplish personal service, and that there is reason to believe that the restrained party is evading service, the court may permit an alternative method of service designed to give reasonable notice of the action to the respondent. Alternative methods of service include, but are not limited to, the following:

(i) Service by publication pursuant to the standards set forth in Section 415.50 of the Code of Civil Procedure.

(ii) Service by first-class mail sent to the respondent at the most current address for the respondent that is available to the court or delivering a copy of the pleadings and orders at the respondent's home or place of employment, pursuant to the standards set forth in Sections 415.20 to 415.40, inclusive, of the Code of Civil Procedure.

(B) If the court permits an alternative method of service under this paragraph, the court shall grant a continuance to allow for the alternative service pursuant to Section 245.

(b) The court shall, upon denying a petition under this part, provide a brief statement of the reasons for the decision in writing or on the record. A decision stating "denied" is insufficient.

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