

AMENDED IN ASSEMBLY APRIL 25, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 160

**Introduced by Assembly Members Bates and Cohn, Cohn,
Alquist, Bill Campbell, Diaz, Florez, Pescetti, and Richman
(Coauthors: Senators Karnette and Kuehl)**

January 31, 2001

An act to amend Section 6380 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to victim and witness intimidation.

LEGISLATIVE COUNSEL'S DIGEST

AB 160, as amended, Bates. Domestic violence: protective orders.

Existing law provides that if a defendant is charged with a domestic violence crime, the court with jurisdiction over that matter may, upon a good cause belief that harm, intimidation, or dissuasion of a victim or witness has occurred or is reasonably likely to occur, issue specified orders, including restraining or protective orders against the defendant. Existing law further provides that a restraining or protective order issued in a domestic violence criminal case has precedence over any other court order against the defendant.

This

This bill would state the Legislature's findings and declarations with respect to the relationship between civil and criminal restraining or protective orders. This bill would specify that the restraining order or protective order has precedence over any civil court order. This bill would prohibit courts with jurisdiction over civil matters from issuing orders that are not in compliance with a restraining or protective order

issued against a defendant in a domestic violence criminal case. This bill would further prohibit courts with jurisdiction over domestic violence criminal cases from issuing restraining or protective orders against a defendant that allow a civil court to compromise the protections provided by the order. Finally, this bill would provide that restraining or protective orders issued in domestic violence criminal cases shall remain in force throughout a defendant's sentence, including incarceration, probation, and parole *and shall state the date that they expire.*

Existing law requires the Department of Justice to maintain a Domestic Violence Restraining Order System containing information regarding various protective and restraining orders and injunctions, including orders to protect victims of violent crime from specified types of contact with the defendant. Under existing law, when a court issues an order to protect a victim of violent crime from contact with the defendant, the court or its designee must transmit that order to law enforcement personnel within one business day. Existing law further provides that specified information regarding the order must be transmitted to the Department of Justice for inclusion in the Domestic Violence Restraining Order System.

This bill would require a court that modifies, extends, or terminates an order protecting a victim of violent crime from contact with the defendant to transmit that modification, extension, or termination to the law enforcement agency that entered the protective order into the Domestic Violence Restraining Order System. This bill would also require modifications, extensions, and terminations of orders protecting victims of violent crime from contact with the defendant to be issued on forms adopted by the Judicial Council of California and approved by the Department of Justice.

By imposing new reporting duties on local law enforcement agencies, this bill would impose a state-mandated local program.

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: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

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

1 SECTION 1. *The Legislature finds and declares as follows:*

2 (a) *In those cases in which a complaint, information, or*
3 *indictment charging a crime of domestic violence, as defined in*
4 *Section 13700 of the Penal Code, has been issued, a restraining*
5 *order or protective order against the defendant issued by the*
6 *criminal court has precedence over any civil restraining or*
7 *protective order; including those issued in family law or*
8 *dependency court, issued before or after the criminal protective*
9 *order, only to the extent that the civil restraining or protective order*
10 *conflicts with the criminal protective order.*

11 (b) *If there are either civil restraining or protective orders and*
12 *criminal restraining or protective orders regarding the same*
13 *parties, the peace officer shall enforce the most recent criminal*
14 *order to the extent that it conflicts with the civil protective or*
15 *restraining orders only. Nothing in this section shall preclude or*
16 *limit the right of a victim of domestic violence to apply for civil*
17 *restraining orders. The protective orders provided in this section*
18 *are in addition to any other civil or criminal remedies that may be*
19 *available to the witness.*

20 (c) *Cases in which a complaint, information, or indictment*
21 *charging a crime of domestic violence, as defined in Section 13700*
22 *of the Penal Code, has been issued, and in which the courts have*
23 *issued both civil and criminal protective orders regarding the same*
24 *parties, are the most egregious civil cases of domestic violence.*
25 *Contact between the defendant and victim or witness may*
26 *intimidate or place the victim or witnesses in jeopardy. The*
27 *Legislature recognizes that the defendant and the victim or witness*
28 *may have a child or children in common, and civil protective or*
29 *restraining orders may contain provisions that permit contact*
30 *between the parties for exchange of the child or children, providing*
31 *an exception to the criminal protective order. It is the intent of the*
32 *Legislature to permit visitation between a defendant and his or her*
33 *children pursuant to civil court orders, but at the same time to*



1 *ensure the safety of the victim or witness. In order to ensure the*
2 *safety of the victim and the children, and to protect the defendant's*
3 *right to visitation with his or her children, the Legislature finds that*
4 *it is the burden of the defendant to apply to the civil court for an*
5 *order that permits the exchange of minors without contact with the*
6 *victim or witness, in compliance with the criminal protective order.*

7 SEC. 2. Section 6380 of the Family Code is amended to read:
8 6380. (a) Each county, with the approval of the Department
9 of Justice, shall, by July 1, 1996, develop a procedure, using
10 existing systems, for the electronic transmission of data, as
11 described in subdivision (b), to the Department of Justice. The data
12 shall be electronically transmitted through the California Law
13 Enforcement Telecommunications System (CLETS) of the
14 Department of Justice by law enforcement personnel, or with the
15 approval of the Department of Justice, court personnel, or another
16 appropriate agency capable of maintaining and preserving the
17 integrity of both the CLETS and the Domestic Violence
18 Restraining Order System, as described in subdivision (e). Data
19 entry is required to be entered only once under the requirements
20 of this section, unless the order is served at a later time. A portion
21 of all fees payable to the Department of Justice under subdivision
22 (a) of Section 1203.097 of the Penal Code for the entry of the
23 information required under this section, based upon the proportion
24 of the costs incurred by the local agency and those incurred by the
25 Department of Justice, shall be transferred to the local agency
26 actually providing the data. All data with respect to criminal court
27 protective orders issued, *modified, extended, or terminated* under
28 subdivision (g) of Section 136.2 of the Penal Code shall be
29 transmitted by the court or its designee within one business day to
30 law enforcement personnel by either one of the following
31 methods:

32 (1) Transmitting a physical copy of the order to a local law
33 enforcement agency authorized by the Department of Justice to
34 enter orders into CLETS.

35 (2) With the approval of the Department of Justice, entering the
36 order into CLETS directly.

37 (b) Upon the issuance of a protective order to which this
38 division applies pursuant to Section 6221, or the issuance of a
39 temporary restraining order or injunction relating to harassment or
40 domestic violence pursuant to Section 527.6 or 527.8 of the Code



1 of Civil Procedure, or the issuance of a criminal court protective
2 order under subdivision (g) of Section 136.2 of the Penal Code, or
3 the issuance of a juvenile court restraining order related to
4 domestic violence pursuant to Section 213.5, 304, or 362.4 of the
5 Welfare and Institutions Code, or the issuance of a protective order
6 pursuant to Section 15657.03 of the Welfare and Institutions Code,
7 or upon registration with the court clerk of a domestic violence
8 protective or restraining order issued by the court of another state,
9 as defined in Section 145, or a military tribunal or tribe, and
10 including any of the foregoing orders issued in connection with an
11 order for modification of a custody or visitation order issued
12 pursuant to a dissolution, legal separation, nullity, or paternity
13 proceeding the Department of Justice shall be immediately
14 notified of the contents of the order and the following information:

15 (1) The name, race, date of birth, and other personal descriptive
16 information of the respondent as required by a form prescribed by
17 the Department of Justice.

18 (2) The names of the protected persons.

19 (3) The date of issuance of the order.

20 (4) The duration or expiration date of the order.

21 (5) The terms and conditions of the protective order, including
22 stay-away, no-contact, residency exclusion, custody, and
23 visitation provisions of the order.

24 (6) The department or division number and the address of the
25 court.

26 (7) Whether or not the order was served upon the respondent.

27 (8) The terms and conditions of any restrictions on the
28 ownership or possession of firearms.

29 All available information shall be included; however, the
30 inability to provide all categories of information shall not delay the
31 entry of the information available.

32 (c) The information conveyed to the Department of Justice
33 shall also indicate whether the respondent was present in court to
34 be informed of the contents of the court order. The respondent's
35 presence in court shall provide proof of service of notice of the
36 terms of the protective order. The respondent's failure to appear
37 shall also be included in the information provided to the
38 Department of Justice.

39 (d) Immediately upon receipt of proof of service the clerk of the
40 court, and immediately after service any law enforcement officer



1 who served the protective order, shall notify the Department of
2 Justice, by electronic transmission, of the service of the protective
3 order, including the name of the person who served the order and,
4 if that person is a law enforcement officer, the law enforcement
5 agency.

6 (e) The Department of Justice shall maintain a Domestic
7 Violence Restraining Order System and shall make available to
8 court clerks and law enforcement personnel, through computer
9 access, all information regarding the protective and restraining
10 orders and injunctions described in subdivision (b), whether or not
11 served upon the respondent.

12 (f) If a court issues a modification, extension, or termination of
13 a protective order, it shall be on forms adopted by the Judicial
14 Council of California and that have been approved by the
15 Department of Justice, and the transmitting agency for the county
16 shall immediately notify the Department of Justice, by electronic
17 transmission, of the terms of the modification, extension, or
18 termination.

19 (g) The Judicial Council shall assist local courts charged with
20 the responsibility for issuing protective orders by developing
21 informational packets describing the general procedures for
22 obtaining a domestic violence restraining order and indicating the
23 appropriate Judicial Council forms, and shall include a design, that
24 local courts shall complete, that describes local court procedures
25 and maps to enable applicants to locate filing windows and
26 appropriate courts. The court clerk shall provide a fee waiver form
27 to all applicants for domestic violence protective orders. The court
28 clerk shall provide all Judicial Council forms required by this
29 chapter to applicants free of charge. The informational packet shall
30 also contain a statement that the protective order is enforceable in
31 any state, as defined in Section 145, or on a reservation, and
32 general information about agencies in other jurisdictions that may
33 be contacted regarding enforcement of an order issued by a court
34 of this state.

35 (h) For the purposes of this part, “electronic transmission”
36 shall include computer access through the California Law
37 Enforcement Telecommunications System (CLETS).

38 (i) Only protective and restraining orders issued on forms
39 adopted by the Judicial Council of California and that have been
40 approved by the Department of Justice shall be transmitted to the



1 Department of Justice. However, this provision shall not apply to
2 a valid protective or restraining order related to domestic or family
3 violence issued by a court of another state, as defined in Section
4 145, a military tribunal, or a tribe. Those orders shall, upon
5 request, be registered pursuant to Section 6380.5.

6 *SEC. 3.* Section 136.2 of the Penal Code is amended to read:

7 136.2. Upon a good cause belief that harm to, or intimidation
8 or dissuasion of, a victim or witness has occurred or is reasonably
9 likely to occur, any court with jurisdiction over a criminal matter
10 may issue orders including, but not limited to, the following:

11 (a) Any order issued pursuant to Section 6320 of the Family
12 Code.

13 (b) An order that a defendant shall not violate any provision of
14 Section 136.1.

15 (c) An order that a person before the court other than a
16 defendant, including, but not limited to, a subpoenaed witness or
17 other person entering the courtroom of the court, shall not violate
18 any provisions of Section 136.1.

19 (d) An order that any person described in this section shall have
20 no communication whatsoever with any specified witness or any
21 victim, except through an attorney under any reasonable
22 restrictions that the court may impose.

23 (e) An order calling for a hearing to determine if an order as
24 described in subdivisions (a) to (d), inclusive, should be issued.

25 (f) An order that a particular law enforcement agency within
26 the jurisdiction of the court provide protection for a victim or a
27 witness, or both, or for immediate family members of a victim or
28 a witness who reside in the same household as the victim or witness
29 or within reasonable proximity of the victim's or witness'
30 household, as determined by the court. The order shall not be made
31 without the consent of the law enforcement agency except for
32 limited and specified periods of time and upon an express finding
33 by the court of a clear and present danger of harm to the victim or
34 witness or immediate family members of the victim or witness.

35 For purposes of this subdivision, "immediate family members"
36 include the spouse, children, or parents of the victim or witness.

37 (g) Any order protecting victims of violent crime from contact,
38 with the intent to annoy, harass, threaten, or commit acts of
39 violence, by the defendant. The court or its designee shall transmit
40 orders made under this subdivision to law enforcement personnel



1 within one business day of the issuance, *modification, extension,*
2 *or termination* of the order, pursuant to subdivision (a) of Section
3 6380 of the Family Code. *It is the responsibility of the court to*
4 *transmit the modification, extension, or termination orders made*
5 *under this subdivision to the same agency that entered the original*
6 *protective order into the Domestic Violence Restraining Order*
7 *System.*

8 Any order issued, *modified, extended, or terminated* by a court
9 pursuant to this subdivision shall be issued on forms adopted by
10 the Judicial Council of California and that have been approved by
11 the Department of Justice pursuant to subdivision (i) of Section
12 6380 of the Family Code. However, the fact that an order issued
13 by a court pursuant to this section was not issued on forms adopted
14 by the Judicial Council and approved by the Department of Justice
15 shall not, in and of itself, make the order unenforceable.

16 Any person violating any order made pursuant to subdivisions
17 (a) to (g), inclusive, may be punished for any substantive offense
18 described in Section 136.1, or for a contempt of the court making
19 the order. A finding of contempt shall not be a bar to prosecution
20 for a violation of Section 136.1. However, any person so held in
21 contempt shall be entitled to credit for any punishment imposed
22 therein against any sentence imposed upon conviction of an
23 offense described in Section 136.1. Any conviction or acquittal for
24 any substantive offense under Section 136.1 shall be a bar to a
25 subsequent punishment for contempt arising out of the same act.

26 (h) (1) In all cases where the defendant is charged with a crime
27 of domestic violence, as defined in Section 13700, the court shall
28 consider issuing the above-described orders on its own motion. All
29 interested parties shall receive a copy of those orders. In order to
30 facilitate this, the court's records of all criminal cases involving
31 domestic violence shall be marked to clearly alert the court to this
32 issue.

33 (2) In those cases in which a complaint, information, or
34 indictment charging a crime of domestic violence, as defined in
35 Section 13700, has been issued, a restraining order or protective
36 order against the defendant issued by the criminal court in that case
37 has precedence over any civil court order, including a family law
38 ~~and~~ *or* dependency court order, against the defendant. All
39 subsequent orders shall comply with and shall not compromise the
40 criminal protective order. A criminal protective order may not



1 contain language either printed or handwritten that will allow a
2 civil or dependency court order to compromise protections
3 allowed under the criminal order to the victim or victims named
4 in the criminal case. The criminal protective order shall remain in
5 full force and effect for the duration of the sentence, including
6 incarceration, probation (either summary or formal), and parole.
7 *The calendar date that the criminal protective order expires shall*
8 *be written on the order.*

9 (i) The Judicial Council shall adopt forms for orders under this
10 section.

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

