

AMENDED IN SENATE APRIL 12, 1999

AMENDED IN SENATE APRIL 5, 1999

AMENDED IN SENATE FEBRUARY 25, 1999

SENATE BILL

No. 161

Introduced by Senator Alpert

**(Coauthors: Senators Baca, Chesbro, Karnette, Rainey,
Schiff, Sher, and Speier)**

(Coauthors: Assembly Members Cunneen, Davis, Dutra,
Havice, Jackson, Knox, Kuehl, Leach, Lempert, Longville,
Romero, Steinberg, Strom-Martin, Torlakson, and
Washington)

January 11, 1999

An act to amend Section 6300 of, and to add Section 6306 to, the Family Code, and to add Section 273.75 to the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 161, as amended, Alpert. Domestic violence: protective orders: background checks.

Existing law, contained in the Domestic Violence Prevention Act, authorizes the court to issue a protective order, as defined, either ex parte or after a hearing, to restrain any person to prevent a recurrence of domestic violence.

This bill would require the court, when considering issuance of a protective order, to cause a search of specified records and data bases to be made to determine if the proposed subject of the order has any specified prior criminal convictions or outstanding warrants, is on parole or probation,

or is or was the subject of other protective or restraining orders. The bill would provide that the search may be performed by the court or a local law enforcement agency, as specified; receipt of results of the search shall not delay issuance of an order; and those results shall be confidential and shall be considered prior to issuance of further orders, as specified. The bill would also require the notification of appropriate law enforcement agencies of the issuance of the protective order in specified circumstances.

Existing law makes it a crime for any person to commit specified acts of violence against his or her spouse, the person with whom he or she is cohabiting, the mother or father of his or her child, or any child.

This bill would require the prosecuting attorney, in all prosecutions of these crimes, to cause a search to be made of specified data bases, for review by the court, to determine if the defendant is or was the subject of any protective or restraining orders and to notify other courts, as specified, of the pending prosecution.

By imposing new duties upon court personnel and prosecuting attorneys, this bill would create 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: yes. State-mandated local program: yes.

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

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



1 6300. (a) An order may be issued under this part,
2 with or without notice, to restrain any person for the
3 purpose of preventing a recurrence of domestic violence
4 and ensuring a period of separation of the persons
5 involved if an affidavit or an affidavit and other
6 information before the court, as described in subdivision
7 (b), shows, to the satisfaction of the court, reasonable
8 proof of a past act or acts of abuse.

9 (b) When considering an application for issuance of an
10 order pursuant to this section, the court shall cause a
11 search to be conducted to determine if the subject of the
12 proposed order has any prior criminal convictions
13 involving domestic violence, weapons, or other violence
14 or any outstanding warrants, is currently on parole or
15 probation, or is the subject of any current or prior
16 restraining orders. The search shall be conducted, with
17 respect to the subject of the proposed order, of all records
18 and data bases readily available to the court including, but
19 not limited to, the following:

20 (1) The Violent Crime Information Network, when
21 available, or the California Law Enforcement
22 Telecommunications System, or both.

23 (2) The Domestic Violence Protective Order Registry.

24 (3) Criminal offender record information and local
25 summary criminal history information compiled by the
26 Department of Justice~~—and~~ or by local criminal justice
27 agencies pursuant to Chapter 2 (commencing with
28 Section 13100) of Title 3 of Part 4 of the Penal Code.

29 (4) State summary criminal history information
30 maintained by the Department of Justice pursuant to
31 Section 11105 of the Penal Code.

32 (5) Data contained in the Federal Bureau of
33 Investigation Nationwide Database, when available.

34 (6) Locally maintained criminal history records or
35 data bases.

36 Nothing in this subdivision shall delay the granting of
37 an application for an order that may otherwise be granted
38 without the information resulting from the data base
39 search.



1 (c) Information received by the court pursuant to
2 subdivision (b) after the granting of an order under this
3 part shall be considered by the court prior to the issuance
4 of any further orders, including orders relating to custody
5 of or visitation with minor children.

6 (d) The data base search described in subdivision (b)
7 may be conducted by the court, if the court has access to
8 the Violent Crime Information Network, the California
9 Law Enforcement Telecommunications System, or both
10 of them, or by a local law enforcement agency within the
11 jurisdictional boundaries of the court.

12 (e) Information received by the court pursuant to
13 subdivision (b) shall be confidential and shall not become
14 a part of any public file in any civil proceeding.

15 SEC. 2. Section 6306 is added to the Family Code, to
16 read:

17 ~~6306. Upon receipt by the court of information that an
18 outstanding warrant exists against the subject of a
19 protective order, as defined in Section 6218, or that the
20 subject is on probation or parole, the court shall, upon
21 issuance of the protective order, notify the appropriate
22 law enforcement officials of the order and of any
23 information regarding the subject's most recent address
24 or location. Those officials shall then take all actions
25 necessary to execute any outstanding warrants or to
26 revoke any parole or probation with respect to the
27 restrained person as appropriate and as soon as
28 practicable.~~

29 *6306. If the court or the local law enforcement agency
30 determines through the data base search required under
31 subdivision (b) of Section 6300 that an outstanding
32 warrant exists against the subject of a protective order, as
33 defined in Section 6218, or that the subject is on probation
34 or parole, the court or the local law enforcement agency
35 shall notify appropriate law enforcement officials of the
36 protective order issued and of the results of the data base
37 search. The law enforcement officials so notified shall
38 then take all appropriate actions necessary to execute any
39 outstanding warrants or to revoke any parole or*



1 *probation with respect to the restrained person as soon as*
2 *practicable.*

3 SEC. 3. Section 273.75 is added to the Penal Code, to
4 read:

5 273.75. (a) In all prosecutions under Section 273a,
6 273d, 273.5, 273.6, or 273.65, the prosecuting attorney shall
7 cause a search to be made of those data bases described
8 in subdivision (b) and the court shall review the resulting
9 information to determine if the defendant is the subject
10 of any prior or current protective or restraining orders
11 issued by any civil, criminal, or juvenile court.

12 (b) For purposes of this section, the prosecuting
13 attorney shall cause a search to be made of the following
14 data bases:

15 (1) The Violent Crime Information Network, when
16 available, or the California Law Enforcement
17 Telecommunications System, or both.

18 (2) The Domestic Violence Protective Order Registry.

19 (3) The Federal Bureau of Investigation Nationwide
20 Database, when available.

21 (c) Upon receipt of information from the data base
22 search pursuant to this section, the prosecuting attorney
23 shall notify any other court that has issued a prior or
24 current protective or restraining order against the
25 defendant of the current prosecution of the defendant
26 under Section 273a, 273d, 273.5, 273.6, or 273.65.

27 SEC. 4. Notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains costs mandated by the
30 state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.

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