

AMENDED IN ASSEMBLY MARCH 9, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 118

Introduced by Assembly Member Cohn
(Principal coauthor: Senator Alquist)

January 13, 2005

An act to amend Section ~~6320~~ 3100 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 118, as amended, Cohn. Protective orders: minor children.

Existing law authorizes the court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child.

Existing law also authorizes any court with jurisdiction over a criminal matter to issue protective orders.

This bill would require that if a criminal protective order has been issued, as specified, a visitation order or a specified custody and visitation order shall make reference to the criminal protective order. The bill would require the Judicial Council to modify criminal and civil court forms consistent with this provision, on or before July 1, 2006.

~~Existing law authorizes the court to issue an ex parte order enjoining a party from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, destroying personal property, contacting, coming within a specified distance of, or disturbing the peace of the other party, and, in the discretion of the court, on a showing of good cause, of other named family or household members.~~

~~This bill would require the court, if there is a minor child of the parties or of the other party, or a minor child under the care, custody, or control of the other party, to specifically state on the order the type of contact, if any, permitted between the enjoined party and the child.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: no.

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

1 ~~SECTION 1. Section 6320 of the Family Code is amended to~~
2 ~~read:~~

3 *SECTION 1. Section 3100 of the Family Code is amended to*
4 *read:*

5 3100. (a) In making an order pursuant to Chapter 4
6 (commencing with Section 3080), the court shall grant
7 reasonable visitation rights to a parent unless it is shown that the
8 visitation would be detrimental to the best interest of the child. In
9 the discretion of the court, reasonable visitation rights may be
10 granted to any other person having an interest in the welfare of
11 the child.

12 (b) If a protective order, as defined in Section 6218, has been
13 directed to a parent, the court shall consider whether the best
14 interest of the child requires that any visitation by that parent
15 shall be limited to situations in which a third person, specified by
16 the court, is present, or whether visitation shall be suspended or
17 denied. The court shall include in its deliberations a
18 consideration of the nature of the acts from which the parent was
19 enjoined and the period of time that has elapsed since that order.
20 A parent may submit to the court the name of a person that the
21 parent deems suitable to be present during visitation.

22 (c) Whenever visitation is ordered in a case in which domestic
23 violence is alleged and an emergency protective order, protective
24 order, or other restraining order has been issued, the visitation
25 order shall specify the time, day, place, and manner of transfer of
26 the child, so as to limit the child's exposure to potential domestic
27 conflict or violence and to ensure the safety of all family
28 members. *If a criminal protective order has been issued pursuant*
29 *to Section 136.2 of the Penal Code, the visitation order shall*
30 *make reference to the criminal protective order.*

1 (d) Where the court finds a party is staying in a place
2 designated as a shelter for victims of domestic violence or other
3 confidential location, the court’s order for time, day, place, and
4 manner of transfer of the child for visitation shall be designed to
5 prevent disclosure of the location of the shelter or other
6 confidential location.

7 *SEC. 2 Section 136.2 of the Penal Code is amended to read:*

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

13 (a) Any order issued pursuant to Section 6320 of the Family
14 Code.

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

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

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

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

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

38 For purposes of this subdivision, “immediate family members”
39 include the spouse, children, or parents of the victim or witness.

1 (g) Any order protecting victims of violent crime from contact,
2 with the intent to annoy, harass, threaten, or commit acts of
3 violence, by the defendant. The court or its designee shall
4 transmit orders made under this subdivision to law enforcement
5 personnel within one business day of the issuance, modification,
6 extension, or termination of the order, pursuant to subdivision (a)
7 of Section 6380 of the Family Code. It is the responsibility of the
8 court to transmit the modification, extension, or termination
9 orders made under this subdivision to the same agency that
10 entered the original protective order into the Domestic Violence
11 Restraining Order System.

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

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

32 (h) (1) A person subject to a protective order issued under this
33 section shall not own, possess, purchase, receive, or attempt to
34 purchase or receive a firearm while the protective order is in
35 effect.

36 (2) The court shall order a person subject to a protective order
37 issued under this section to relinquish any firearms he or she
38 owns or possesses pursuant to Section 527.9 of the Code of Civil
39 Procedure.

1 (3) Every person who owns, possesses, purchases or receives,
2 or attempts to purchase or receive a firearm while the protective
3 order is in effect is punishable pursuant to subdivision (g) of
4 Section 12021 of the Penal Code.

5 (i) (1) In all cases where the defendant is charged with a
6 crime of domestic violence, as defined in Section 13700, the
7 court shall consider issuing the above-described orders on its
8 own motion. All interested parties shall receive a copy of those
9 orders. In order to facilitate this, the court's records of all
10 criminal cases involving domestic violence shall be marked to
11 clearly alert the court to this issue.

12 (2) In those cases in which a complaint, information, or
13 indictment charging a crime of domestic violence, as defined in
14 Section 13700, has been issued, a restraining order or protective
15 order against the defendant issued by the criminal court in that
16 case has precedence in enforcement over any civil court order
17 against the defendant.

18 (3) Custody and visitation with respect to the defendant and
19 his or her minor children may be ordered by a family or juvenile
20 court consistent with the protocol established pursuant to
21 subdivision ~~(i)~~ (j), *but if ordered after a criminal protective order*
22 *has been issued pursuant to this section, the custody and*
23 *visitation order shall make reference to the criminal protective*
24 *order. On or before July 1, 2006, the Judicial Council shall*
25 *modify the criminal and civil court forms consistent with this*
26 *subdivision.*

27 (j) On or before January 1, 2003, the Judicial Council shall
28 promulgate a protocol, for adoption by each local court in
29 substantially similar terms, to provide for the timely coordination
30 of all orders against the same defendant and in favor of the same
31 named victim or victims. The protocol shall include, but shall not
32 be limited to, mechanisms for assuring appropriate
33 communication and information sharing between criminal,
34 family, and juvenile courts concerning orders and cases that
35 involve the same parties, and shall permit a family or juvenile
36 court order to coexist with a criminal court protective order
37 subject to the following conditions:

38 (1) Any order that permits contact between the restrained
39 person and his or her children shall provide for the safe exchange
40 of the children and shall not contain language either printed or

1 handwritten that violates a “no contact order” issued by a
2 criminal court.

3 (2) Safety of all parties shall be the courts’ paramount
4 concern. The family or juvenile court shall specify the time, day,
5 place, and manner of transfer of the child, as provided in Section
6 3100 of the Family Code.

7 (k) On or before January 1, 2003, the Judicial Council shall
8 modify the criminal and civil court protective order forms
9 consistent with this section.

10 ~~6320. (a) The court may issue an ex parte order enjoining a~~
11 ~~party from molesting, attacking, striking, stalking, threatening,~~
12 ~~sexually assaulting, battering, harassing, telephoning, including,~~
13 ~~but not limited to, annoying telephone calls as described in~~
14 ~~Section 653m of the Penal Code, destroying personal property,~~
15 ~~contacting, either directly or indirectly, by mail or otherwise,~~
16 ~~coming within a specified distance of, or disturbing the peace of~~
17 ~~the other party, and, in the discretion of the court, on a showing~~
18 ~~of good cause, of other named family or household members.~~

19 ~~(b) Notwithstanding subdivision (a), if there is a minor child~~
20 ~~of the parties or of the other party, or a minor child under the~~
21 ~~care, custody, or control of the other party, the court shall~~
22 ~~specifically state on the order the type of contact, if any,~~
23 ~~permitted between the enjoined party and the child.~~