

AMENDED IN ASSEMBLY MARCH 29, 2005

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)  
(*Coauthor: Assembly Member Spitzer*)

January 13, 2005

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An act to amend Section 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.

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

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

1 SECTION 1. Section 3100 of the Family Code is amended to  
2 read:

3 3100. (a) In making an order pursuant to Chapter 4  
4 (commencing with Section 3080), the court shall grant  
5 reasonable visitation rights to a parent unless it is shown that the  
6 visitation would be detrimental to the best interest of the child. In  
7 the discretion of the court, reasonable visitation rights may be  
8 granted to any other person having an interest in the welfare of  
9 the child.

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

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

29 (d) ~~Where~~ *If* the court finds a party is staying in a place  
30 designated as a shelter for victims of domestic violence or other  
31 confidential location, the court’s order for time, day, place, and  
32 manner of transfer of the child for visitation shall be designed to  
33 prevent disclosure of the location of the shelter or other  
34 confidential location.

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

36 136.2. Upon a good cause belief that harm to, or intimidation  
37 or dissuasion of, a victim or witness has occurred or is  
38 reasonably likely to occur, any court with jurisdiction over a

1 criminal matter may issue orders including, but not limited to, the  
2 following:

3 (a) Any order issued pursuant to Section 6320 of the Family  
4 Code.

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

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

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

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

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

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

30 (g) Any order protecting victims of violent crime from contact,  
31 with the intent to annoy, harass, threaten, or commit acts of  
32 violence, by the defendant. The court or its designee shall  
33 transmit orders made under this subdivision to law enforcement  
34 personnel within one business day of the issuance, modification,  
35 extension, or termination of the order, pursuant to subdivision (a)  
36 of Section 6380 of the Family Code. It is the responsibility of the  
37 court to transmit the modification, extension, or termination  
38 orders made under this subdivision to the same agency that  
39 entered the original protective order into the Domestic Violence  
40 Restraining Order System.

1 Any order issued, modified, extended, or terminated by a court  
2 pursuant to this subdivision shall be issued on forms adopted by  
3 the Judicial Council of California and that have been approved  
4 by the Department of Justice pursuant to subdivision (i) of  
5 Section 6380 of the Family Code. However, the fact that an order  
6 issued by a court pursuant to this section was not issued on forms  
7 adopted by the Judicial Council and approved by the Department  
8 of Justice shall not, in and of itself, make the order  
9 unenforceable.

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

21 (h) (1) A person subject to a protective order issued under this  
22 section shall not own, possess, purchase, receive, or attempt to  
23 purchase or receive a firearm while the protective order is in  
24 effect.

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

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

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

1 (2) In those cases in which a complaint, information, or  
2 indictment charging a crime of domestic violence, as defined in  
3 Section 13700, has been issued, a restraining order or protective  
4 order against the defendant issued by the criminal court in that  
5 case has precedence in enforcement over any civil court order  
6 against the defendant.

7 (3) Custody and visitation with respect to the defendant and  
8 his or her minor children may be ordered by a family or juvenile  
9 court consistent with the protocol established pursuant to  
10 subdivision (j), but if ordered after a criminal protective order has  
11 been issued pursuant to this section, the custody and visitation  
12 order shall make reference to the criminal protective order. On or  
13 before July 1, 2006, the Judicial Council shall modify the  
14 criminal and civil court forms consistent with this subdivision.

15 (j) On or before January 1, 2003, the Judicial Council shall  
16 promulgate a protocol, for adoption by each local court in  
17 substantially similar terms, to provide for the timely coordination  
18 of all orders against the same defendant and in favor of the same  
19 named victim or victims. The protocol shall include, but shall not  
20 be limited to, mechanisms for assuring appropriate  
21 communication and information sharing between criminal,  
22 family, and juvenile courts concerning orders and cases that  
23 involve the same parties, and shall permit a family or juvenile  
24 court order to coexist with a criminal court protective order  
25 subject to the following conditions:

26 (1) Any order that permits contact between the restrained  
27 person and his or her children shall provide for the safe exchange  
28 of the children and shall not contain language either printed or  
29 handwritten that violates a “no contact order” issued by a  
30 criminal court.

31 (2) Safety of all parties shall be the courts’ paramount  
32 concern. The family or juvenile court shall specify the time, day,  
33 place, and manner of transfer of the child, as provided in Section  
34 3100 of the Family Code.

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

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