

AMENDED IN SENATE MAY 25, 2005  
AMENDED IN ASSEMBLY MARCH 29, 2005  
AMENDED IN ASSEMBLY MARCH 9, 2005  
CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 118**

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

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

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

37 136.2. Upon a good cause belief that harm to, or intimidation  
38 or dissuasion of, a victim or witness has occurred or is

1 reasonably likely to occur, any court with jurisdiction over a  
2 criminal matter may issue orders including, but not limited to, the  
3 following:

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

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

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

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

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

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

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

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

1 entered the original protective order into the Domestic Violence  
2 Restraining Order System.

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

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

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

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

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

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

1 criminal cases involving domestic violence shall be marked to  
2 clearly alert the court to this issue.

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

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

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

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

34 (2) Safety of all parties shall be the courts’ paramount  
35 concern. The family or juvenile court shall specify the time, day,  
36 place, and manner of transfer of the child, as provided in Section  
37 3100 of the Family Code.

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

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