

AMENDED IN SENATE JUNE 13, 2005

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

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

January 13, 2005

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~~ *any appropriate* 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~~ *any appropriate* 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.

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

2 136.2. (a) Upon a good cause belief that harm to, or
3 intimidation or dissuasion of, a victim or witness has occurred or
4 is reasonably likely to occur, any court with jurisdiction over a
5 criminal matter may issue orders including, but not limited to, the
6 following:

7 ~~(a)~~

8 (1) Any order issued pursuant to Section 6320 of the Family
9 Code.

10 ~~(b)~~

11 (2) An order that a defendant shall not violate any provision of
12 Section 136.1.

13 ~~(c)~~

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

18 ~~(d)~~

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

23 ~~(e)~~

24 (5) An order calling for a hearing to determine if an order as
25 described in ~~subdivisions (a) to (d)~~ *paragraphs (1) to (4)*,
26 inclusive, should be issued.

27 ~~(f)~~

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

1 For purposes of this ~~subdivision~~ *paragraph*, “immediate family
 2 members” include the spouse, children, or parents of the victim
 3 or witness.

4 ~~(g)~~

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

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

25 ~~Any~~

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

37 ~~(h)~~

38 (c) (1) A person subject to a protective order issued under this
 39 section shall not own, possess, purchase, receive, or attempt to

1 purchase or receive a firearm while the protective order is in
2 effect.

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

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

11 (i)

12 (d) (1) In all cases where the defendant is charged with a
13 crime of domestic violence, as defined in Section 13700, the
14 court shall consider issuing the above-described orders on its
15 own motion. All interested parties shall receive a copy of those
16 orders. In order to facilitate this, the court's records of all
17 criminal cases involving domestic violence shall be marked to
18 clearly alert the court to this issue.

19 (2) In those cases in which a complaint, information, or
20 indictment charging a crime of domestic violence, as defined in
21 Section 13700, has been issued, a restraining order or protective
22 order against the defendant issued by the criminal court in that
23 case has precedence in enforcement over any civil court order
24 against the defendant.

25 (3) Custody and visitation with respect to the defendant and
26 his or her minor children may be ordered by a family or juvenile
27 court consistent with the protocol established pursuant to
28 subdivision-(j) (e), but if ordered after a criminal protective order
29 has been issued pursuant to this section, the custody and
30 visitation order shall make reference to, and acknowledge the
31 precedence of enforcement of, ~~the~~ *any appropriate* criminal
32 protective order. On or before July 1, 2006, the Judicial Council
33 shall modify the criminal and civil court forms consistent with
34 this subdivision.

35 (j)

36 (e) On or before January 1, 2003, the Judicial Council shall
37 promulgate a protocol, for adoption by each local court in
38 substantially similar terms, to provide for the timely coordination
39 of all orders against the same defendant and in favor of the same
40 named victim or victims. The protocol shall include, but shall not

1 be limited to, mechanisms for assuring appropriate
2 communication and information sharing between criminal,
3 family, and juvenile courts concerning orders and cases that
4 involve the same parties, and shall permit a family or juvenile
5 court order to coexist with a criminal court protective order
6 subject to the following conditions:

7 (1) Any order that permits contact between the restrained
8 person and his or her children shall provide for the safe exchange
9 of the children and shall not contain language either printed or
10 handwritten that violates a “no contact order” issued by a
11 criminal court.

12 (2) Safety of all parties shall be the courts’ paramount
13 concern. The family or juvenile court shall specify the time, day,
14 place, and manner of transfer of the child, as provided in Section
15 3100 of the Family Code.

16 ~~(k)~~

17 (f) On or before January 1, 2003, the Judicial Council shall
18 modify the criminal and civil court protective order forms
19 consistent with this section.