

AMENDED IN ASSEMBLY MAY 4, 2005

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1288**

**Introduced by Assembly Member Chu**  
**(Coauthors: Assembly Members Cohn, Goldberg, and Leno)**

February 22, 2005

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An act to amend Sections 136.2 and 11106 of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1288, as amended, Chu. Court orders.

(1) Existing law provides a mechanism whereby the court may issue a protective order.

This bill would require a court, under specified circumstances, to issue, *or consider issuing*, a protective order to a defendant charged with domestic violence that would require, among other things, the relinquishment of his or her firearms. A failure to comply with the provisions of that protective order would result in a misdemeanor.

By adding to the duties of local employees, this bill would impose a state-mandated local program. By imposing a crime for a violation of the above-described protective order, the bill would create a state-mandated local program.

(2) Existing law requires the Attorney General to maintain a registry of information reported to the Department of Justice regarding firearms, including, among other things, copies of licenses to carry firearms and applications for licenses to carry firearms. Existing law provides generally that information contained in the registry shall, upon proper application, be furnished to specified peace officers.

However, information relating to firearms that are not handguns shall not generally be retained but shall instead be destroyed, as specified; a violation of this provision is a misdemeanor.

This bill would, as an exception to the above provisions, authorize specified peace officers to disseminate the name of the subject of the record, the number of firearms listed in the record, and the description of any firearm, including the make, model, and caliber from the record, relating to any firearm's sale, transfer, registration, or license record, or any information reported to the Department of Justice pursuant to specified provisions, if the subject of the record has been arraigned for domestic violence and is being prosecuted or is serving a sentence for the crime, or the subject of the record is the subject of an emergency protective order, a temporary restraining order, or an order after hearing, which is in effect and has been issued by a family court under the Domestic Violence Protect Act and the record or information is disseminated only to the victim of the crime or to the person who has obtained the emergency protective order, the temporary restraining order, or the order after hearing issued by the family court. The bill would further provide that the victim or person to whom such information is disseminated may disclose it as he or she deems necessary to protect himself, herself, or another person from bodily harm by the person who is the subject of the record.

(3) 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.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 136.2 of the Penal Code is amended to  
2 read:

1 136.2. Upon a good cause belief that harm to, or intimidation  
2 or dissuasion of, a victim or witness has occurred or is  
3 reasonably likely to occur, any court with jurisdiction over a  
4 criminal matter may issue orders including, but not limited to, the  
5 following:

6 (a) Any order issued pursuant to Section 6320 of the Family  
7 Code.

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

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

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

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

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

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

33 (g) (1) Any order protecting victims of violent crime from  
34 contact, with the intent to annoy, harass, threaten, or commit acts  
35 of violence, by the defendant. The court or its designee shall  
36 transmit orders made under this subdivision to law enforcement  
37 personnel within one business day of the issuance, modification,  
38 extension, or termination of the order, pursuant to subdivision (a)  
39 of Section 6380 of the Family Code. It is the responsibility of the  
40 court to transmit the modification, extension, or termination

1 orders made under this subdivision to the same agency that  
2 entered the original protective order into the Domestic Violence  
3 Restraining Order System.

4 (2) (A) If a court does not issue an order pursuant to  
5 paragraph (1) in a case in which the defendant is charged with a  
6 crime of domestic violence as defined in Section 13700, the court  
7 on its own motion shall ~~issue~~ *consider issuing* a protective order  
8 upon a good cause belief that harm to, or intimidation or  
9 dissuasion of, a victim or witness has occurred or is reasonably  
10 likely to occur, that provides as follows:

11 (i) The defendant shall not own, possess, purchase, receive, or  
12 attempt to purchase or receive, a firearm while the protective  
13 order is in effect.

14 (ii) The defendant shall relinquish any firearms that he or she  
15 owns or possesses pursuant to Section 527.9 of the Code of Civil  
16 Procedure.

17 (B) Every person who owns, possesses, purchases, or receives,  
18 or attempts to purchase or receive, a firearm while this protective  
19 order is in effect is punishable pursuant to subdivision (g) of  
20 Section 12021.

21 (3) Any order issued, modified, extended, or terminated by a  
22 court pursuant to this subdivision shall be issued on forms  
23 adopted by the Judicial Council of California and that have been  
24 approved by the Department of Justice pursuant to subdivision (i)  
25 of Section 6380 of the Family Code. However, the fact that an  
26 order issued by a court pursuant to this section was not issued on  
27 forms adopted by the Judicial Council and approved by the  
28 Department of Justice shall not, in and of itself, make the order  
29 unenforceable.

30 (4) Any person violating any order made pursuant to  
31 subdivisions (a) to (g), inclusive, may be punished for any  
32 substantive offense described in Section 136.1, or for a contempt  
33 of the court making the order. A finding of contempt shall not be  
34 a bar to prosecution for a violation of Section 136.1. However,  
35 any person so held in contempt shall be entitled to credit for any  
36 punishment imposed therein against any sentence imposed upon  
37 conviction of an offense described in Section 136.1. Any  
38 conviction or acquittal for any substantive offense under Section  
39 136.1 shall be a bar to a subsequent punishment for contempt  
40 arising out of the same act.

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

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

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

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

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

26 (3) Custody and visitation with respect to the defendant and  
27 his or her minor children may be ordered by a family or juvenile  
28 court consistent with the protocol established pursuant to  
29 subdivision (i).

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

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

6 (2) Safety of all parties shall be the courts’ paramount  
7 concern. The family or juvenile court shall specify the time, day,  
8 place, and manner of transfer of the child, as provided in Section  
9 3100 of the Family Code.

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

13 SEC. 2. Section 11106 of the Penal Code is amended to read:

14 11106. (a) (1) In order to assist in the investigation of crime,  
15 the prosecution of civil actions by city attorneys pursuant to  
16 paragraph (3) of subdivision (c), the arrest and prosecution of  
17 criminals, and the recovery of lost, stolen, or found property, the  
18 Attorney General shall keep and properly file a complete record  
19 of all copies of fingerprints, copies of licenses to carry firearms  
20 issued pursuant to Section 12050, information reported to the  
21 Department of Justice pursuant to Section 12053, dealers’  
22 records of sales of firearms, reports provided pursuant to Section  
23 12072 or 12078, forms provided pursuant to Section 12084,  
24 reports provided pursuant to Section 12071 that are not dealers’  
25 records of sales of firearms, and reports of stolen, lost, found,  
26 pledged, or pawned property in any city or county of this state,  
27 and shall, upon proper application therefor, furnish this  
28 information to the officers referred to in Section 11105.

29 (2) (A) Any officer referred to in paragraphs (1) to (6),  
30 inclusive, of subdivision (b) of Section 11105 may disseminate  
31 the name of the subject of the record, the number of the firearms  
32 listed in the record, and the description of any firearm, including  
33 the make, model, and caliber, from the record relating to any  
34 firearms sale, transfer, registration, or license record, or any  
35 information reported to the Department of Justice pursuant to  
36 Sections 12021.3, 12053, 12071, 12072, 12077, 12078, 12082, or  
37 12285, if the following conditions are met:

38 (i) The subject of the record has been arraigned for a crime in  
39 which the victim is a person described in subdivisions (a) to (f),  
40 inclusive, of Section 6211 of the Family Code and is being

1 prosecuted or is serving a sentence for the crime, or the subject of  
2 the record is the subject of an emergency protective order, a  
3 temporary restraining order, or an order after hearing, which is in  
4 effect and has been issued by a family court under the Domestic  
5 Violence Protection Act set forth in Division 10 (commencing  
6 with Section 6200) of the Family Code.

7 (ii) The information is disseminated only to the victim of the  
8 crime or to the person who has obtained the emergency  
9 protective order, the temporary restraining order, or the order  
10 after hearing issued by the family court.

11 (B) The victim or person to whom such information is  
12 disseminated may disclose it as he or she deems necessary to  
13 protect himself or herself or another person from bodily harm by  
14 the person who is the subject of the record.

15 (b) (1) Except as provided in paragraph (2) of subdivision (a),  
16 the Attorney General shall not retain or compile any information  
17 from reports filed pursuant to subdivision (a) of Section 12078  
18 for firearms that are not handguns, from forms submitted  
19 pursuant to Section 12084 for firearms that are not handguns, or  
20 from dealers' records of sales for firearms that are not handguns.  
21 All copies of the forms submitted, or any information received in  
22 electronic form, pursuant to Section 12084 for firearms that are  
23 not handguns, or of the dealers' records of sales for firearms that  
24 are not handguns shall be destroyed within five days of the  
25 clearance by the Attorney General, unless the purchaser or  
26 transferor is ineligible to take possession of the firearm. All  
27 copies of the reports filed, or any information received in  
28 electronic form, pursuant to subdivision (a) of Section 12078 for  
29 firearms that are not handguns shall be destroyed within five  
30 days of the receipt by the Attorney General, unless retention is  
31 necessary for use in a criminal prosecution.

32 (2) A peace officer, the Attorney General, a Department of  
33 Justice employee designated by the Attorney General, or any  
34 authorized local law enforcement employee shall not retain or  
35 compile any information from a firearms transaction record, as  
36 defined in paragraph (5) of subdivision (c) of Section 12071, for  
37 firearms that are not handguns unless retention or compilation is  
38 necessary for use in a criminal prosecution or in a proceeding to  
39 revoke a license issued pursuant to Section 12071.

40 (3) A violation of this subdivision is a misdemeanor.

1 (c) (1) The Attorney General shall permanently keep and  
2 properly file and maintain all information reported to the  
3 Department of Justice pursuant to Sections 12071, 12072, 12078,  
4 12082, and 12084 or any other law, as to handguns and maintain  
5 a registry thereof.

6 (2) The registry shall consist of all of the following:

7 (A) The name, address, identification of, place of birth (state  
8 or country), complete telephone number, occupation, sex,  
9 description, and all legal names and aliases ever used by the  
10 owner or person being loaned the particular handgun as listed on  
11 the information provided to the department on the Dealers'  
12 Record of Sale, the Law Enforcement Firearms Transfer (LEFT),  
13 as defined in Section 12084, or reports made to the department  
14 pursuant to Section 12078 or any other law.

15 (B) The name and address of, and other information about, any  
16 person (whether a dealer or a private party) from whom the  
17 owner acquired or the person being loaned the particular handgun  
18 and when the firearm was acquired or loaned as listed on the  
19 information provided to the department on the Dealers' Record  
20 of Sale, the LEFT, or reports made to the department pursuant to  
21 Section 12078 or any other law.

22 (C) Any waiting period exemption applicable to the  
23 transaction which resulted in the owner of or the person being  
24 loaned the particular handgun acquiring or being loaned that  
25 firearm.

26 (D) The manufacturer's name if stamped on the firearm,  
27 model name or number if stamped on the firearm, and, if  
28 applicable, the serial number, other number (if more than one  
29 serial number is stamped on the firearm), caliber, type of firearm,  
30 if the firearm is new or used, barrel length, and color of the  
31 firearm.

32 (3) Information in the registry referred to in this subdivision  
33 shall, upon proper application therefor, be furnished to the  
34 officers referred to in Section 11105, to a city attorney  
35 prosecuting a civil action, solely for use in prosecuting that civil  
36 action and not for any other purpose, or to the person listed in the  
37 registry as the owner or person who is listed as being loaned the  
38 particular handgun.

39 (4) If any person is listed in the registry as the owner of a  
40 firearm through a Dealers' Record of Sale prior to 1979, and the

1 person listed in the registry requests by letter that the Attorney  
2 General store and keep the record electronically, as well as in the  
3 record's existing photographic, photostatic, or nonerasable  
4 optically stored form, the Attorney General shall do so within  
5 three working days of receipt of the request. The Attorney  
6 General shall, in writing, and as soon as practicable, notify the  
7 person requesting electronic storage of the record that the request  
8 has been honored as required by this paragraph.

9 SEC. 3. No reimbursement is required by this act pursuant to  
10 Section 6 of Article XIII B of the California Constitution for  
11 certain costs that may be incurred by a local agency or school  
12 district because, in that regard, this act creates a new crime or  
13 infraction, eliminates a crime or infraction, or changes the  
14 penalty for a crime or infraction, within the meaning of Section  
15 17556 of the Government Code, or changes the definition of a  
16 crime within the meaning of Section 6 of Article XIII B of the  
17 California Constitution.

18 However, if the Commission on State Mandates determines  
19 that this act contains other costs mandated by the state,  
20 reimbursement to local agencies and school districts for those  
21 costs shall be made pursuant to Part 7 (commencing with Section  
22 17500) of Division 4 of Title 2 of the Government Code.