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CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Chu

(Principal coauthor: Senator Alquist)

(Coauthors: Assembly Members Cohn, Goldberg, and Leno)

February 22, 2005

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~~ *Protection 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 law enforcement shall provide the victim with a "Victims of Domestic Violence" card, as specified, and that the victim or person to whom the information is disseminated may disclose that information 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. By imposing new duties on local law enforcement officers, this bill would impose a state-mandated local program.

(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:

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

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

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

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

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

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

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

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

1 (g) (1) Any order protecting victims of violent crime from
2 contact, with the intent to annoy, harass, threaten, or commit acts
3 of 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 (2) (A) If a court does not issue an order pursuant to
13 paragraph (1) in a case in which the defendant is charged with a
14 crime of domestic violence as defined in Section 13700, the court
15 on its own motion shall consider issuing a protective order upon
16 a good cause belief that harm to, or intimidation or dissuasion of,
17 a victim or witness has occurred or is reasonably likely to occur,
18 that provides as follows:

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

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

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

29 (3) Any order issued, modified, extended, or terminated by a
30 court pursuant to this subdivision shall be issued on forms
31 adopted by the Judicial Council of California and that have been
32 approved by the Department of Justice pursuant to subdivision (i)
33 of Section 6380 of the Family Code. However, the fact that an
34 order issued by a court pursuant to this section was not issued on
35 forms adopted by the Judicial Council and approved by the
36 Department of Justice shall not, in and of itself, make the order
37 unenforceable.

38 (4) Any person violating any order made pursuant to
39 subdivisions (a) to (g), inclusive, may be punished for any
40 substantive offense described in Section 136.1, or for a contempt

1 of the court making the order. A finding of contempt shall not be
2 a bar to prosecution for a violation of Section 136.1. However,
3 any person so held in contempt shall be entitled to credit for any
4 punishment imposed therein against any sentence imposed upon
5 conviction of an offense described in Section 136.1. Any
6 conviction or acquittal for any substantive offense under Section
7 136.1 shall be a bar to a subsequent punishment for contempt
8 arising out of the same act.

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

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

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

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

28 (2) In those cases in which a complaint, information, or
29 indictment charging a crime of domestic violence, as defined in
30 Section 13700, has been issued, a restraining order or protective
31 order against the defendant issued by the criminal court in that
32 case has precedence in enforcement over any civil court order
33 against the defendant.

34 (3) Custody and visitation with respect to the defendant and
35 his or her minor children may be ordered by a family or juvenile
36 court consistent with the protocol established pursuant to
37 subdivision (i).

38 (j) On or before January 1, 2003, the Judicial Council shall
39 promulgate a protocol, for adoption by each local court in
40 substantially similar terms, to provide for the timely coordination

1 of all orders against the same defendant and in favor of the same
2 named victim or victims. The protocol shall include, but shall not
3 be limited to, mechanisms for assuring appropriate
4 communication and information sharing between criminal,
5 family, and juvenile courts concerning orders and cases that
6 involve the same parties, and shall permit a family or juvenile
7 court order to coexist with a criminal court protective order
8 subject to the following conditions:

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

14 (2) Safety of all parties shall be the courts’ paramount
15 concern. The family or juvenile court shall specify the time, day,
16 place, and manner of transfer of the child, as provided in Section
17 3100 of the Family Code.

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

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

22 11106. (a) In order to assist in the investigation of crime, the
23 prosecution of civil actions by city attorneys pursuant to
24 paragraph (3) of subdivision (c), the arrest and prosecution of
25 criminals, and the recovery of lost, stolen, or found property, the
26 Attorney General shall keep and properly file a complete record
27 of all copies of fingerprints, copies of licenses to carry firearms
28 issued pursuant to Section 12050, information reported to the
29 Department of Justice pursuant to Section 12053, dealers’
30 records of sales of firearms, reports provided pursuant to Section
31 12072 or 12078, forms provided pursuant to Section 12084,
32 reports provided pursuant to Section 12071 that are not dealers’
33 records of sales of firearms, and reports of stolen, lost, found,
34 pledged, or pawned property in any city or county of this state,
35 and shall, upon proper application therefor, furnish this
36 information to the officers referred to in Section 11105.

37 (b) (1) Except as provided in subdivision (d), the Attorney
38 General shall not retain or compile any information from reports
39 filed pursuant to subdivision (a) of Section 12078 for firearms
40 that are not handguns, from forms submitted pursuant to Section

1 12084 for firearms that are not handguns, or from dealers’
2 records of sales for firearms that are not handguns. All copies of
3 the forms submitted, or any information received in electronic
4 form, pursuant to Section 12084 for firearms that are not
5 handguns, or of the dealers’ records of sales for firearms that are
6 not handguns shall be destroyed within five days of the clearance
7 by the Attorney General, unless the purchaser or transferor is
8 ineligible to take possession of the firearm. All copies of the
9 reports filed, or any information received in electronic form,
10 pursuant to subdivision (a) of Section 12078 for firearms that are
11 not handguns shall be destroyed within five days of the receipt by
12 the Attorney General, unless retention is necessary for use in a
13 criminal prosecution.

14 (2) A peace officer, the Attorney General, a Department of
15 Justice employee designated by the Attorney General, or any
16 authorized local law enforcement employee shall not retain or
17 compile any information from a firearms transaction record, as
18 defined in paragraph (5) of subdivision (c) of Section 12071, for
19 firearms that are not handguns unless retention or compilation is
20 necessary for use in a criminal prosecution or in a proceeding to
21 revoke a license issued pursuant to Section 12071.

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

23 (c) (1) The Attorney General shall permanently keep and
24 properly file and maintain all information reported to the
25 Department of Justice pursuant to Sections 12071, 12072, 12078,
26 12082, and 12084 or any other law, as to handguns and maintain
27 a registry thereof.

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

29 (A) The name, address, identification of, place of birth (state
30 or country), complete telephone number, occupation, sex,
31 description, and all legal names and aliases ever used by the
32 owner or person being loaned the particular handgun as listed on
33 the information provided to the department on the Dealers’
34 Record of Sale, the Law Enforcement Firearms Transfer (LEFT),
35 as defined in Section 12084, or reports made to the department
36 pursuant to Section 12078 or any other law.

37 (B) The name and address of, and other information about, any
38 person (whether a dealer or a private party) from whom the
39 owner acquired or the person being loaned the particular handgun
40 and when the firearm was acquired or loaned as listed on the

1 information provided to the department on the Dealers' Record
2 of Sale, the LEFT, or reports made to the department pursuant to
3 Section 12078 or any other law.

4 (C) Any waiting period exemption applicable to the
5 transaction which resulted in the owner of or the person being
6 loaned the particular handgun acquiring or being loaned that
7 firearm.

8 (D) The manufacturer's name if stamped on the firearm,
9 model name or number if stamped on the firearm, and, if
10 applicable, the serial number, other number (if more than one
11 serial number is stamped on the firearm), caliber, type of firearm,
12 if the firearm is new or used, barrel length, and color of the
13 firearm.

14 (3) Information in the registry referred to in this subdivision
15 shall, upon proper application therefor, be furnished to the
16 officers referred to in Section 11105, to a city attorney
17 prosecuting a civil action, solely for use in prosecuting that civil
18 action and not for any other purpose, or to the person listed in the
19 registry as the owner or person who is listed as being loaned the
20 particular handgun.

21 (4) If any person is listed in the registry as the owner of a
22 firearm through a Dealers' Record of Sale prior to 1979, and the
23 person listed in the registry requests by letter that the Attorney
24 General store and keep the record electronically, as well as in the
25 record's existing photographic, photostatic, or nonerasable
26 optically stored form, the Attorney General shall do so within
27 three working days of receipt of the request. The Attorney
28 General shall, in writing, and as soon as practicable, notify the
29 person requesting electronic storage of the record that the request
30 has been honored as required by this paragraph.

31 (d) (1) Any officer referred to in paragraphs (1) to (6),
32 inclusive, of subdivision (b) of Section 11105 may disseminate
33 the name of the subject of the record, the number of the firearms
34 listed in the record, and the description of any firearm, including
35 the make, model, and caliber, from the record relating to any
36 ~~firearms~~ *firearm's* sale, transfer, registration, or license record, or
37 any information reported to the Department of Justice pursuant to
38 ~~Sections~~ *Section* 12021.3, 12053, 12071, 12072, 12077, 12078,
39 12082, or 12285, if the following conditions are met:

1 (A) The subject of the record has been arraigned for a crime in
2 which the victim is a person described in subdivisions (a) to (f),
3 inclusive, of Section 6211 of the Family Code and is being
4 prosecuted or is serving a sentence for the crime, or the subject of
5 the record is the subject of an emergency protective order, a
6 temporary restraining order, or an order after hearing, which is in
7 effect and has been issued by a family court under the Domestic
8 Violence Protection Act set forth in Division 10 (commencing
9 with Section 6200) of the Family Code.

10 (B) The information is disseminated only to the victim of the
11 crime or to the person who has obtained the emergency
12 protective order, the temporary restraining order, or the order
13 after hearing issued by the family court.

14 (C) Whenever a law enforcement officer disseminates the
15 information authorized by this subdivision, that officer or another
16 officer assigned to the case shall immediately provide the victim
17 of the crime with a “Victims of Domestic Violence” card, as
18 specified in subparagraph (G) of paragraph (9) of subdivision (c)
19 of Section 13701.

20 (2) The victim or person to whom such information is
21 disseminated may disclose it as he or she deems necessary to
22 protect himself or herself or another person from bodily harm by
23 the person who is the subject of the record.

24 SEC. 3. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution for
26 certain costs that may be incurred by a local agency or school
27 district because, in that regard, this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the
29 penalty for a crime or infraction, within the meaning of Section
30 17556 of the Government Code, or changes the definition of a
31 crime within the meaning of Section 6 of Article XIII B of the
32 California Constitution.

33 However, if the Commission on State Mandates determines
34 that this act contains other costs mandated by the state,
35 reimbursement to local agencies and school districts for those
36 costs shall be made pursuant to Part 7 (commencing with Section
37 17500) of Division 4 of Title 2 of the Government Code.

O