

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 585**

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**Introduced by Senator Kehoe**

February 18, 2005

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An act to amend Section 6389 of the Family Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 585, as amended, Kehoe. Protective orders: firearms.

Existing law provides that the form ~~for a~~ *providing notice that a protective order has been requested or granted* notify the respondent that he or she shall be ordered to relinquish possession and control of any firearms. Existing law also provides that the court shall order that relinquishment, as specified, within 24 hours of being served the order, and require the respondent to notify the court of the relinquishment within 72 hours.

This bill would revise the *application for a protective order* form to include a space for the petitioner to identify all firearms known to be in the possession of the respondent, the location of the firearms, the basis for the petitioner's knowledge regarding the existence and location of the firearms, and why the respondent's possession of firearms subjects the petitioner to an increased risk of harm. The bill would also require the respondent to notify the court of the relinquishment within 48 rather than 72 hours, and would require the court, upon issuance of a protective order, to order the respondent to relinquish any firearm in that person's control to local law enforcement officials or a licensed gun dealer, within 24 hours of being served with the order, ~~and~~. *The bill would authorize the court to issue a search warrant for the immediate search and seizure of any*

firearm in the respondent's possession upon a judicial finding of probable cause that the respondent's possession of firearms creates an increased risk of harm to the petitioner and that specified firearms will be found a specified location. The bill would also set forth additional procedures for surrendering a firearm to a peace officer.

By requiring new duties of law enforcement, the bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 6389 of the Family Code is amended to  
2 read:

3 6389. (a) A person subject to a protective order, as defined in  
4 Section 6218, shall not own, possess, purchase, or receive a  
5 firearm while that protective order is in effect. Every person who  
6 owns, possesses, purchases or receives, or attempts to purchase  
7 or receive a firearm while the protective order is in effect is  
8 punishable pursuant to subdivision (g) of Section 12021 of the  
9 Penal Code.

10 (b) (1) *Each application for a protective order shall include a*  
11 *space for the petitioner to identify all firearms known to be in the*  
12 *possession of the respondent, the location of the firearms, the*  
13 *basis for the petitioner's knowledge regarding the existence and*  
14 *location of the firearms, and why the respondent's possession of*  
15 *firearms subjects the petitioner to an increased risk of harm.*

16 (2) On all forms providing notice that a protective order has  
17 been requested or granted, the Judicial Council, shall include a  
18 notice that, upon service of the order, the respondent shall be  
19 ordered to relinquish possession or control of any firearms and  
20 not to purchase or receive or attempt to purchase or receive any

1 firearms for a period not to exceed the duration of the restraining  
2 order.

3 ~~(2) Each form shall include a space for the petitioner to~~  
4 ~~identify all firearms known to be in the possession of the~~  
5 ~~respondent, the location of the firearms, the basis for the~~  
6 ~~petitioner's knowledge regarding the existence and location of~~  
7 ~~the firearms, and why the respondent's possession of firearms~~  
8 ~~subjects the petitioner to an increased risk of harm.~~

9 (c) (1) Upon issuance of a protective order, as defined in  
10 Section 6218, the court shall order the respondent to relinquish  
11 any firearm in that person's possession or control pursuant to this  
12 subdivision:

13 (A) The court shall order that the respondent surrender the  
14 firearm to the control of local law enforcement officials or sell  
15 the firearm to a licensed gun dealer, as specified in Section  
16 12071 of the Penal Code, within 24 hours of being served with  
17 the order.

18 (B) A judge may issue a search warrant for the immediate  
19 search and seizure of any firearm in the possession of the  
20 respondent upon a judicial finding of probable cause that the  
21 respondent's possession of firearms creates an increased risk of  
22 harm to the petitioner, and that specified firearms will be found  
23 in a specified location.

24 (C) In the event that a subordinate judicial officer reviews the  
25 petition, that judicial officer may refer the matter to a judge for  
26 review and possible issuance of a warrant, as provided for in  
27 paragraph (2).

28 ~~(D) A peace officer serving the order may, upon~~  
29 ~~recommendation of a judicial officer or in his or her own~~  
30 ~~discretion, request the immediate surrender of any firearm in the~~  
31 ~~possession of the respondent and may use any lawful means to~~  
32 ~~facilitate this surrender.~~

33 (2) A person ordered to relinquish any firearm pursuant to this  
34 subdivision shall, within 48 hours after receiving the order, file  
35 with the court a receipt showing the firearm was surrendered to  
36 the local law enforcement agency or sold to a licensed gun  
37 dealer.

38 (d) *If the respondent declines to relinquish possession of any*  
39 *firearm based on the assertion of the right against*  
40 *self-incrimination, as provided by the Fifth Amendment to the*

1 *United States Constitution and Section 15 of Article I of the*  
2 *California Constitution, the court may grant use immunity for the*  
3 *act of relinquishing the firearm required under this section.*

4 (e) A local law enforcement agency may charge the  
5 respondent a fee for the storage of any firearm pursuant to this  
6 section. This fee shall not exceed the actual cost incurred by the  
7 local law enforcement agency for the storage of the firearm. For  
8 purposes of this subdivision, “actual cost” means expenses  
9 directly related to taking possession of a firearm, storing the  
10 firearm, and surrendering possession of the firearm to a licensed  
11 dealer as defined in Section 12071 of the Penal Code or to the  
12 respondent.

13 (e)

14 (f) The restraining order requiring a person to relinquish a  
15 firearm pursuant to subdivision (c) shall state on its face that the  
16 respondent is prohibited from owning, possessing, purchasing, or  
17 receiving a firearm while the protective order is in effect and that  
18 the firearm shall be relinquished to the local law enforcement  
19 agency for that jurisdiction or sold to a licensed gun dealer, and  
20 that proof of surrender or sale shall be filed with the court within  
21 a specified period of receipt of the order. The order shall also  
22 state on its face the expiration date for relinquishment. Nothing  
23 in this section shall limit a respondent’s right under existing law  
24 to petition the court at a later date for modification of the order.

25 (f)

26 (g) The restraining order requiring a person to relinquish a  
27 firearm pursuant to subdivision (c) shall prohibit the person from  
28 possessing or controlling any firearm for the duration of the  
29 order. At the expiration of the order, the local law enforcement  
30 agency shall return possession of any surrendered firearm to the  
31 respondent, within five days after the expiration of the  
32 relinquishment order, unless the local law enforcement agency  
33 determines that (1) the firearm has been stolen, (2) the  
34 respondent is prohibited from possessing a firearm because the  
35 respondent is in any prohibited class for the possession of  
36 firearms, as defined in Sections 12021 and 12021.1 of the Penal  
37 Code and Sections 8100 and 8103 of the Welfare and Institutions  
38 Code, or (3) another successive restraining order is used against  
39 the respondent under this section. If the local law enforcement  
40 agency determines that the respondent is the legal owner of any

1 firearm deposited with the local law enforcement agency and is  
2 prohibited from possessing any firearm, the respondent shall be  
3 entitled to sell or transfer the firearm to a licensed dealer as  
4 defined in Section 12071 of the Penal Code. If the firearm has  
5 been stolen, the firearm shall be restored to the lawful owner  
6 upon his or her identification of the firearm and proof of  
7 ownership.

8 ~~(g)~~

9 (h) The court may, as part of the relinquishment order, grant  
10 an exemption from the relinquishment requirements of this  
11 section for a particular firearm if the respondent can show that a  
12 particular firearm is necessary as a condition of continued  
13 employment and that the current employer is unable to reassign  
14 the respondent to another position where a firearm is  
15 unnecessary. If an exemption is granted pursuant to this  
16 subdivision, the order shall provide that the firearm shall be in  
17 the physical possession of the respondent only during scheduled  
18 work hours and during travel to and from his or her place of  
19 employment. In any case involving a peace officer who as a  
20 condition of employment and whose personal safety depends on  
21 the ability to carry a firearm, a court may allow the peace officer  
22 to continue to carry a firearm, either on duty or off duty, if the  
23 court finds by a preponderance of the evidence that the officer  
24 does not pose a threat of harm. Prior to making this finding, the  
25 court shall require a mandatory psychological evaluation of the  
26 peace officer and may require the peace officer to enter into  
27 counseling or other remedial treatment program to deal with any  
28 propensity for domestic violence.

29 ~~(h)~~

30 (i) During the period of the relinquishment order, a respondent  
31 is entitled to make one sale of all firearms that are in the  
32 possession of a local law enforcement agency pursuant to this  
33 section. A licensed gun dealer, who presents a local law  
34 enforcement agency with a bill of sale indicating that all firearms  
35 owned by the respondent that are in the possession of the local  
36 law enforcement agency have been sold by the respondent to the  
37 licensed gun dealer, shall be given possession of those firearms,  
38 at the location where a respondent's firearms are stored, within  
39 five days of presenting the local law enforcement agency with a  
40 bill of sale.

1     ~~(i)~~  
 2     (j) The disposition of any unclaimed property under this  
 3 section shall be made pursuant to Section 1413 of the Penal  
 4 Code.

5     ~~(j)~~  
 6     (k) The return of a firearm to any person pursuant to  
 7 subdivision (f) shall not be subject to the requirements of  
 8 subdivision (d) of Section 12072 of the Penal Code.

9     ~~(k)~~  
 10    (l) If the respondent notifies the court that he or she owns a  
 11 firearm that is not in his or her immediate possession, the court  
 12 may limit the order to exclude that firearm if the judge is  
 13 satisfied the respondent is unable to gain access to that firearm  
 14 while the protective order is in effect.

15    ~~(l)~~  
 16    (m) Any respondent to a protective order who violates any  
 17 order issued pursuant to this section shall be punished under the  
 18 provisions of subdivision (g) of Section 12021 of the Penal Code.

19    SEC. 2. If the Commission on State Mandates determines that  
 20 this act contains costs mandated by the state, reimbursement to  
 21 local agencies and school districts for those costs shall be made  
 22 pursuant to Part 7 (commencing with Section 17500) of Division  
 23 4 of Title 2 of the Government Code.