

Introduced by Senator Kuehl

February 22, 2005

An act to amend Section 1218 of the Code of Civil Procedure, to amend Section 6380 of the Family Code, and to amend ~~Sections 136.2 and 1203.097~~ *Section 136.2* of the Penal Code, relating to court orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 720, as amended, Kuehl. Court orders.

(1) Existing law provides specified procedures to initiate and pursue contempt orders.

This bill would authorize a district attorney or city attorney to initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the ~~Family Code~~ *Domestic Violence Protection Act*.

(2) Existing law requires the court to transmit data to law enforcement personnel related to certain protective orders.

This bill would further require the court to similarly transmit data related to any protective order issued, modified, extended, or terminated pursuant to specified provisions of the Family Code.

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

~~Prior to termination of certain protective orders, this bill would require the district attorney or city attorney to notify a victim 30 days prior to that termination.~~

~~By adding to the duties of local employees, this bill would impose a state-mandated local program.~~

~~(4) 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.~~

This bill would make clarifying changes with regard to that authority, specifically with respect to orders protecting victims of violent crime from all contact by a defendant.

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1218 of the Code of Civil Procedure is
2 amended to read:

3 1218. (a) Upon the answer and evidence taken, the court or
4 judge shall determine whether the person proceeded against is
5 guilty of the contempt charged, and if it be adjudged that he or
6 she is guilty of the contempt, a fine may be imposed on him or
7 her not exceeding one thousand dollars (\$1,000), or he or she
8 may be imprisoned not exceeding five days, or both. In addition,
9 a person who is subject to a court order as a party to the action,
10 or any agent of this person, who is adjudged guilty of contempt
11 for violating that court order may be ordered to pay to the party
12 initiating the contempt proceeding the reasonable attorney's fees
13 and costs incurred by this party in connection with the contempt
14 proceeding.

15 (b) No party, who is in contempt of a court order or judgment
16 in a dissolution of marriage or legal separation action, shall be
17 permitted to enforce such an order or judgment, by way of
18 execution or otherwise, either in the same action or by way of a
19 separate action, against the other party. This restriction shall not
20 affect nor apply to the enforcement of child or spousal support
21 orders.

22 (c) In any court action in which a party is found in contempt of
23 court for failure to comply with a court order pursuant to the
24 Family Code, the court shall order the following:

(1) Upon a first finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hours, for each count of contempt.

(2) Upon the second finding of contempt, the court shall order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.

(3) Upon the third or any subsequent finding of contempt, the court shall order both of the following:

(A) The court shall order the contemner to serve a term of imprisonment of up to 240 hours, and to perform community service of up to 240 hours, for each count of contempt.

(B) The court shall order the contemner to pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to a community service program pursuant to this paragraph.

(4) The court shall take parties' employment schedules into consideration when ordering either community service or imprisonment, or both.

(d) Pursuant to Section 1211 and this section, a district attorney or city attorney may initiate and pursue a court action for contempt against a party for failing to comply with a court order entered pursuant to the ~~Family Code~~ *Domestic Violence Protection Act (Division 10 (commencing with Section 6200) of the Family Code)*.

SEC. 2. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice

1 under subdivision (a) of Section 1203.097 of the Penal Code for
2 the entry of the information required under this section, based
3 upon the proportion of the costs incurred by the local agency and
4 those incurred by the Department of Justice, shall be transferred
5 to the local agency actually providing the data. All data with
6 respect to criminal court protective orders issued, modified,
7 extended, or terminated under subdivision (g) of Section 136.2 of
8 the Penal Code, and all data with respect to protective orders,
9 including their issuance, modification, extension, or termination,
10 to which this division applies pursuant to Section 6221, shall be
11 transmitted by the court or its designee within one business day
12 to law enforcement personnel by either one of the following
13 methods:

14 (1) Transmitting a physical copy of the order to a local law
15 enforcement agency authorized by the Department of Justice to
16 enter orders into CLETS.

17 (2) With the approval of the Department of Justice, entering
18 the order into CLETS directly.

19 (b) Upon the issuance of a protective order to which this
20 division applies pursuant to Section 6221, or the issuance of a
21 temporary restraining order or injunction relating to harassment
22 or domestic violence pursuant to Section 527.6 or 527.8 of the
23 Code of Civil Procedure, or the issuance of a criminal court
24 protective order under subdivision (g) of Section 136.2 of the
25 Penal Code, or the issuance of a juvenile court restraining order
26 related to domestic violence pursuant to Section 213.5, 304, or
27 362.4 of the Welfare and Institutions Code, or the issuance of a
28 protective order pursuant to Section 15657.03 of the Welfare and
29 Institutions Code, or upon registration with the court clerk of a
30 domestic violence protective or restraining order issued by the
31 tribunal of another state, as defined in Section 6401, and
32 including any of the foregoing orders issued in connection with
33 an order for modification of a custody or visitation order issued
34 pursuant to a dissolution, legal separation, nullity, or paternity
35 proceeding the Department of Justice shall be immediately
36 notified of the contents of the order and the following
37 information:

38 (1) The name, race, date of birth, and other personal
39 descriptive information of the respondent as required by a form
40 prescribed by the Department of Justice.

1 (2) The names of the protected persons.

2 (3) The date of issuance of the order.

3 (4) The duration or expiration date of the order.

4 (5) The terms and conditions of the protective order, including
5 stay-away, no-contact, residency exclusion, custody, and
6 visitation provisions of the order.

7 (6) The department or division number and the address of the
8 court.

9 (7) Whether or not the order was served upon the respondent.

10 (8) The terms and conditions of any restrictions on the
11 ownership or possession of firearms.

12 All available information shall be included; however, the
13 inability to provide all categories of information shall not delay
14 the entry of the information available.

15 (c) The information conveyed to the Department of Justice
16 shall also indicate whether the respondent was present in court to
17 be informed of the contents of the court order. The respondent's
18 presence in court shall provide proof of service of notice of the
19 terms of the protective order. The respondent's failure to appear
20 shall also be included in the information provided to the
21 Department of Justice.

22 (d) (1) Within one business day of service, any law
23 enforcement officer who served a protective order shall submit
24 the proof of service directly into the Department of Justice
25 Domestic Violence Restraining Order System, including his or
26 her name and law enforcement agency, and shall transmit the
27 original proof of service form to the issuing court.

28 (2) Within one business day of receipt of proof of service by a
29 person other than a law enforcement officer, the clerk of the
30 court shall submit the proof of service of a protective order
31 directly into the Department of Justice Domestic Violation
32 Restraining Order System, including the name of the person who
33 served the order. If the court is unable to provide this notification
34 to the Department of Justice by electronic transmission, the court
35 shall, within one business day of receipt, transmit a copy of the
36 proof of service to a local law enforcement agency. The local law
37 enforcement agency shall submit the proof of service directly
38 into the Department of Justice Domestic Violence Restraining
39 Order System within one business day of receipt from the court.

1 (e) The Department of Justice shall maintain a Domestic
2 Violence Restraining Order System and shall make available to
3 court clerks and law enforcement personnel, through computer
4 access, all information regarding the protective and restraining
5 orders and injunctions described in subdivision (b), whether or
6 not served upon the respondent.

7 (f) If a court issues a modification, extension, or termination of
8 a protective order, it shall be on forms adopted by the Judicial
9 Council of California and that have been approved by the
10 Department of Justice, and the transmitting agency for the county
11 shall immediately notify the Department of Justice, by electronic
12 transmission, of the terms of the modification, extension, or
13 termination.

14 (g) The Judicial Council shall assist local courts charged with
15 the responsibility for issuing protective orders by developing
16 informational packets describing the general procedures for
17 obtaining a domestic violence restraining order and indicating the
18 appropriate Judicial Council forms. The informational packets
19 shall include a design, that local courts shall complete, that
20 describes local court procedures and maps to enable applicants to
21 locate filing windows and appropriate courts, and shall also
22 include information on how to return proofs of service, including
23 mailing addresses and fax numbers. The court clerk shall provide
24 a fee waiver form to all applicants for domestic violence
25 protective orders. The court clerk shall provide all Judicial
26 Council forms required by this chapter to applicants free of
27 charge. The informational packet shall also contain a statement
28 that the protective order is enforceable in any state, as defined in
29 Section 6401, and general information about agencies in other
30 jurisdictions that may be contacted regarding enforcement of an
31 order issued by a court of this state.

32 (h) For the purposes of this part, “electronic transmission”
33 shall include computer access through the California Law
34 Enforcement Telecommunications System (CLETS).

35 (i) Only protective and restraining orders issued on forms
36 adopted by the Judicial Council of California and that have been
37 approved by the Department of Justice shall be transmitted to the
38 Department of Justice. However, this provision shall not apply to
39 a valid protective or restraining order related to domestic or
40 family violence issued by a tribunal of another state, as defined

1 in Section 6401. Those orders shall, upon request, be registered
2 pursuant to Section 6404.

3 SEC. 3. Section 136.2 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

36 (g) (1) Any order protecting victims of violent crime from all
37 contact by the defendant, or contact, with the intent to annoy,
38 harass, threaten, or commit acts of violence, by the defendant.
39 The court or its designee shall transmit orders made under this
40 subdivision to law enforcement personnel within one business

1 day of the issuance, modification, extension, or termination of
2 the order, pursuant to subdivision (a) of Section 6380 of the
3 Family Code. It is the responsibility of the court to transmit the
4 modification, extension, or termination orders made under this
5 subdivision to the same agency that entered the original
6 protective order into the Domestic Violence Restraining Order
7 System.

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

17 (3) Any person violating any order made pursuant to
18 subdivisions (a) to (g), inclusive, may be punished for any
19 substantive offense described in Section 136.1, or for a contempt
20 of the court making the order. A finding of contempt shall not be
21 a bar to prosecution for a violation of Section 136.1. However,
22 any person so held in contempt shall be entitled to credit for any
23 punishment imposed therein against any sentence imposed upon
24 conviction of an offense described in Section 136.1. Any
25 conviction or acquittal for any substantive offense under Section
26 136.1 shall be a bar to a subsequent punishment for contempt
27 arising out of the same act.

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

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

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

1 (i) (1) In all cases where the defendant is charged with a
2 crime of domestic violence, as defined in Section 13700, the
3 court shall consider issuing the above-described orders on its
4 own motion. All interested parties shall receive a copy of those
5 orders. In order to facilitate this, the court's records of all
6 criminal cases involving domestic violence shall be marked to
7 clearly alert the court to this issue. ~~In any case in which any court~~
8 ~~later orders that the protective order be terminated, the district~~
9 ~~attorney or city attorney shall notify the victim of the order 30~~
10 ~~days before the termination takes effect.~~

11 (2) In those cases in which a complaint, information, or
12 indictment charging a crime of domestic violence, as defined in
13 Section 13700, has been issued, a restraining order or protective
14 order against the defendant issued by the criminal court in that
15 case has precedence in enforcement over any civil court order
16 against the defendant.

17 (3) Custody and visitation with respect to the defendant and
18 his or her minor children may be ordered by a family or juvenile
19 court consistent with the protocol established pursuant to
20 subdivision (i).

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

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

37 (2) Safety of all parties shall be the courts' paramount
38 concern. The family or juvenile court shall specify the time, day,
39 place, and manner of transfer of the child, as provided in Section
40 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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6 **All matter omitted in this version of the bill**
7 **appears in the bill as introduced in Senate,**
8 **February 22, 2005 (JR11)**
9