

AMENDED IN ASSEMBLY JUNE 14, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 720

Introduced by Senator Kuehl

(Coauthors: Senators Figueroa, Kehoe, and Speier)

*(Coauthors: Assembly Members Benoit, Cohn, Jones, Koretz, Lieber,
Mullin, and Pavley)*

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 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 Domestic Violence Protection Act. The bill would require any attorney's fees and costs ordered against a party in contempt of the above provision to be paid to the Office of Emergency Services for the purpose of funding domestic violence shelter service providers.

(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.

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: no.
State-mandated local program: 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:

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

28 (2) Upon the second finding of contempt, the court shall order
29 the contemner to perform community service of up to 120 hours,

1 in addition to ordering imprisonment of the contemner up to 120
2 hours, for each count of contempt.

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

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

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

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

15 (d) Pursuant to Section 1211 and this section, a district
16 attorney or city attorney may initiate and pursue a court action
17 for contempt against a party for failing to comply with a court
18 order entered pursuant to the Domestic Violence Protection Act
19 (Division 10 (commencing with Section 6200) of the Family
20 Code). Any attorney's fees and costs ordered by the court
21 pursuant to subdivision (a) against a party who is adjudged guilty
22 of contempt under this subdivision shall be paid to the Office of
23 Emergency Services' account established for the purpose of
24 funding domestic violence shelter service providers pursuant to
25 subdivision (f) of Section 13823.15 of the Penal Code.

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

27 6380. (a) Each county, with the approval of the Department
28 of Justice, shall, by July 1, 1996, develop a procedure, using
29 existing systems, for the electronic transmission of data, as
30 described in subdivision (b), to the Department of Justice. The
31 data shall be electronically transmitted through the California
32 Law Enforcement Telecommunications System (CLETS) of the
33 Department of Justice by law enforcement personnel, or with the
34 approval of the Department of Justice, court personnel, or
35 another appropriate agency capable of maintaining and
36 preserving the integrity of both the CLETS and the Domestic
37 Violence Restraining Order System, as described in subdivision
38 (e). Data entry is required to be entered only once under the
39 requirements of this section, unless the order is served at a later
40 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 filed with the court *on the required*
9 *Judicial Council forms* with respect to protective orders,
10 including their issuance, modification, extension, or termination,
11 to which this division applies pursuant to Section 6221, shall be
12 transmitted by the court or its designee within one business day
13 to law enforcement personnel by either one of the following
14 methods:

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

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

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

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

4 (2) The names of the protected persons.

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

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

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

10 (6) The department or division number and the address of the
11 court.

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

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

15 All available information shall be included; however, the
16 inability to provide all categories of information shall not delay
17 the entry of the information available.

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

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

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

1 into the Department of Justice Domestic Violence Restraining
2 Order System within one business day of receipt from the court.

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

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

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

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

37 (i) Only protective and restraining orders issued on forms
38 adopted by the Judicial Council of California and that have been
39 approved by the Department of Justice shall be transmitted to the
40 Department of Justice. However, this provision shall not apply to

1 a valid protective or restraining order related to domestic or
2 family violence issued by a tribunal of another state, as defined
3 in Section 6401. Those orders shall, upon request, be registered
4 pursuant to Section 6404.

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

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

11 (a) Any order issued pursuant to Section 6320 of the Family
12 Code.

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

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

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

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

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

38 (g) (1) Any order protecting victims of violent crime from all
39 contact by the defendant, or contact, with the intent to annoy,
40 harass, threaten, or commit acts of violence, by the defendant.

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

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

19 (3) Any person violating any order made pursuant to
20 subdivisions (a) to (g), inclusive, may be punished for any
21 substantive offense described in Section 136.1, or for a contempt
22 of the court making the order. A finding of contempt shall not be
23 a bar to prosecution for a violation of Section 136.1. However,
24 any person so held in contempt shall be entitled to credit for any
25 punishment imposed therein against any sentence imposed upon
26 conviction of an offense described in Section 136.1. Any
27 conviction or acquittal for any substantive offense under Section
28 136.1 shall be a bar to a subsequent punishment for contempt
29 arising out of the same act.

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

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

38 (3) Every person who owns, possesses, purchases or receives,
39 or attempts to purchase or receive a firearm while the protective

1 order is in effect is punishable pursuant to subdivision (g) of
2 Section 12021 of the Penal Code.

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

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

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

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

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

36 (2) Safety of all parties shall be the courts' paramount
37 concern. The family or juvenile court shall specify the time, day,
38 place, and manner of transfer of the child, as provided in Section
39 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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