

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 176

Introduced by Assembly Member Campos

January 24, 2013

An act to amend Sections 3100, 6383, and 6405 of the Family Code, and to amend Section 136.2 of the Penal Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 176, as amended, Campos. Family law: protective and restraining orders.

Existing law requires, if there is more than one civil protective or restraining order regarding the same parties, a peace officer to enforce the order issued last. If both criminal and civil protective or restraining orders have been issued regarding the same parties, existing law generally requires an officer to enforce the criminal order issued last.

~~This bill would instead provide that, when there are both civil and criminal orders an officer must enforce the order that is more restrictive in relation to the restrained person.~~ *instead, if more than one order has been issued and one of the orders is a no-contact order, as described, require an officer to enforce the no-contact order.* This bill would also make related, conforming changes.

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

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

1 SECTION 1. Section 3100 of the Family Code is amended to
2 read:

1 3100. (a) In making an order pursuant to Chapter 4
2 (commencing with Section 3080), the court shall grant reasonable
3 visitation rights to a parent unless it is shown that the visitation
4 would be detrimental to the best interest of the child. In the
5 discretion of the court, reasonable visitation rights may be granted
6 to any other person having an interest in the welfare of the child.

7 (b) If a protective order, as defined in Section 6218, has been
8 directed to a parent, the court shall consider whether the best
9 interest of the child requires that any visitation by that parent shall
10 be limited to situations in which a third person, specified by the
11 court, is present, or whether visitation shall be suspended or denied.
12 The court shall include in its deliberations a consideration of the
13 nature of the acts from which the parent was enjoined and the
14 period of time that has elapsed since that order. A parent may
15 submit to the court the name of a person that the parent deems
16 suitable to be present during visitation.

17 (c) If visitation is ordered in a case in which domestic violence
18 is alleged and an emergency protective order, protective order, or
19 other restraining order has been issued, the visitation order shall
20 specify the time, day, place, and manner of transfer of the child,
21 so as to limit the child's exposure to potential domestic conflict
22 or violence and to ensure the safety of all family members. If a
23 criminal protective order has been issued pursuant to Section 136.2
24 of the Penal Code, the visitation order shall make reference ~~to any~~
25 *to, and unless there is a no-contact order, as described in Section*
26 *6320, acknowledge the precedence of enforcement of, an*
27 *appropriate criminal protective order.*

28 (d) If the court finds a party is staying in a place designated as
29 a shelter for victims of domestic violence or other confidential
30 location, the court's order for time, day, place, and manner of
31 transfer of the child for visitation shall be designed to prevent
32 disclosure of the location of the shelter or other confidential
33 location.

34 SEC. 2. Section 6383 of the Family Code is amended to read:

35 6383. (a) A temporary restraining order or emergency
36 protective order issued under this part shall, on request of the
37 petitioner, be served on the respondent, whether or not the
38 respondent has been taken into custody, by a law enforcement
39 officer who is present at the scene of reported domestic violence
40 involving the parties to the proceeding.

1 (b) The petitioner shall provide the officer with an endorsed
2 copy of the order and a proof of service that the officer shall
3 complete and transmit to the issuing court.

4 (c) It is a rebuttable presumption that the proof of service was
5 signed on the date of service.

6 (d) Upon receiving information at the scene of a domestic
7 violence incident that a protective order has been issued under this
8 part, or that a person who has been taken into custody is the
9 respondent to that order, if the protected person cannot produce
10 an endorsed copy of the order, a law enforcement officer shall
11 immediately inquire of the Department of Justice Domestic
12 Violence Restraining Order System to verify the existence of the
13 order.

14 (e) If the law enforcement officer determines that a protective
15 order has been issued, but not served, the officer shall immediately
16 notify the respondent of the terms of the order and where a written
17 copy of the order can be obtained and the officer shall, at that time,
18 also enforce the order. The law enforcement officer's verbal notice
19 of the terms of the order shall constitute service of the order and
20 is sufficient notice for the purposes of this section and for the
21 purposes of Sections 273.6 and 29825 of the Penal Code.

22 (f) If a report is required under Section 13730 of the Penal Code,
23 or if no report is required, then in the daily incident log, the officer
24 shall provide the name and assignment of the officer notifying the
25 respondent pursuant to subdivision (e) and the case number of the
26 order.

27 (g) Upon service of the order outside of the court, a law
28 enforcement officer shall advise the respondent to go to the local
29 court to obtain a copy of the order containing the full terms and
30 conditions of the order.

31 (h) There shall be no civil liability on the part of, and no cause
32 of action for, false arrest or false imprisonment against a peace
33 officer who makes an arrest pursuant to a protective or restraining
34 order that is regular upon its face, if the ~~peace officer~~ *officer*, in
35 making the ~~arrest~~ *arrest*, acts in good faith and has reasonable
36 cause to believe that the person against whom the order is issued
37 has notice of the order and has committed an act in violation of
38 the order. *If there is more than one order issued and one of the*
39 *orders issued is a no-contact order, as described in Section 6320,*
40 *the peace officer shall enforce the no-contact order. If there is*

1 more than one civil order regarding the same ~~parties, parties and~~
2 ~~a no-contact order has not been issued~~, the peace officer shall
3 enforce the order that was issued last. If there are both civil and
4 criminal orders regarding the same ~~parties, parties and a no-contact~~
5 ~~order has not been issued~~, the peace officer shall enforce the ~~order~~
6 ~~that is more restrictive in relation to the restrained person. criminal~~
7 ~~order issued last, subject to the provisions of subdivisions (h) and~~
8 ~~(i) of Section 136.2 of the Penal Code.~~ Nothing in this section shall
9 be deemed to exonerate a peace officer from liability for the
10 unreasonable use of force in the enforcement of the order. The
11 immunities afforded by this section shall not affect the availability
12 of any other immunity ~~which that~~ may apply, including, but not
13 limited to, Sections 820.2 and 820.4 of the Government Code.

14 SEC. 3. Section 6405 of the Family Code is amended to read:

15 6405. There shall be no civil liability on the part of, and no
16 cause of action for false arrest or false imprisonment against, a
17 peace officer who makes an arrest pursuant to a foreign protection
18 order that is regular upon its face, if the peace ~~officer~~ *officer*, in
19 making the ~~arrest~~ *arrest*, acts in good faith and has reasonable
20 cause to believe that the person against whom the order is issued
21 has notice of the order and has committed an act in violation of
22 the order. ~~If there is more than one order issued and one of the~~
23 ~~orders issued is a no-contact order, as described in Section 6320,~~
24 ~~the peace officer shall enforce the no-contact order.~~ If there is
25 more than one civil order regarding the same ~~parties, parties and~~
26 ~~a no-contact order has not been issued~~, the peace officer shall
27 enforce the order that was issued last. If there are both civil and
28 criminal orders regarding the same ~~parties, parties and a no-contact~~
29 ~~order has not been issued~~, the peace officer shall enforce the ~~order~~
30 ~~that is more restrictive in relation to the restrained person. criminal~~
31 ~~order issued last.~~ Nothing in this section shall be deemed to
32 exonerate a peace officer from liability for the unreasonable use
33 of force in the enforcement of the order. The immunities afforded
34 by this section shall not affect the availability of any other
35 immunity that may apply, including, but not limited to, Sections
36 820.2 and 820.4 of the Government Code.

37 SEC. 4. Section 136.2 of the Penal Code is amended to read:

38 136.2. (a) Upon a good cause belief that harm to, or
39 intimidation or dissuasion of, a victim or witness has occurred or
40 is reasonably likely to occur, a court with jurisdiction over a

1 criminal matter may issue orders including, but not limited to, the
2 following:

3 (1) An order issued pursuant to Section 6320 of the Family
4 Code.

5 (2) An order that a defendant shall not violate any provision of
6 Section 136.1.

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

11 (4) An order that a person described in this section shall have
12 no communication whatsoever with a specified witness or a victim,
13 except through an attorney under reasonable restrictions that the
14 court may impose.

15 (5) An order calling for a hearing to determine if an order as
16 described in paragraphs (1) to (4), inclusive, should be issued.

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

27 (B) For purposes of this paragraph, "immediate family
28 members" include the spouse, children, or parents of the victim
29 or witness.

30 (7) (A) An order protecting victims of violent crime from all
31 contact by the defendant, or contact, with the intent to annoy,
32 harass, threaten, or commit acts of violence, by the defendant. The
33 court or its designee shall transmit orders made under this
34 paragraph to law enforcement personnel within one business day
35 of the issuance, modification, extension, or termination of the
36 order, pursuant to subdivision (a) of Section 6380 of the Family
37 Code. It is the responsibility of the court to transmit the
38 modification, extension, or termination orders made under this
39 paragraph to the same agency that entered the original protective
40 order into the Domestic Violence Restraining Order System.

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

8 (I) The defendant shall not own, possess, purchase, receive, or
9 attempt to purchase or receive, a firearm while the protective order
10 is in effect.

11 (II) The defendant shall relinquish any firearms that he or she
12 owns or possesses pursuant to Section 527.9 of the Code of Civil
13 Procedure.

14 (ii) Every person who owns, possesses, purchases, or receives,
15 or attempts to purchase or receive, a firearm while this protective
16 order is in effect is punishable pursuant to Section 29825.

17 (C) An order issued, modified, extended, or terminated by a
18 court pursuant to this paragraph shall be issued on forms adopted
19 by the Judicial Council of California and that have been approved
20 by the Department of Justice pursuant to subdivision (i) of Section
21 6380 of the Family Code. However, the fact that an order issued
22 by a court pursuant to this section was not issued on forms adopted
23 by the Judicial Council and approved by the Department of Justice
24 shall not, in and of itself, make the order unenforceable.

25 (D) A protective order issued under this paragraph may require
26 the defendant to be placed on electronic monitoring if the local
27 government, with the concurrence of the county sheriff or the chief
28 probation officer with jurisdiction, adopts a policy to authorize
29 electronic monitoring of defendants and specifies the agency with
30 jurisdiction for this purpose. If the court determines that the
31 defendant has the ability to pay for the monitoring program, the
32 court shall order the defendant to pay for the monitoring. If the
33 court determines that the defendant does not have the ability to
34 pay for the electronic monitoring, the court may order electronic
35 monitoring to be paid for by the local government that adopted
36 the policy to authorize electronic monitoring. The duration of
37 electronic monitoring shall not exceed one year from the date the
38 order is issued. At no time shall the electronic monitoring be in
39 place if the protective order is not in place.

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

11 (c) *A no-contact order, as described in Section 6320 of the*
12 *Family Code, shall have precedence in enforcement over any other*
13 *restraining or protective order.*

14 (e)

15 (d) (1) A person subject to a protective order issued under this
16 section shall not own, possess, purchase, receive, or attempt to
17 purchase or receive a firearm while the protective order is in effect.

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

22 (3) A person who owns, possesses, purchases or receives, or
23 attempts to purchase or receive a firearm while the protective order
24 is in effect is punishable pursuant to Section 29825.

25 (d)

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

33 (2) In those cases in which a complaint, information, or
34 indictment charging a crime of domestic violence, as defined in
35 Section 13700, has been issued and there is more than one
36 ~~restraining order or protective order regarding the same parties~~
37 ~~and issued against the same defendant, the order that is more~~
38 ~~restrictive relative to the defendant has precedence in enforcement.~~
39 *issued, a restraining order or protective order against the*
40 *defendant issued by the criminal court in that case has precedence*

1 *in enforcement over a civil court order against the defendant,*
2 *unless a court issues a no-contact order, as described in Section*
3 *6320 of the Family Code, in which case the no-contact order shall*
4 *have precedence in enforcement over any other restraining or*
5 *protective order.*

6 (3) Custody and visitation with respect to the defendant and his
7 or her minor children may be ordered by a family or juvenile court
8 consistent with the protocol established pursuant to subdivision
9 ~~(e)~~, (f), but if ordered after a criminal protective order has been
10 issued pursuant to this section, the custody and visitation order
11 shall make reference ~~to~~ *to, and if there is not a no-contact order,*
12 *as described in Section 6320, acknowledge the precedence of*
13 *enforcement of, an appropriate criminal protective order. On or*
14 *before July 1, 2014, the Judicial Council shall modify the criminal*
15 *and civil court forms consistent with this subdivision.*

16 ~~(e)~~

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

28 (1) An order that permits contact between the restrained person
29 and his or her children shall provide for the safe exchange of the
30 children and shall not contain language either printed or
31 handwritten that violates a “no contact order” issued by a criminal
32 court.

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

37 ~~(f)~~

38 (g) On or before January 1, 2003, the Judicial Council shall
39 modify the criminal and civil court protective order forms
40 consistent with this section.

1 ~~(g)~~

2 (h) In any case in which a complaint, information, or indictment
3 charging a crime of domestic violence, as defined in Section 13700,
4 has been filed, the court may consider, in determining whether
5 good cause exists to issue an order under paragraph (1) of
6 subdivision (a), the underlying nature of the offense charged, and
7 the information provided to the court pursuant to Section 273.75.

8 ~~(h)~~

9 (i) (1) In all cases in which a criminal defendant has been
10 convicted of a crime of domestic violence as defined in Section
11 13700, the court, at the time of sentencing, shall consider issuing
12 an order restraining the defendant from any contact with the victim.
13 The order may be valid for up to 10 years, as determined by the
14 court. This protective order may be issued by the court regardless
15 of whether the defendant is sentenced to the state prison or a county
16 jail, or whether imposition of sentence is suspended and the
17 defendant is placed on probation. It is the intent of the Legislature
18 in enacting this subdivision that the duration of any restraining
19 order issued by the court be based upon the seriousness of the facts
20 before the court, the probability of future violations, and the safety
21 of the victim and his or her immediate family.

22 (2) An order under this subdivision may include provisions for
23 electronic monitoring if the local government, upon receiving the
24 concurrence of the county sheriff or the chief probation officer
25 with jurisdiction, adopts a policy authorizing electronic monitoring
26 of defendants and specifies the agency with jurisdiction for this
27 purpose. If the court determines that the defendant has the ability
28 to pay for the monitoring program, the court shall order the
29 defendant to pay for the monitoring. If the court determines that
30 the defendant does not have the ability to pay for the electronic
31 monitoring, the court may order the electronic monitoring to be
32 paid for by the local government that adopted the policy authorizing
33 electronic monitoring. The duration of the electronic monitoring
34 shall not exceed one year from the date the order is issued.

35 ~~(i)~~

36 (j) For purposes of this section, “local government” means the
37 county that has jurisdiction over the protective order.

1 *SEC. 5. The provisions of this act shall become operative on*
2 *July 1, 2014.*

O