

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 introduced, 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. 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:
3 3100. (a) In making an order pursuant to Chapter 4
4 (commencing with Section 3080), the court shall grant reasonable
5 visitation rights to a parent unless it is shown that the visitation

1 would be detrimental to the best interest of the child. In the
2 discretion of the court, reasonable visitation rights may be granted
3 to any other person having an interest in the welfare of the child.

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

14 (c) If visitation is ordered in a case in which domestic violence
15 is alleged and an emergency protective order, protective order, or
16 other restraining order has been issued, the visitation order shall
17 specify the time, day, place, and manner of transfer of the child,
18 so as to limit the child's exposure to potential domestic conflict
19 or violence and to ensure the safety of all family members. If a
20 criminal protective order has been issued pursuant to Section 136.2
21 of the Penal Code, the visitation order shall make reference to, and
22 acknowledge the precedence of enforcement of, to any appropriate
23 criminal protective order.

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

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

31 6383. (a) A temporary restraining order or emergency
32 protective order issued under this part shall, on request of the
33 petitioner, be served on the respondent, whether or not the
34 respondent has been taken into custody, by ~~any~~ a law enforcement
35 officer who is present at the scene of reported domestic violence
36 involving the parties to the proceeding.

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

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

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

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

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

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

28 (h) There shall be no civil liability on the part of, and no cause
29 of action for, false arrest or false imprisonment against ~~any~~ a peace
30 officer who makes an arrest pursuant to a protective or restraining
31 order that is regular upon its face, if the peace officer in making
32 the arrest acts in good faith and has reasonable cause to believe
33 that the person against whom the order is issued has notice of the
34 order and has committed an act in violation of the order. If there
35 is more than one civil order regarding the same parties, the peace
36 officer shall enforce the order that was issued last. If there are both
37 civil and criminal orders regarding the same parties, the peace
38 officer shall enforce the ~~criminal order issued last, subject to the~~
39 ~~provisions of subdivisions (h) and (i) of Section 136.2 of the Penal~~
40 ~~Code~~ *order that is more restrictive in relation to the restrained*

1 *person*. Nothing in this section shall be deemed to exonerate a
2 peace officer from liability for the unreasonable use of force in
3 the enforcement of the order. The immunities afforded by this
4 section shall not affect the availability of any other immunity which
5 may apply, including, but not limited to, Sections 820.2 and 820.4
6 of the Government Code.

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

8 6405. There shall be no civil liability on the part of, and no
9 cause of action for false arrest or false imprisonment against, ~~any~~
10 a peace officer who makes an arrest pursuant to a foreign protection
11 order that is regular upon its face, if the peace officer in making
12 the arrest acts in good faith and has reasonable cause to believe
13 that the person against whom the order is issued has notice of the
14 order and has committed an act in violation of the order. If there
15 is more than one civil order regarding the same parties, the peace
16 officer shall enforce the order that was issued last. If there are both
17 civil and criminal orders regarding the same parties, the peace
18 officer shall enforce the ~~criminal order issued last~~ *order that is*
19 *more restrictive in relation to the restrained person*. Nothing in
20 this section shall be deemed to exonerate a peace officer from
21 liability for the unreasonable use of force in the enforcement of
22 the order. The immunities afforded by this section shall not affect
23 the availability of any other immunity that may apply, including,
24 but not limited to, Sections 820.2 and 820.4 of the Government
25 Code.

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

27 136.2. (a) ~~Except as provided in subdivision (c), upon~~ *Upon*
28 a good cause belief that harm to, or intimidation or dissuasion of,
29 a victim or witness has occurred or is reasonably likely to occur,
30 a court with jurisdiction over a criminal matter may issue orders
31 including, but not limited to, the following:

32 (1) An order issued pursuant to Section 6320 of the Family
33 Code.

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

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

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

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

7 (6) (A) An order that a particular law enforcement agency
8 within the jurisdiction of the court provide protection for a victim
9 or a witness, or both, or for immediate family members of a victim
10 or a witness who reside in the same household as the victim or
11 witness or within reasonable proximity of the victim's or witness'
12 household, as determined by the court. The order shall not be made
13 without the consent of the law enforcement agency except for
14 limited and specified periods of time and upon an express finding
15 by the court of a clear and present danger of harm to the victim or
16 witness or immediate family members of the victim or witness.

17 (B) For purposes of this paragraph, "immediate family
18 members" include the spouse, children, or parents of the victim
19 or witness.

20 (7) (A) An order protecting victims of violent crime from all
21 contact by the defendant, or contact, with the intent to annoy,
22 harass, threaten, or commit acts of violence, by the defendant. The
23 court or its designee shall transmit orders made under this
24 paragraph to law enforcement personnel within one business day
25 of the issuance, modification, extension, or termination of the
26 order, pursuant to subdivision (a) of Section 6380 of the Family
27 Code. It is the responsibility of the court to transmit the
28 modification, extension, or termination orders made under this
29 paragraph to the same agency that entered the original protective
30 order into the Domestic Violence Restraining Order System.

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

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

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

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

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

15 (D) A protective order *issued* under this paragraph may require
16 the defendant to be placed on electronic monitoring if the local
17 government, with the concurrence of the county sheriff or the chief
18 probation officer with jurisdiction, adopts a policy to authorize
19 electronic monitoring of defendants and specifies the agency with
20 jurisdiction for this purpose. If the court determines that the
21 defendant has the ability to pay for the monitoring program, the
22 court shall order the defendant to pay for the monitoring. If the
23 court determines that the defendant does not have the ability to
24 pay for the electronic monitoring, the court may order electronic
25 monitoring to be paid for by the local government that adopted
26 the policy to authorize electronic monitoring. The duration of
27 electronic monitoring shall not exceed one year from the date the
28 order is issued. At no time shall the electronic monitoring be in
29 place if the protective order is not in place.

30 (b) A person violating an order made pursuant to paragraphs
31 (1) to (7), inclusive, of subdivision (a) may be punished for any
32 substantive offense described in Section 136.1, or for a contempt
33 of the court making the order. A finding of contempt shall not be
34 a bar to prosecution for a violation of Section 136.1. However, a
35 person so held in contempt shall be entitled to credit for punishment
36 imposed therein against a sentence imposed upon conviction of
37 an offense described in Section 136.1. A conviction or acquittal
38 for a substantive offense under Section 136.1 shall be a bar to a
39 subsequent punishment for contempt arising out of the same act.

1 ~~(e) (1) Notwithstanding subdivisions (a) and (c), an emergency~~
2 ~~protective order issued pursuant to Chapter 2 (commencing with~~
3 ~~Section 6250) of Part 3 of Division 10 of the Family Code or~~
4 ~~Section 646.91 of the Penal Code shall have precedence in~~
5 ~~enforcement over any other restraining or protective order, provided~~
6 ~~the emergency protective order meets all of the following~~
7 ~~requirements:~~
8 ~~(A) The emergency protective order is issued to protect one or~~
9 ~~more individuals who are already protected persons under another~~
10 ~~restraining or protective order.~~
11 ~~(B) The emergency protective order restrains the individual who~~
12 ~~is the restrained person in the other restraining or protective order~~
13 ~~specified in subparagraph (A).~~
14 ~~(C) The provisions of the emergency protective order are more~~
15 ~~restrictive in relation to the restrained person than are the provisions~~
16 ~~of the other restraining or protective order specified in~~
17 ~~subparagraph (A).~~
18 ~~(2) An emergency protective order that meets the requirements~~
19 ~~of paragraph (1) shall have precedence in enforcement over the~~
20 ~~provisions of any other restraining or protective order only with~~
21 ~~respect to those provisions of the emergency protective order that~~
22 ~~are more restrictive in relation to the restrained person.~~
23 ~~(d)~~
24 ~~(c) (1) A person subject to a protective order issued under this~~
25 ~~section shall not own, possess, purchase, receive, or attempt to~~
26 ~~purchase or receive a firearm while the protective order is in effect.~~
27 ~~(2) The court shall order a person subject to a protective order~~
28 ~~issued under this section to relinquish any firearms he or she owns~~
29 ~~or possesses pursuant to Section 527.9 of the Code of Civil~~
30 ~~Procedure.~~
31 ~~(3) A person who owns, possesses, purchases or receives, or~~
32 ~~attempts to purchase or receive a firearm while the protective order~~
33 ~~is in effect is punishable pursuant to Section 29825.~~
34 ~~(e)~~
35 ~~(d) (1) In all cases where the defendant is charged with a crime~~
36 ~~of domestic violence, as defined in Section 13700, the court shall~~
37 ~~consider issuing the above-described orders on its own motion.~~
38 ~~All interested parties shall receive a copy of those orders. In order~~
39 ~~to facilitate this, the court's records of all criminal cases involving~~

1 domestic violence shall be marked to clearly alert the court to this
2 issue.

3 (2) In those cases in which a complaint, information, or
4 indictment charging a crime of domestic violence, as defined in
5 Section 13700, has been issued, ~~a and there is more than one~~
6 ~~restraining order or protective order against the defendant issued~~
7 ~~by the criminal court in that case has precedence in enforcement~~
8 ~~over a civil court order against the defendant, unless a court issues~~
9 ~~an emergency protective order pursuant to Chapter 2 (commencing~~
10 ~~with Section 6250) of Part 3 of Division 10 of the Family Code or~~
11 ~~Section 646.91 of the Penal Code, in which case the emergency~~
12 ~~protective order shall have precedence in enforcement over any~~
13 ~~other restraining or protective order, provided the emergency~~
14 ~~protective order meets the following requirements: regarding the~~
15 ~~same parties and issued against the same defendant, the order that~~
16 ~~is more restrictive relative to the defendant has precedence in~~
17 ~~enforcement.~~

18 ~~(A) The emergency protective order is issued to protect one or~~
19 ~~more individuals who are already protected persons under another~~
20 ~~restraining or protective order.~~

21 ~~(B) The emergency protective order restrains the individual who~~
22 ~~is the restrained person in the other restraining or protective order~~
23 ~~specified in subparagraph (A).~~

24 ~~(C) The provisions of the emergency protective order are more~~
25 ~~restrictive in relation to the restrained person than are the provisions~~
26 ~~of the other restraining or protective order specified in~~
27 ~~subparagraph (A).~~

28 (3) Custody and visitation with respect to the defendant and his
29 or her minor children may be ordered by a family or juvenile court
30 consistent with the protocol established pursuant to subdivision
31 (f) (e), but if ordered after a criminal protective order has been
32 issued pursuant to this section, the custody and visitation order
33 shall make reference to, and acknowledge the precedence of
34 enforcement of, to an appropriate criminal protective order. On or
35 before July 1, 2006, 2014, the Judicial Council shall modify the
36 criminal and civil court forms consistent with this subdivision.

37 ~~(f)~~

38 (e) 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 communication
4 and information sharing between criminal, family, and juvenile
5 courts concerning orders and cases that involve the same parties,
6 and shall permit a family or juvenile court order to coexist with a
7 criminal court protective order subject to the following conditions:

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

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

17 ~~(g)~~

18 (f) 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 ~~(h)~~

22 (g) In any case in which a complaint, information, or indictment
23 charging a crime of domestic violence, as defined in Section 13700,
24 has been filed, the court may consider, in determining whether
25 good cause exists to issue an order under paragraph (1) of
26 subdivision (a), the underlying nature of the offense charged, and
27 the information provided to the court pursuant to Section 273.75.

28 ~~(i)~~

29 (h) (1) In all cases in which a criminal defendant has been
30 convicted of a crime of domestic violence as defined in Section
31 13700, the court, at the time of sentencing, shall consider issuing
32 an order restraining the defendant from any contact with the victim.
33 The order may be valid for up to 10 years, as determined by the
34 court. This protective order may be issued by the court regardless
35 of whether the defendant is sentenced to the state prison or a county
36 jail, or whether imposition of sentence is suspended and the
37 defendant is placed on probation. It is the intent of the Legislature
38 in enacting this subdivision that the duration of any restraining
39 order issued by the court be based upon the seriousness of the facts

1 before the court, the probability of future violations, and the safety
2 of the victim and his or her immediate family.

3 (2) An order under this subdivision may include provisions for
4 electronic monitoring if the local government, upon receiving the
5 concurrence of the county sheriff or the chief probation officer
6 with jurisdiction, adopts a policy authorizing electronic monitoring
7 of defendants and specifies the agency with jurisdiction for this
8 purpose. If the court determines that the defendant has the ability
9 to pay for the monitoring program, the court shall order the
10 defendant to pay for the monitoring. If the court determines that
11 the defendant does not have the ability to pay for the electronic
12 monitoring, the court may order the electronic monitoring to be
13 paid for by the local government that adopted the policy authorizing
14 electronic monitoring. The duration of the electronic monitoring
15 shall not exceed one year from the date the order is issued.

16 ~~(j)~~

17 (i) For purposes of this section, “local government” means the
18 county that has jurisdiction over the protective order.