

Resolution 05-07-2009

Restraining Order Termination Notification Requirement

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Family Code sections 6345 and 6380, to read as follows:

1 §6345

2 (a) In the discretion of the court, the personal conduct, stay-away, and residence
3 exclusion orders contained in a court order issued after notice and a hearing under this article
4 may have a duration of not more than five years, subject to termination or modification by
5 further order of the court either on written stipulation filed with the court or on the motion of
6 a party. These orders may be renewed, upon the request of a party, either for five years or
7 permanently, without a showing of any further abuse since the issuance of the original order,
8 subject to termination or modification by further order of the court either on written
9 stipulation filed with the court or on the motion of a party.

10 (b) Notwithstanding subdivision (a), the duration of any orders, other than the
11 protective orders described in subdivision (a), that are also contained in a court order issued
12 after notice and a hearing under this article, including, but not limited to, orders for custody,
13 visitation, support, and disposition of property, shall be governed by the law relating to those
14 specific subjects.

15 (c) The failure to state the expiration date on the face of the form creates an order
16 with a duration of three years from the date of issuance.

17 (d) The petitioner has to be notified as soon as feasible that a court proceeding is set
18 to terminate or modify a restraining order prior to the expiration date specified on the order.
19 If it is not possible to notify the protected party prior to the hearing for modification or
20 termination of the restraining order, the court shall notify the protected person as soon as
21 possible. The petitioner may be notified by any means available.

22
23 §6380

24 (a) Each county, with the approval of the Department of Justice, shall, by July 1,
25 1996, develop a procedure, using existing systems, for the electronic transmission of data, as
26 described in subdivision (b), to the Department of Justice. The data shall be electronically
27 transmitted through the California Law Enforcement Telecommunications System (CLETS)
28 of the Department of Justice by law enforcement personnel, or with the approval of the
29 Department of Justice, court personnel, or another appropriate agency capable of maintaining
30 and preserving the integrity of both the CLETS and the Domestic Violence Restraining Order
31 System, as described in subdivision (e). Data entry is required to be entered only once under
32 the requirements of this section, unless the order is served at a later time. A portion of all fees
33 payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal
34 Code for the entry of the information required under this section, based upon the proportion
35 of the costs incurred by the local agency and those incurred by the Department of Justice,
36 shall be transferred to the local agency actually providing the data. All data with respect to
37 criminal court protective orders issued, modified, extended, or terminated under subdivision
38 (g) of Section 136.2 of the Penal Code, and all data filed with the court on the required

39 Judicial Council forms with respect to protective orders, including their issuance,
40 modification, extension, or termination, to which this division applies pursuant to Section
41 6221, shall be transmitted by the court or its designee within one business day to law
42 enforcement personnel by either one of the following methods:

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

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

47 (b) Upon the issuance of a protective order to which this division applies pursuant to
48 Section 6221, or the issuance of a temporary restraining order or injunction relating to
49 harassment or domestic violence pursuant to Section 527.6 or 527.8 of the Code of Civil
50 Procedure, or the issuance of a criminal court protective order under subdivision (g) of
51 Section 136.2 of the Penal Code, or the issuance of a juvenile court restraining order related
52 to domestic violence pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions
53 Code, or the issuance of a protective order pursuant to Section 15657.03 of the Welfare and
54 Institutions Code, or upon registration with the court clerk of a domestic violence protective
55 or restraining order issued by the tribunal of another state, as defined in Section 6401, and
56 including any of the foregoing orders issued in connection with an order for modification of a
57 custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or
58 paternity proceeding the Department of Justice shall be immediately notified of the contents
59 of the order and the following information:

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

62 (2) The names of the protected persons.

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

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

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

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

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

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

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

73 (c) The information conveyed to the Department of Justice shall also indicate whether
74 the respondent was present in court to be informed of the contents of the court order. The
75 respondent's presence in court shall provide proof of service of notice of the terms of the
76 protective order. The respondent's failure to appear shall also be included in the information
77 provided to the Department of Justice.

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

82 (2) Within one business day of receipt of proof of service by a person other than a law
83 enforcement officer, the clerk of the court shall submit the proof of service of a protective

84 order directly into the Department of Justice Domestic Violation Restraining Order System,
85 including the name of the person who served the order. If the court is unable to provide this
86 notification to the Department of Justice by electronic transmission, the court shall, within
87 one business day of receipt, transmit a copy of the proof of service to a local law enforcement
88 agency. The local law enforcement agency shall submit the proof of service directly into the
89 Department of Justice Domestic Violence Restraining Order System within one business day
90 of
91 receipt from the court.

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

96 (f) If a court issues a modification, extension, or termination of a protective order, it
97 shall be on forms adopted by the Judicial Council of California and that have been approved
98 by the Department of Justice, and the transmitting agency for the county shall immediately
99 notify the Department of Justice, by electronic transmission, of the terms of the modification,
100 extension, or termination.

101 (g) The Judicial Council shall assist local courts charged with the responsibility for
102 issuing protective orders by developing informational packets describing the general
103 procedures for obtaining a domestic violence restraining order and indicating the appropriate
104 Judicial Council forms. The informational packets shall include a design, that local courts
105 shall complete, that describes local court procedures and maps to enable applicants to locate
106 filing windows and appropriate courts, and shall also include information on how to return
107 proofs of service, including mailing addresses and fax numbers. The court clerk shall provide
108 a fee waiver form to all applicants for domestic violence protective orders. The court clerk
109 shall provide all Judicial Council forms required by this chapter to applicants free of charge.
110 The informational packet shall also contain a statement that the protective order is
111 enforceable in any state, as defined in Section 6401, and general information about agencies
112 in other jurisdictions that may be contacted regarding enforcement of an order issued by a
113 court of this state. The informational packet shall also contain a statement that protected
114 person(s) is/are entitled to be notified, by the court, if for any reason the restraining order is
115 terminated prior to the date specified on the restraining order.

116 (h) For the purposes of this part, "electronic transmission" shall include computer
117 access through the California Law Enforcement Telecommunications System (CLETS).

118 (i) Only protective and restraining orders issued on forms adopted by the Judicial
119 Council of California and that have been approved by the Department of Justice shall be
120 transmitted to the Department of Justice. However, this provision shall not apply to a valid
121 protective or restraining order related to domestic or family violence issued by a tribunal of
122 another state, as defined in Section 6401. Those orders shall, upon request, be registered
123 pursuant to Section 6404.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Women Lawyers of Sacramento

STATEMENT OF REASONS

Existing Law: Existing laws establish the procedures for obtaining protective orders relating to harassment or domestic violence. Existing law states that all protective orders shall include a date and time the protective order expires. Ex parte or emergency protective orders expire either at the close of judicial business on the fifth court day following the day of issuance, or the seventh calendar day following the day of issuance, whichever comes first. Non-emergency protective orders may, after notice and hearing, be issued with a duration of no more than five years, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party. Existing law also provides that the court may issue an order requiring the restrained party to participate in a batterer's program.

This Resolution: This resolution would provide that the court shall notify the holder of a protective order that a proceeding has been set to modify or terminate that protective order. This resolution would provide that if notice prior to the hearing is not possible, then the court shall notify the protected person as soon as possible.

The Problem: Most restraining orders have an end date, making any notification of termination unnecessary. However, rather than waiting for the specified end date, some courts may terminate a restraining order following the restrained party's completion of a batterer's program. Moreover, respondents may request a hearing to terminate the restraining order for other reasons. This is sometimes accomplished through ex parte proceedings, leaving the protected party with no knowledge that such action has been taken. Thus, the party that sought protection from the court in the first place may be unaware that the protection is no longer in place.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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