

1-1-2006

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Recommended Citation

Kerry Campbell, *Chapter 631: Increasing the Effectiveness of Domestic Violence Protective Orders*, 37 MCGEORGE L. REV. 217 (2006).
Available at: <https://scholarlycommons.pacific.edu/mlr/vol37/iss2/10>

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Chapter 631: Increasing the Effectiveness of Domestic Violence Protective Orders

Kerry Campbell

Code Sections Affected

Code of Civil Procedure § 1218 (amended); Family Code § 6380 (amended); Penal Code § 136.2 (amended).
SB 720 (Kuehl); 2005 STAT. Ch. 631.

I. INTRODUCTION

In 2003, domestic violence resulted in 182 deaths in California.¹ Each year, nearly six percent of Californian women are physically injured as a result of domestic violence.² Californians first received the right to obtain domestic violence protective orders in 1977.³ In the years following 1977, there was a considerable amount of legislative action designed to protect the victims of domestic violence.⁴ In 2003, Attorney General Bill Lockyer assembled a task force to investigate the effectiveness of the techniques the Legislature enacted over those years.⁵

Based on recommendations from the task force,⁶ Chapter 631 creates uniform treatment of criminal and civil protective orders and empowers city and district attorneys to initiate contempt proceedings against violators of those orders.⁷ By broadening existing powers and responsibilities, Chapter 631 aims to empower law enforcement with the ability to protect victims of domestic violence more effectively.⁸

1. Cal. Att’y Gen.’s Crime & Violence Prevention Ctr., *Domestic Violence Facts*, <http://safestate.org/index.cfm?navID=42> (last visited Sept. 16, 2005) (on file with the *McGeorge Law Review*).

2. *Id.*

3. See Cal. Att’y Gen.’s Crime & Violence Prevention Ctr., *Fighting Domestic Violence: The California Record-Highlights*, <http://safestate.org/index.cfm?navid=221> (last visited Sept. 16, 2005) (on file with the *McGeorge Law Review*) (referring to the enactment of AB 1019, which granted courts the authority to issue temporary restraining orders in domestic violence cases).

4. *Id.*

5. Cal. Att’y Gen.’s Crime & Violence Prevention Ctr., *Attorney General’s Task Force on Local Criminal Justice Response to Domestic Violence*, <http://safestate.org/index.cfm?navID=386> (last visited Sept. 16, 2005) (on file with the *McGeorge Law Review*).

6. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 1 (May 18, 2005).

7. *Id.* at 5.

8. *Id.* at 3.

II. LEGAL BACKGROUND

Under California law, both civil⁹ and criminal¹⁰ courts can issue orders protecting people from the abusive behavior of, or any contact with, another person.¹¹ Violations of these orders are punishable by fines, imprisonment, or both.¹² Still, violators are not always arrested¹³ or prosecuted,¹⁴ leaving victims unprotected because the orders are not enforced.

Some advocates have suggested that victims may initiate contempt proceedings to seek enforcement.¹⁵ Existing penalties for contempt include fines, community service, and imprisonment.¹⁶ A finding of contempt also allows the court to order the guilty party to pay the attorneys' fees associated with the contempt action.¹⁷

However, victims of domestic violence are unlikely to have the financial resources to hire counsel and initiate contempt proceedings.¹⁸ In addition, private initiation of contempt proceedings may be unconstitutional.¹⁹ The United States Supreme Court held that an interested party may not prosecute criminal contempt charges.²⁰ Although that holding was based on a case involving copyright

9. See CAL. FAM. CODE § 6218 (West 2004) (defining protective orders as those granted under sections 6320, 6321, and 6322).

10. See CAL. PENAL CODE § 136.2(a) (West Supp. 2005) (referencing a criminal court's ability to issue court orders under section 6320 of the California Family Code).

11. See CAL. FAM. CODE § 6320 (specifying "molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, annoying telephone calls as described in Section 653m of the Penal Code, destroying personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the other party, . . .").

12. CAL. PENAL CODE § 273.6.

13. See *Attorney General's Task Force on Criminal Justice Response to Domestic Violence: Regional Hearing—San Diego, California*, 26 (2004) [hereinafter *San Diego Hearing*] (statement of Steve Allen, Dir. of Legal Services, Ctr. for Cmty. Solutions) (on file with the *McGeorge Law Review*) (stating that officers do not have sufficient training to know when arrest is a possibility or requirement).

14. See *Attorney General's Task Force on Criminal Justice Response to Domestic Violence: Regional Hearing—Fresno, California*, 74 (2004) [hereinafter *Fresno Hearing*] (statement of John Zrofsky, Police Chief, Shafter Police Dep't) (on file with the *McGeorge Law Review*) (stating that it is the policy of the Kern County District Attorney's Office not to prosecute the violation of misdemeanor restraining order violations without evidence of physical harm).

15. See *id.* at 170 (statement of Jan Sublett, Executive Dir., Alliance Against Family Violence & Sexual Assault) (stating that when prosecutors fail to file criminal charges, victims are told they need to file civil contempt charges).

16. CAL. CIV. PROC. CODE § 1218(c) (West 2004).

17. *Id.* § 1218(a).

18. See *Fresno Hearing*, *supra* note 14, at 170 (statement of Jan Sublett, Executive Dir., Alliance Against Family Violence & Sexual Assault) (stating that victims are unable to afford counsel to take action in filing civil contempt actions).

19. See *Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 802-09 (1987) (holding that federal charges of criminal contempt require prosecution by a disinterested party).

20. *Id.* at 809.

infringement,²¹ the ruling may mean that a domestic violence victim would not be able to file for contempt on a protective order that a criminal court issued.²²

Existing law requires that courts or their designees enter criminal protective orders into the California Law Enforcement Telecommunications System (CLETS).²³ CLETS allows police officers to access information from the scenes of crimes.²⁴ Although existing law also requires that courts issue civil orders on the forms allowing them to be entered into CLETS,²⁵ they are not required to enter the civil orders into the system. This has led to a lack of protection for victims.²⁶ In many counties, the victim is responsible for filing the paperwork to have the order entered into CLETS.²⁷ In addition, officers have stated that they cannot enforce an order if a victim does not have a copy of it because they do not have access to the information.²⁸

III. CHAPTER 631

Chapter 631 creates three distinct changes to the current enforcement of domestic violence protective orders. First, it allows district and city attorneys to initiate charges for contempt when a party violates a domestic violence protective order.²⁹ Second, it requires that civil protective orders be entered into CLETS in the same manner as criminal protective orders.³⁰ Lastly, it clarifies the power of criminal courts to issue protective orders prohibiting any contact between the parties.³¹

21. *Id.* at 789-90.

22. See Fact Sheet, Shelia James Kuehl, *SB 720 Fact Sheet*, available at <http://democrats.sen.ca.gov/articlefiles/2592-SB%20720%20Kuehl%20Fact%20Sheet.pdf> (last visited Jun. 23, 2006) (on file with the *McGeorge Law Review*) (applying *Young v. United States* to this situation).

23. CAL. PENAL CODE § 136.2(g) (West Supp. 2005).

24. CAL. GOV'T. CODE § 15151 (West 2004).

25. CAL. FAM. CODE § 6221(c) (West 2004).

26. See *Attorney General's Task Force on Criminal Justice Response to Domestic Violence: Regional Hearing—Redding, California*, 139-140 (2004) [hereinafter *Redding Hearing*] (statement of Dennis Kessinger, Legal Assistance Coordinator, Shasta County Women's Refuge) (on file with the *McGeorge Law Review*) (stating that a temporary restraining order lasts only until the time of the hearing and that in the gap between the hearing and the filing of the paperwork for any new orders, victims are vulnerable).

27. See *Attorney General's Task Force on Criminal Justice Response to Domestic Violence: Regional Hearing—Sacramento, California*, 171 (2004) [hereinafter *Sacramento Hearing*] (statement of Leslie Brown, Sacramento County Sheriff's Dep't) (on file with the *McGeorge Law Review*) (stating that victims of domestic violence are responsible for completing the paperwork although they are "the least likely person to be able to deal with this process").

28. See *Sacramento Hearing*, *supra* note 27, at 171-72 (statement of Leslie Brown, Sacramento County Sheriff's Dep't) (stating that although orders can be confirmed by checking CLETS, officers have a preference to see the physical copy and will sometimes not enforce orders without one).

29. CAL. CIV. PROC. CODE § 1218(d) (amended by Chapter 631).

30. CAL. FAM. CODE § 6380(g) (amended by Chapter 631).

31. CAL. PENAL CODE § 136.2(g)(1) (amended by Chapter 631).

Previously, although a party who violated a protective order could be held in contempt, it was unclear who was responsible for initiating the action.³² Chapter 631 does not specify which party must initiate it, but does grant prosecutors the power to do so.³³ Because a finding of contempt allows for the award of attorneys' fees, the Senate Judiciary Committee questioned whether it would be appropriate for the prosecutors' offices to collect the fees and thus suggested that any fees collected be directed to a special fund.³⁴ Chapter 631 thus directs the payment of all attorneys' fees collected under this power to the Office of Emergency Services for funding domestic violence shelters.³⁵

Another problem the Attorney General's task force revealed was the inability to enforce civil domestic violence protective orders because they were not required to be reported in CLETS in the same way as criminal orders.³⁶ Chapter 631 requires that both types of orders be entered into the reporting system identically,³⁷ adopting the practice that is already in place in nineteen California counties.³⁸

Chapter 631 also allows criminal courts to issue so-called "stay-away orders" that prohibit all contact between parties.³⁹ This change allows criminal courts to prohibit contact in the same manner as civil courts and removes the criminal statutory limitation that orders be issued to prohibit contact "intended to harass, intimidate, annoy or threaten a victim or witness."⁴⁰

IV. ANALYSIS

Chapter 631 was uncontroversial.⁴¹ It was proposed based on suggestions gleaned from two years of hearings, investigations, and analysis.⁴² The supporters, including law enforcement, victims' advocacy groups, and prosecutors,⁴³ all hope the changes to the existing law will make a more uniform statewide system of protection for victims of domestic violence.⁴⁴

32. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 5 (May 18, 2005).

33. CAL. CIV. PROC. CODE § 1218(d) (amended by Chapter 631).

34. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 6 (May 18, 2005).

35. CAL. CIV. PROC. CODE § 1218(d) (amended by Chapter 631).

36. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 4-5 (Apr. 5, 2005).

37. CAL. FAM. CODE § 6380(g) (amended by Chapter 631).

38. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 5 (Apr. 5, 2005).

39. CAL. PENAL CODE § 136.2(g)(1) (amended by Chapter 631).

40. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 720, at 6 (Apr. 5, 2005).

41. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 720, at 1 (June 7, 2005).

42. See *id.* at 3 (stating that the bill was based on the recommendations from the Attorney General's Task Force after two years of study).

43. *Id.* at 5-6.

44. See Kuehl, *supra* note 22 (stating that the purpose of the bill is to "enhance the safety of victims of intimate partner violence").

The problem those testifying before the Task Force cited most frequently was the lack of resources.⁴⁵ All of the remedies Chapter 631 creates require the courts and prosecutors to invest more time and effort.⁴⁶ Although the Legislature keyed Chapter 631 as non-fiscal,⁴⁷ the demands it places on court systems and prosecutors may stretch the already thin resources, both human and financial, too far.⁴⁸

Additionally, Chapter 631 does not require prosecutors to file contempt charges against violators of protective orders; it simply gives them that power.⁴⁹ Prior to Chapter 631, people blamed the failure to prosecute misdemeanor violations of domestic violence protective orders on a number of causes. Some blamed prosecutors' concerns for their conviction rates,⁵⁰ some theorized that it was the inability to punish those that would be convicted due to the lack of jail resources,⁵¹ and others thought there simply were not enough resources to prosecute all of the cases.⁵² Contempt charges may offer the solution to the issue of limited jail resources because of the ability to sentence violators to community service.⁵³ However, there is no guarantee that the cases will be prosecuted if issues of resources or concerns for conviction rates are more prevalent. Chapter 631 only grants a new tool to counties and cities that are already prosecuting violators; it does not require increased prosecution in areas where it is lacking.

Requiring courts to enter civil orders into CLETS may strain court resources.⁵⁴ However, at the same time, requiring court officials to do much of the filing work—instead of victims—may relieve the strain put on the system. As

45. See *Fresno Hearing*, *supra* note 14, at 18 (statement of David Gottlieb, Fresno County Superior Court Comm'r) (citing the biggest problem in Fresno as, "resources, resources, resources"); *Attorney General's Task Force on Criminal Justice Response to Domestic Violence: Regional Hearing—Los Angeles, California*, 134 (2004) [hereinafter *L.A. Hearing*] (statement of Laurie Taylor, Coordinator of the Domestic Violence Unit, L.A. Police Dep't) (on file with the *McGeorge Law Review*) (saying that all cases would be given "CSI type of attention" if only they had the resources); *Redding Hearing*, *supra* note 26, at 129 (statement of Jerry Benito, District Attorney of Shasta County) (stating that their successful enforcement program was undercut by budget cuts).

46. See *supra* text accompanying notes 29-40 (explaining Chapter 631).

47. ASSEMBLY RULES COMMITTEE, FLOOR ANALYSIS OF SB 720, at 2 (June 23, 2005).

48. See *Redding Hearing*, *supra* note 26, at 155 (statement of Dennis Kessinger, Legal Assistance Coordinator, Shasta County Women's Refuge) (discussing the difficulties inherent in the possibility of requiring courts to enter orders into CLETS).

49. CAL. CIV. PROC. CODE § 1218(d) (amended by Chapter 631).

50. See *Fresno Hearing*, *supra* note 14, at 172 (statement of Jan Sublett, Executive Dir., Alliance Against Family Violence & Sexual Assault) (responding that although the reason given is "lack of resources," she attributes the failure to prosecute to concern for "winnable cases").

51. See *L.A. Hearing*, *supra* note 45, at 20-21 (statement of Alana Bowman, Deputy City Att'y, Los Angeles City Att'y's Office) (discussing the "inability to obtain jail space" for misdemeanors in general).

52. See *Fresno Hearing*, *supra* note 14, at 154 (statement of Mike Agnew, Detective, Fresno Police Dep't) ("[T]here is not staffing, courtrooms, [or] judges to prosecute that number of misdemeanor cases.").

53. CAL. CIV. PROC. CODE § 1218(c).

54. See *Redding Hearing*, *supra* note 26, at 155 (statement of Dennis Kessinger, Legal Assistance Coordinator, Shasta County Women's Refuge) (discussing the difficulties inherent in the possibility of requiring courts to enter orders into CLETS).

Leslie Brown of the Sacramento County Sheriff's Department proposed, after the victim tells the story of the abuse, "the court and the system need to kick in to accomplish the rest of the task: filing, notification of approval or denial requests, service, distribution of service and entering in CLETS. Everything needs to be accomplished by the courts—not that person having trouble just getting through the day."⁵⁵ By moving the burden from the victim to the court to transmit the information to the Department of Justice for entry into CLETS, Chapter 631 is offering better care and protection to the victims of domestic violence.⁵⁶ Because this aspect of Chapter 631 is a requirement, it will hopefully solve the immediate problem of police officers' access to domestic violence protective orders from civil courts even if it creates new ones by straining the court system.

V. CONCLUSION

Prior to Chapter 631, Jan Sublett of the Alliance Against Family Violence and Sexual Assault described the system as living up to an abuser's threats to a victim:⁵⁷ "[T]hat's exactly what their perpetrators tells them. [']Nothing's going to happen,['] and then nothing does happen."⁵⁸ Chapter 631 was designed to make something happen. Although the roadblocks of limited resources and budget cuts may derail some of its effectiveness,⁵⁹ Chapter 631 provides victims with additional support and protection⁶⁰ and provides prosecutors with additional options for punishing violators.⁶¹

55. *Sacramento Hearing*, *supra* note 27, at 171 (statement of Leslie Brown, Sacramento County Sheriff's Dep't).

56. CAL. FAM. CODE § 6380(a) (amended by Chapter 631).

57. *Fresno Hearing*, *supra* note 14, at 171 (statement of Jan Sublett, Executive Dir., Alliance Against Family Violence & Sexual Assault).

58. *Id.*

59. *See supra* text accompanying notes 45-48.

60. *See supra* text accompanying notes 54-56.

61. *See supra* text accompanying notes 49-53.