

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
Hon. Marvin R. Baxter, Chair
Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli, Co-chair
Hon. Susan D. Huguenor, Co-chair
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DATE: October 12, 2004

SUBJECT: Juvenile Law: Court Protective Orders (Welf. & Inst. Code, § 213.5(a))
(Action Required)

Issue Statement

Under current law the juvenile court has the authority to issue ex parte protective orders to protect a child under its jurisdiction, as well as the child's parent, guardian, or caretaker. While the authority to protect the child is very broad, the authority to protect parents and caregivers is limited to cases where the orders to protect the child and the parent are made simultaneously. As a result, when the court becomes aware that a parent or caregiver needs a protective order, but the court does not need to protect the child at that time, it must direct the protected person to file a request for a protective order in another court.

Recommendation

The Policy Coordination and Liaison Committee and the Family and Juvenile Law Advisory Committee recommend sponsoring legislation to amend Welfare and Institutions Code section 213.5(a) to allow the court to issue ex parte protective orders for parents and caregivers of children under its jurisdiction regardless of whether the court is issuing an order to protect the child.

The text of the proposed legislation is attached at page 3.

Rationale for Recommendation

The Judicial Council made access to justice a high priority, particularly for children and families. The proposed statutory change would further this objective by streamlining the process for parties involved with the juvenile court to obtain protective orders. When the juvenile court becomes aware of the need to protect the parent or caregiver of a child under its jurisdiction, it should have the authority to do so expeditiously and should not be required to direct the individual needing protection to another court. When the current statute was drafted, the authors did not consider the need to address such circumstances, but experience with the statute has indicated this need.

Alternative Actions Considered

Not applicable.

Comments From Interested Parties

Comment on this proposal were not solicited.

Implementation Requirements and Cost

This proposal would broaden the authority of the court to issue protective orders in juvenile cases and would eliminate the need to refer some litigants to other courts to obtain protective orders. As a result, it would increase the overall efficiency of the court in handling these matters.

Attachment

Welfare and Institutions Code section 213.5(a) would be amended to read:

1 **§ 213.5**
2

- 3 (a) After a petition has been filed pursuant to Section 311 to declare a child a
4 dependent child of the juvenile court, and until the time that the petition is
5 dismissed or dependency is terminated, upon application in the manner provided
6 by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex
7 parte orders (1) enjoining any person from molesting, attacking, striking, sexually
8 assaulting, stalking, or battering the child or any other child in the household; (2)
9 excluding any person from the dwelling of the person who has care, custody, and
10 control of the child; and (3) enjoining any person from behavior, including
11 contacting, threatening, or disturbing the peace of the child, that the court
12 determines is necessary to effectuate orders under paragraph (1) or (2). ~~A court~~
13 ~~issuing an ex parte order pursuant to this subdivision may simultaneously issue an~~
14 ~~ex parte order enjoining any person from contacting, threatening, molesting,~~
15 ~~attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace~~
16 ~~of any parent, legal guardian, or current caretaker of the child, regardless of~~
17 ~~whether the child resides with that parent, legal guardian, or current caretaker,~~
18 ~~upon application in the manner provided by Section 527 of the Code of Civil~~
19 ~~Procedure.~~ The court may also issue an ex parte order enjoining any person from
20 contacting, threatening, molesting, attacking, striking, sexually assaulting,
21 stalking, battering, or disturbing the peace of any parent, legal guardian, or current
22 caretaker of the child, regardless of whether the child resides with that parent,
23 legal guardian, or current caretaker, upon application in the manner provided by
24 Section 527 of the Code of Civil Procedure.
25
- 26 (b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a
27 ward of the juvenile court, and until the time that the petition is dismissed or
28 wardship is terminated, upon application in the manner provided by Section 527 of
29 the Code of Civil Procedure, the juvenile court may issue ex parte orders (1)
30 enjoining any person from molesting, attacking, threatening, sexually assaulting,
31 stalking, or battering the child or any other child in the household; (2) excluding
32 any person from the dwelling of the person who has care, custody, and control of
33 the child; or (3) enjoining the child from contacting, threatening, stalking, or
34 disturbing the peace of any person the court finds to be at risk from the conduct of
35 the child, or with whom association would be detrimental to the child.
36
- 37 (c) In the case in which a temporary restraining order is granted without notice, the
38 matter shall be made returnable on an order requiring cause to be shown why the
39 order should not be granted, on the earliest day that the business of the court will
40 permit, but not later than 15 days or, if good cause appears to the court, 20 days
41 from the date the temporary restraining order is granted. The court may, on the

1 motion of the person seeking the restraining order, or on its own motion, shorten
2 the time for service on the person to be restrained of the order to show cause. The
3 court may, upon its own motion or the filing of an affidavit by the person seeking
4 the restraining order, find that the person to be restrained could not be served
5 within the time required by law and to reissue an order previously issued and
6 dissolved by the court for failure to serve the person to be restrained. The reissued
7 order shall state on its face the date of expiration of the order. Any hearing
8 pursuant to this section may be held simultaneously with any regularly scheduled
9 hearings held in proceedings to declare a child a dependent child or ward of the
10 juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings
11 regarding the dependent child or ward.
12

13 (d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth
14 in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this
15 subdivision shall remain in effect, in the discretion of the court, not to exceed three
16 years, unless otherwise terminated by the court, extended by mutual consent of all
17 parties to the restraining order, or extended by further order of the court on the
18 motion of any party to the restraining order.
19

20 (e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or
21 (d) excluding a person from a residence or dwelling. This order may be issued
22 for the time and on the conditions that the court determines, regardless of which
23 party holds legal or equitable title or is the lessee of the residence or dwelling.
24

25 (2) The court may issue an order under paragraph (1) only on a showing of all of
26 the following:
27

28 (A) Facts sufficient for the court to ascertain that the party who will stay in
29 the dwelling has a right under color of law to possession of the premises.
30

31 (B) That the party to be excluded has assaulted or threatens to assault the other
32 party or any other person under the care, custody, and control of the other party,
33 or any minor child of the parties or of the other party.
34

35 (C) That physical or emotional harm would otherwise result to the other party,
36 to any person under the care, custody, and control of the other party, or to any
37 minor child of the parties or of the other party.
38

39 (f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face
40 the date of expiration of the order.
41

42 (g) The juvenile court shall order any designated person or attorney to mail a copy of
43 any order, or extension, modification, or termination thereof, granted pursuant to

1 subdivision (a), (b), (c), or (d), by the close of the business day on which the order,
2 extension, modification, or termination was granted, and any subsequent proof of
3 service thereof, to each local law enforcement agency designated by the person
4 seeking the restraining order or his or her attorney having jurisdiction over the
5 residence of the person who has care, custody, and control of the child and other
6 locations where the court determines that acts of domestic violence or abuse
7 against the child or children are likely to occur. Each appropriate law enforcement
8 agency shall make available through an existing system for verification,
9 information as to the existence, terms, and current status of any order issued
10 pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer
11 responding to the scene of reported domestic violence or abuse.
12

13 (h) Any willful and knowing violation of any order granted pursuant to subdivision
14 (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the
15 Penal Code.
16

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

25 (j) Information on any juvenile court restraining order related to domestic violence
26 issued by a court pursuant to this section shall be transmitted to the Department of
27 Justice in accordance with subdivision (b) of Section 6380 of the Family Code.
28

29 (k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search
30 shall be conducted as described in subdivision (a) of Section 6306 of the Family
31 Code. (2) Prior to deciding whether to issue an order under this part, the court
32 shall consider the following information obtained pursuant to a search conducted
33 under paragraph (1): any conviction for a violent felony specified in Section
34 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the
35 Penal Code; any misdemeanor conviction involving domestic violence, weapons,
36 or other violence; any outstanding warrant; parole or probation status; any prior
37 restraining order; and any violation of a prior restraining order. (3) (A) If the
38 results of the search conducted pursuant to paragraph (1) indicate that an
39 outstanding warrant exists against the subject of the search, the court shall order
40 the clerk of the court to immediately notify, by the most effective means
41 available, appropriate law enforcement officials of any information obtained
42 through the search that the court determines is appropriate. The law enforcement
43 officials so notified shall take all actions necessary to execute any outstanding

1 warrants or any other actions, as appropriate and as soon as practicable. (B) If
2 the results of the search conducted pursuant to paragraph (1) indicate that the
3 subject of the search is currently on parole or probation, the court shall order the
4 clerk of the court to immediately notify, by the most effective means available,
5 the appropriate parole or probation officer of any information obtained through
6 the search that the court determines is appropriate. The parole or probation
7 officer so notified shall take all actions necessary to revoke any parole or
8 probation, or any other actions, with respect to the subject person, as appropriate
9 and as soon as practicable.

- 10
11 (1) Upon making any order for custody or visitation pursuant to this section, the court
12 shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of
13 the Family Code.