

AMENDED IN SENATE JUNE 29, 2024

AMENDED IN SENATE JUNE 20, 2024

AMENDED IN SENATE JUNE 4, 2024

AMENDED IN ASSEMBLY MAY 16, 2024

AMENDED IN ASSEMBLY APRIL 1, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 3209

**Introduced by Assembly Members Berman and Robert Rivas
(Coauthor: Assembly Member Gipson)**

February 16, 2024

An act to ~~amend, repeal and add~~ *amend* Section 6380 of the Family Code, and to ~~add and repeal~~ *add* Section 490.8 of to the Penal Code, relating to ~~crimes, and declaring the urgency thereof, to take effect immediately.~~ *crimes.*

LEGISLATIVE COUNSEL'S DIGEST

AB 3209, as amended, Berman. Crimes: theft: retail theft restraining orders.

Existing law prohibits the theft of merchandise from a retail establishment. Existing law authorizes a court, upon sentencing a person for specified offenses, including stalking and elder abuse, to issue a criminal protective order prohibiting the person from contacting any victim of their offense.

This bill would authorize a court, when sentencing a person for an offense involving theft from a retail establishment, vandalism of a retail establishment, or battery of an employee of a retail establishment, to

issue a criminal protective order prohibiting a person from entering the retail establishment, including any parking lots and including other franchise or chain locations of the retail establishment, as specified.

The bill would also authorize a prosecuting attorney, city attorney, county counsel, or attorney representing a retail establishment to file a petition for the issuance of a criminal protective order of this type against a person who has been arrested, including, but not limited to, the issuance of a citation in lieu of a custodial arrest, 2 or more times for any of the offenses at the same retail establishment, as specified. The bill would also make conforming changes.

The bill would make a violation of these orders punishable as a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program.

Existing law requires a person arrested for a misdemeanor to be issued a written notice to appear and to be released upon their signed promise to appear, except as otherwise provided.

This bill would exempt a violation of a retail establishment restraining order from that requirement.

~~The bill would make these changes inoperative if a specified initiative is approved by the voters.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 6380 of the Family Code is amended to
- 2 read:
- 3 6380. (a) Each county, with the approval of the Department
- 4 of Justice, shall, by July 1, 1996, develop a procedure, using
- 5 existing systems, for the electronic transmission of data, as
- 6 described in subdivision (b), to the Department of Justice. The
- 7 data shall be electronically transmitted through the California Law
- 8 Enforcement Telecommunications System (CLETS) of the

1 Department of Justice by law enforcement personnel, or with the
2 approval of the Department of Justice, court personnel, or another
3 appropriate agency capable of maintaining and preserving the
4 integrity of both the CLETS and the California Restraining and
5 Protective Order System, as described in subdivision (e). Data
6 entry is required to be entered only once under the requirements
7 of this section, unless the order is served at a later time. A portion
8 of all fees payable to the Department of Justice under subdivision
9 (a) of Section 1203.097 of the Penal Code for the entry of the
10 information required under this section, based upon the proportion
11 of the costs incurred by the local agency and those incurred by the
12 Department of Justice, shall be transferred to the local agency
13 actually providing the data. All data with respect to criminal court
14 protective orders issued, modified, extended, or terminated under
15 Section 136.2 of the Penal Code, and all data filed with the court
16 on the required Judicial Council forms with respect to protective
17 orders, including their issuance, modification, extension, or
18 termination, to which this division applies pursuant to Section
19 6221, shall be transmitted by the court or its designee within one
20 business day to law enforcement personnel by either one of the
21 following methods:

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

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

27 (b) Upon the issuance of a protective order to which this division
28 applies pursuant to Section 6221, or the issuance of a temporary
29 restraining order or injunction relating to harassment, unlawful
30 violence, or the threat of violence pursuant to Section 527.6, 527.8,
31 or 527.85 of the Code of Civil Procedure, or the issuance of a
32 criminal court protective order under Section 136.2 of the Penal
33 Code, or a retail crime restraining order under Section 490.8 of
34 the Penal Code, or the issuance of a juvenile court restraining order
35 related to domestic violence pursuant to Section 213.5, 304, or
36 362.4 of the Welfare and Institutions Code, or the issuance of a
37 protective order pursuant to Section 15657.03 of the Welfare and
38 Institutions Code, or upon registration with the court clerk of a
39 domestic violence protective or restraining order issued by the
40 tribunal of another state, as defined in Section 6401, and including

1 any of the foregoing orders issued in connection with an order for
2 modification of a custody or visitation order issued pursuant to a
3 dissolution, legal separation, nullity, or paternity proceeding the
4 Department of Justice shall be immediately notified of the contents
5 of the order and the following information:

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

9 (2) The names of the protected persons.

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

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

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

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

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

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

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

23 (c) The information conveyed to the Department of Justice shall
24 also indicate whether the respondent was present in court to be
25 informed of the contents of the court order. The respondent's
26 presence in court shall provide proof of service of notice of the
27 terms of the protective order. The respondent's failure to appear
28 shall also be included in the information provided to the
29 Department of Justice.

30 (d) (1) Within one business day of service, a law enforcement
31 officer who served a protective order shall submit the proof of
32 service directly into the Department of Justice California
33 Restraining and Protective Order System, including the officer's
34 name and law enforcement agency, and shall transmit the original
35 proof of service form to the issuing court.

36 (2) Within one business day of receipt of proof of service by a
37 person other than a law enforcement officer, the clerk of the court
38 shall submit the proof of service of a protective order directly into
39 the Department of Justice California Restraining and Protective
40 Order System, including the name of the person who served the

1 order. If the court is unable to provide this notification to the
2 Department of Justice by electronic transmission, the court shall,
3 within one business day of receipt, transmit a copy of the proof of
4 service to a local law enforcement agency. The local law
5 enforcement agency shall submit the proof of service directly into
6 the Department of Justice California Restraining and Protective
7 Order System within one business day of receipt from the court.

8 (e) The Department of Justice shall maintain a California
9 Restraining and Protective Order System and shall make available
10 to court clerks and law enforcement personnel, through computer
11 access, all information regarding the protective and restraining
12 orders and injunctions described in subdivision (b), whether or not
13 served upon the respondent.

14 (f) If a court issues a modification, extension, or termination of
15 a protective order, it shall be on forms adopted by the Judicial
16 Council of California and that have been approved by the
17 Department of Justice, and the transmitting agency for the county
18 shall immediately notify the Department of Justice, by electronic
19 transmission, of the terms of the modification, extension, or
20 termination.

21 (g) The Judicial Council shall assist local courts charged with
22 the responsibility for issuing protective orders by developing
23 informational packets describing the general procedures for
24 obtaining a domestic violence restraining order and indicating the
25 appropriate Judicial Council forms. The informational packets
26 shall include a design, that local courts shall complete, that
27 describes local court procedures and maps to enable applicants to
28 locate filing windows and appropriate courts, and shall also include
29 information on how to return proofs of service, including mailing
30 addresses and fax numbers. The court clerk shall provide a fee
31 waiver form to all applicants for domestic violence protective
32 orders. The court clerk shall provide all Judicial Council forms
33 required by this chapter to applicants free of charge. The
34 informational packet shall also contain a statement that the
35 protective order is enforceable in any state, as defined in Section
36 6401, and general information about agencies in other jurisdictions
37 that may be contacted regarding enforcement of an order issued
38 by a court of this state.

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

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

(j) (1) All protective orders subject to transmittal to CLETS pursuant to this section are required to be so transmitted.

(2) This subdivision does not constitute a change in, but is declaratory of, existing law.

~~(k) If the proposed initiative measure titled “The Homelessness, Drug Addiction, and Theft Reduction Act” (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the fifth day after the Secretary of State files the statement of the vote for the election, and shall be repealed on January 1, 2025.~~

SEC. 2. Section 6380 is added to the Family Code, to read:

~~6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court personnel, or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the California Restraining and Protective Order System, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (a) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency~~

1 actually providing the data. All data with respect to criminal court
2 protective orders issued, modified, extended, or terminated under
3 Section 136.2 of the Penal Code, and all data filed with the court
4 on the required Judicial Council forms with respect to protective
5 orders, including their issuance, modification, extension, or
6 termination, to which this division applies pursuant to Section
7 6221, shall be transmitted by the court or its designee within one
8 business day to law enforcement personnel by either one of the
9 following methods:

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

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

15 (b) Upon the issuance of a protective order to which this division
16 applies pursuant to Section 6221, or the issuance of a temporary
17 restraining order or injunction relating to harassment, unlawful
18 violence, or the threat of violence pursuant to Section 527.6, 527.8,
19 or 527.85 of the Code of Civil Procedure, or the issuance of a
20 criminal court protective order under Section 136.2 of the Penal
21 Code, or the issuance of a juvenile court restraining order related
22 to domestic violence pursuant to Section 213.5, 304, or 362.4 of
23 the Welfare and Institutions Code, or the issuance of a protective
24 order pursuant to Section 15657.03 of the Welfare and Institutions
25 Code, or upon registration with the court clerk of a domestic
26 violence protective or restraining order issued by the tribunal of
27 another state, as defined in Section 6401, and including any of the
28 foregoing orders issued in connection with an order for
29 modification of a custody or visitation order issued pursuant to a
30 dissolution, legal separation, nullity, or paternity proceeding the
31 Department of Justice shall be immediately notified of the contents
32 of the order and the following information:

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

36 (2) The names of the protected persons.

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

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

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

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

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

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

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

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

~~(d) (1) Within one business day of service, a law enforcement officer who served a protective order shall submit the proof of service directly into the Department of Justice California Restraining and Protective Order System, including the officer's name and law enforcement agency, and shall transmit the original proof of service form to the issuing court.~~

~~(2) Within one business day of receipt of proof of service by a person other than a law enforcement officer, the clerk of the court shall submit the proof of service of a protective order directly into the Department of Justice California Restraining and Protective Order System, including the name of the person who served the order. If the court is unable to provide this notification to the Department of Justice by electronic transmission, the court shall, within one business day of receipt, transmit a copy of the proof of service to a local law enforcement agency. The local law enforcement agency shall submit the proof of service directly into the Department of Justice California Restraining and Protective Order System within one business day of receipt from the court.~~

~~(e) The Department of Justice shall maintain a California Restraining and Protective Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining~~

1 orders and injunctions described in subdivision (b), whether or not
2 served upon the respondent.

3 (f) ~~If a court issues a modification, extension, or termination of~~
4 ~~a protective order, it shall be on forms adopted by the Judicial~~
5 ~~Council of California and that have been approved by the~~
6 ~~Department of Justice, and the transmitting agency for the county~~
7 ~~shall immediately notify the Department of Justice, by electronic~~
8 ~~transmission, of the terms of the modification, extension, or~~
9 ~~termination.~~

10 (g) ~~The Judicial Council shall assist local courts charged with~~
11 ~~the responsibility for issuing protective orders by developing~~
12 ~~informational packets describing the general procedures for~~
13 ~~obtaining a domestic violence restraining order and indicating the~~
14 ~~appropriate Judicial Council forms. The informational packets~~
15 ~~shall include a design, that local courts shall complete, that~~
16 ~~describes local court procedures and maps to enable applicants to~~
17 ~~locate filing windows and appropriate courts, and shall also include~~
18 ~~information on how to return proofs of service, including mailing~~
19 ~~addresses and fax numbers. The court clerk shall provide a fee~~
20 ~~waiver form to all applicants for domestic violence protective~~
21 ~~orders. The court clerk shall provide all Judicial Council forms~~
22 ~~required by this chapter to applicants free of charge. The~~
23 ~~informational packet shall also contain a statement that the~~
24 ~~protective order is enforceable in any state, as defined in Section~~
25 ~~6401, and general information about agencies in other jurisdictions~~
26 ~~that may be contacted regarding enforcement of an order issued~~
27 ~~by a court of this state.~~

28 (h) ~~For the purposes of this part, “electronic transmission” shall~~
29 ~~include computer access through the California Law Enforcement~~
30 ~~Telecommunications System (CLETS).~~

31 (i) ~~Only protective and restraining orders issued on forms~~
32 ~~adopted by the Judicial Council of California and that have been~~
33 ~~approved by the Department of Justice shall be transmitted to the~~
34 ~~Department of Justice. However, this provision does not apply to~~
35 ~~a valid protective or restraining order related to domestic or family~~
36 ~~violence issued by a tribunal of another state, as defined in Section~~
37 ~~6401. Those orders shall, upon request, be registered pursuant to~~
38 ~~Section 6404.~~

39 (j) (1) ~~All protective orders subject to transmittal to CLETS~~
40 ~~pursuant to this section are required to be so transmitted.~~

~~(2) This subdivision does not constitute a change in, but is declaratory of, existing law.~~

~~(k) If the proposed initiative measure titled “The Homelessness, Drug Addiction, and Theft Reduction Act” (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become operative on the fifth day after the Secretary of State files the statement of the vote for the election.~~

~~SEC. 3.~~

SEC. 2. Section 490.8 is added to the Penal Code, to read:

490.8. (a) A court sentencing a defendant for any violation described in subdivision (b) shall consider issuing an order restraining the defendant from entering the premises of the retail establishment, that may be valid for up to two years, as determined by the court.

(b) Subdivision (a) shall apply to a person convicted of any of the following offenses:

(1) Shoplifting in violation of Section 459.5.

(2) Any theft, including a violation of Section 487 or 488, from a retail establishment.

(3) Organized retail theft in violation of Section 490.4.

(4) Any vandalism of a retail establishment in violation of Section 594.

(5) Any assault or battery of an employee of a retail establishment while that person is working at the retail establishment, including a violation of Section 240, 242, or 245.

(c) (1) An order issued pursuant to subdivision (a) shall prohibit the restrained person from entering the retail establishment, or being present on the grounds of, or any parking lot adjacent to and used to service, the retail establishment.

(2) If the retail establishment is part of a chain or franchise, the court may include other retail establishments in that chain or franchise within a specified geographic range in the order.

(d) In determining whether to impose a retail crime restraining order pursuant to subdivision (a) or (e), the court shall consider whether the retail establishment is the only place that sells food, pharmaceuticals, or other basic life necessities within one mile of where the individual resides, or otherwise creates undue hardship for the individual.

1 (e) (1) A prosecuting attorney, city attorney, county counsel,
2 or attorney representing a retail establishment may file a petition
3 requesting a retail crime restraining order for an individual who
4 has been arrested, including, but not limited to, the issuance of a
5 citation in lieu of a custodial arrest pursuant to Section 853.6, two
6 or more times for any of the offenses listed in subdivision (b)
7 within the same retail establishment.

8 (2) An order issued pursuant to this subdivision shall be issued
9 after a hearing.

10 (3) The respondent shall be personally served with notice of the
11 hearing and shall be entitled to representation by court-appointed
12 counsel.

13 (4) The petitioner shall bear the burden of proving, by a
14 preponderance of the evidence, that the respondent, on two or more
15 separate occasions, committed an offense described in subdivision
16 (b) within the retail establishment or on the grounds thereof.

17 (5) The court may issue an order restraining the respondent from
18 entering the premises of the retail establishment for a period not
19 to exceed two years if the court finds by a preponderance of the
20 evidence that both of the following are true:

21 (A) The respondent, on two or more separate occasions,
22 committed an offense described in subdivision (b) within the retail
23 establishment or on the grounds thereof.

24 (B) There is a substantial likelihood that the individual will
25 return to the retail establishment.

26 (6) (A) An order issued pursuant to this subdivision shall
27 prohibit the restrained person from entering the retail establishment,
28 or being present on the grounds of, or any parking lot adjacent to
29 and used to service, the retail establishment.

30 (B) If the retail establishment is part of a chain or franchise, the
31 court may include other retail establishments in that chain or
32 franchise within a specified geographic range in the order.

33 (f) A violation of an order issued pursuant to this section is
34 punishable as a misdemeanor. Declarative of existing law,
35 prosecution under this section shall not preclude prosecution for
36 any other offenses committed during a violation of this section.

37 (g) Notwithstanding Section 853.6, an officer arresting a person
38 for a violation of this section is not required to release the person
39 pursuant to a written notice to appear.

(h) Declarative of existing law, a court may offer an individual charged with a violation of this section an opportunity to participate in a diversion program for which they are eligible, including those described in Title 6 (commencing with Section 976) of Part 2.

(i) If a person subject to a retail crime restraining order issued pursuant to this section was not present in court at the time the order was issued or renewed, the retail crime restraining order shall be personally served on the restrained person by a law enforcement officer, or by a person as provided in Section 414.10 of the Code of Civil Procedure.

(j) The Judicial Council may prescribe the form of the petitions and orders and any other documents, and may promulgate any rules of court, necessary to implement this section.

~~(k) If the proposed initiative measure titled “The Homelessness, Drug Addiction, and Theft Reduction Act” (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024, this section shall become inoperative on the fifth day after the Secretary of State files the statement of the vote for the election, and shall be repealed on January 1, 2025.~~

~~SEC. 4.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~To address the increase in community-based crime and retail theft and to provide broader public safety, it is necessary that this act take effect immediately.~~