

Title	Criminal Law: <i>Criminal Protective Order – Domestic Violence, Criminal Protective Order – Other Than Domestic Violence, and Notice of Termination of Protective Order in Criminal Proceedings (CLETS)</i> (amend Judicial Council forms CR-160, CR-161, and CR-165).
Summary	The proposed amendments to the <i>Criminal Protective Order – Domestic Violence, Criminal Protective Order – Other Than Domestic Violence, and Notice of Termination of Protective Order in Criminal Proceedings (CLETS)</i> forms are in response to recently enacted legislation extending protections to specified animals and authorizing courts to issue protective orders for up to ten years against certain convicted defendants.
Source	Criminal Law Advisory Committee Justice Steven Z. Perren, Chair
Staff	Arturo Castro, 415-865-7702, arturo.castro@jud.ca.gov.
Discussion	<p>Two recent legislative bills, AB 289 (Spitzer; Stats. 2007, ch. 582) and SB 353 (Kuehl; Stats. 2007, ch. 205), require amendments to the <i>Criminal Protective Order – Domestic Violence, Criminal Protective Order – Other Than Domestic Violence, and Notice of Termination of Protective Order in Criminal Proceedings (CLETS)</i> (forms CR-160, CR-161, and CR-165).</p> <p>First, SB 353 amends Family Code section 6320 to authorize courts to issue orders protecting specified animals, including orders that (a) grant the petitioner the exclusive care, possession, or control of the animals, (b) require the defendant to stay away from the animals, and (c) forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animals. (Fam. Code, § 6320(b).) SB 353 requires the Judicial Council to modify its forms consistent with Family Code section 6320 by July 1, 2009. (Fam. Code, § 6320(c).)</p> <p>The proposed amendments would add specific provisions to the <i>Criminal Protective Order – Domestic Violence</i> (form CR-160) to incorporate all the additional protections afforded to animals under amended Family Code section 6320.</p> <p>Second, under existing law, a court may issue a restraining order valid for up to 10 years against a defendant convicted of stalking under</p>

Penal Code section 646.9. (Pen. Code, § 646.9(k)(1).) AB 289 amends Penal Code section 273.5 to authorize courts to issue an identical order against defendants convicted of domestic violence under that section. (Pen. Code, § 273.5(i).) AB 289 also clarifies that courts may issue protective orders under Penal Code sections 273.5 and 646.9 “whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.” (Pen. Code, §§ 273.5(i), 646.9(k)(2).)

This proposal would add orders issued under Penal Code sections 273.5 and 646.9 to the headings of the forms and would provide additional instructions and warnings on the forms consistent with the new laws. Further, because orders under Penal Code section 136.2 are also enforceable *after* a trial, i.e., during the period between conviction and sentencing, this proposal would also change the description of the orders under that section in the headings of the forms from “Order Pending Trial” to “Order Under Penal Code section 136.2.” The Criminal Law Advisory Committee, however, seeks public comment on whether the description should instead be changed to “Order Pending Sentencing” or “Order Before Sentencing.”

In addition, because Family Code section 6320 is set forth under the Domestic Violence Protection Act (Fam. Code, § 6200 et seq.)—whose provisions govern acts and relationships that qualify as domestic violence (see, e.g., Fam. Code, §§ 6201, 6211)—the Criminal Law Advisory Committee has decided to add the protections extended to animals under that section only to the domestic violence criminal protective order, *Criminal Protective Order – Domestic Violence* (form CR-161). The Criminal Law Advisory Committee, however, seeks public comment on whether those protections for animals may properly be included on the non-domestic violence protective order form, *Criminal Protective Order – Other Than Domestic Violence* (form CR-161).

Attachments

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR COURT USE ONLY
DRAFT ONLY

PEOPLE OF THE STATE OF CALIFORNIA
vs.
DEFENDANT:

CRIMINAL PROTECTIVE ORDER — DOMESTIC VIOLENCE
(CLETS - CPO) (Pen. Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))
ORDER UNDER PENAL CODE § 136.2 MODIFICATION
PROBATION CONDITION ORDER (Pen. Code, § 1203.097)
ORDER UNDER: PENAL CODE § 273.5(i) PENAL CODE § 646.9(k)

CASE NUMBER:

CLETS ENTRY BY:

This Order May Take Precedence over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED (complete name):
Sex: M F Ht.: Wt.: Hair color: Eye color: Race: Age: Date of birth:
The defendant is a peace officer with Department:

- 1. This proceeding was heard on (date): at (time): in Dept.: Room: by judicial officer (name):
2. This order expires on (date): If no date is listed, this order expires three years from the date of issuance.
3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON:

5. For good cause shown, the court grants the protected persons named above the exclusive care, possession, and control of the following animals:

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

- 6. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
7. must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.
8. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
9. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 9.
10. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
11. must have no contact with the protected persons named above through a third party, except an attorney of record.
12. must not come within yards of the protected persons and animals named above.
13. may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. issued on (date):, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
14. may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no-contact" or "stay-away" provision in paragraph 10, 11, or 12 of this order.
15. must not take, transfer, encumber, conceal, molest, attack, strike, threaten, harm, or otherwise dispose of the animals described in paragraph 5.
16. The protected persons may record any prohibited communications made by the restrained person.
17. Other orders including stay-away orders from specific locations:

Date:

JUDICIAL OFFICER Department/Division:

WARNINGS AND NOTICES

1. Except as provided in this paragraph, this order takes precedence over any conflicting protective order, visitation order, or any other court order if the protected person is a victim of domestic violence under Penal Code section 13700. However, this order does not take precedence if (1) there is a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order, or (2) if box 13 or 14 has been checked on page 1 of this order. (Pen. Code, § 136.2(e)(2).)
2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261(a)(1) (1994).
3. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders must relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)
4. **ENFORCING THIS ORDER IN CALIFORNIA**
 - This order **must** be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
 - Law enforcement **must** determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement **must** advise the restrained person of the terms of the order and, if the restrained person fails to comply, shall enforce it. (Fam. Code, § 6383.)
5. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.
6. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
 - These orders are effective as of the date they were signed by a judicial officer.
 - These orders expire as explained in item 2 on the reverse.
 - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
 - Orders under Penal Code section 1203.097 are probationary orders and the court has jurisdiction as long as the defendant is on probation. (Pen. Code, § 1203.097(a)(2).)
 - Orders under Penal Code sections 273.5 and 646.9 are valid for up to ten years and may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, §§ 273.5(i) and 646.9(k).)
 - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding* (CLETS).
7. **CHILD CUSTODY AND VISITATION**
 - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
 - Unless box 14 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
 - If box 13 or 14 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF — STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	<i>FOR COURT USE ONLY</i> <div style="font-size: 24pt; font-weight: bold; text-align: center;">DRAFT ONLY</div>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
CRIMINAL PROTECTIVE ORDER — OTHER THAN DOMESTIC VIOLENCE (CLETS - OCP) (Pen. Code, §§ 136.2 and 646.9(k)) <input type="checkbox"/> ORDER UNDER PENAL CODE § 136.2 <input type="checkbox"/> MODIFICATION <input type="checkbox"/> PROBATION CONDITION ORDER (Pen. Code, § 136.2) <input type="checkbox"/> ORDER UNDER PENAL CODE § 646.9(k)	CASE NUMBER: <hr/> CLETS ENTRY BY:

This Order May Take Precedence over Other Conflicting Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED (<i>complete name</i>): _____ Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____ <input type="checkbox"/> The defendant is a peace officer with _____ Department: _____
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1. This proceeding was heard on (*date*): _____ at (*time*): _____ in Dept.: _____ Room: _____
by judicial officer (*name*): _____
2. This order expires on (*date*): _____ If no date is listed, this order expires three years from the date of issuance.
3. Defendant was personally served with a copy of this order at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON: _____

GOOD CAUSE APPEARING, THE COURT ORDERS THAT THE ABOVE-NAMED DEFENDANT

5. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
6. **must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours** after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.
7. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
8. must take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. The court finds good cause not to make the order in item 8.
9. must have no personal, electronic, telephonic, or written contact with the protected persons named above.
10. must have no contact with the protected persons named above through a third party, except an attorney of record.
11. must not come within _____ yards of the protected persons named above.
12. may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. _____, issued on (*date*): _____, as an exception to the “no-contact” or “stay-away” provision in paragraph 9, 10, or 11 of this order.
13. may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the “no-contact” or “stay-away” provision in paragraph 9, 10, or 11 of this order.
14. The protected persons may record any prohibited communications made by the restrained person.
15. Other orders including stay-away orders from specific locations:

Date: _____

JUDICIAL OFFICER _____ Department/Division: _____

(Distribution: original to file; 1 copy to each protected person; 1 copy to defendant; 1 copy to prosecutor; 1 copy to law enforcement)

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a felony, a misdemeanor, or contempt of court.
2. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders **must** relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a protective order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Pen. Code, § 136.2(d).)
3. **ENFORCING THIS ORDER IN CALIFORNIA**
 - This order **must** be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
 - Law enforcement **must** determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement **must** advise the restrained person of the terms of the order and, if the restrained person fails to comply, shall enforce it. (Code Civil Proc., § 527.6.)
4. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
 - These orders are effective as of the date they were signed by a judicial officer.
 - These orders expire as explained in item 2 on the reverse.
 - Orders under Penal Code section 136.2 are valid as long as the court has jurisdiction over the case. They are not valid after imposition of a state prison commitment. (See *People v. Stone* (2004) 123 Cal.App.4th 153.)
 - Orders under Penal Code section 646.9 are valid for up to ten years and may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, § 646.9(k).)
 - To terminate this protective order, use form CR-165, *Notice of Termination of Protective Order in Criminal Proceeding* (CLETS).
5. **CHILD CUSTODY AND VISITATION**
 - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
 - Unless box 13 on page 1 is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
 - If box 12 or 13 on page 1 is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

NAME OF COURT AND DISTRICT, BRANCH, OR DIVISION, IF ANY:	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center;">DRAFT ONLY</p> <p style="text-align: center;">NOT FOR USE</p>
<p style="text-align: center;">PEOPLE OF THE STATE OF CALIFORNIA</p> <p style="text-align: center;">vs.</p> <p>DEFENDANT:</p>	
<p style="text-align: center;">NOTICE OF TERMINATION OF PROTECTIVE ORDER IN CRIMINAL PROCEEDING (CLETS)</p> <p style="text-align: center;">(Penal Code, §§ 136.2, 1203.097(a)(2), 273.5(i), and 646.9(k))</p> <p><input type="checkbox"/> ORDER UNDER PENAL CODE § 136.2</p> <p><input type="checkbox"/> PROBATION CONDITION ORDER (Pen. Code, §§ 136.2, 1203.097(a)(2))</p> <p>ORDER UNDER: <input type="checkbox"/> PENAL CODE § 273.5(i) <input type="checkbox"/> PENAL CODE § 646.9(k)</p>	ARRESTING AGENCY:
	CASE NUMBER:

THIS ORDER DOES NOT SUPERSEDE EXISTING FAMILY, JUVENILE, OR PROBATE COURT ORDERS

ORDER

1. THE COURT ORDERS:

Effective *(date)*: _____, the Protective Order issued on *(date)*: _____,

restraining *{name}*: _____,

listing as protected person(s): _____,

is terminated forthwith.

2. This supersedes all prior protective orders in the above-entitled case.

3. a. The clerk shall notify the arresting agency or local law enforcement of this order by facsimile transmission.

b. The arresting agency or local law enforcement agency is responsible for entry of this order into the Domestic Violence Registry.

4. The prosecuting agency is ordered to notify the protected person(s) of this order.

Dated: _____

JUDICIAL OFFICER

Item SPR08-34 Response Form

Title: **Criminal and Juvenile Law: New DNA Expungement Forms** (approve forms CR-185/JV-796 and CR-186/JV-798)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be written on this form, prepared in a letter format, or submitted online. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments.

Internet: www.courtinfo.ca.gov/invitationstocomment

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 20, 2008

*Circulation for comment does not imply endorsement by the Judicial Council
or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*