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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 1089                      **Hearing Date:** March 20, 2018  
**Author:** Jackson  
**Version:** February 12, 2018  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** EC

**Subject:** *California Law Enforcement Telecommunications System*

### HISTORY

**Source:** Author

**Prior Legislation:** AB 176 (Campos), Chaptered 263, Statutes of 2013  
AB 383 (Wagner), Chaptered 76, Statutes of 2013  
AB 1498 (Campos), Chaptered 665, Statutes of 2014  
AB 1850 (Waldron), Chaptered 673, Statutes of 2014  
SB 910 (Pavley), Chaptered 638, Statutes of 2014  
SB 1304 (Committee on Judiciary), Chaptered 71, Statutes of 2014

**Support:** Unknown

**Opposition:** None known

### PURPOSE

*The purpose of this bill is to clarify that all protective orders subject to transmittal to the California Law Enforcement Telecommunications System (CLETS), are required to be transmitted.*

*Existing law* states that the Department of Justice (DOJ) shall be immediately notified of the contents of protective orders including temporary, criminal court, domestic violence protective orders, and injunctions relating to harassment, unlawful violence, or threat of violence, immediately upon issuance. (Fam. Code § 6380, subd. (b).)

*Existing law* requires each county to develop a procedure using existing systems for electronic data transmission to the DOJ. Law enforcement, court, or other appropriate agency personnel shall enter the data electronically and transmit the data to CLETS. The court or its designee must transmit all data filed, with respect to protective orders, to law enforcement personnel within one business day by one of the following methods. (Fam. Code § 6380, subd. (a).):

- Transmitting a physical copy of the order to a local law enforcement agency authorized to enter orders into CLETS; or
- With the approval to DOJ, entering the order into CLETS directly.

*Existing law* requires all available information be included; however, the inability to provide all categories of information shall not delay the entry of information available. (Fam. Code § 6380, subd. (b)(1)-(8).):

- Names of the protected persons.
- Date of issuance of the order.
- Duration or expiration date of the order.
- Terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.
- Department or division number and the address of the court.
- Whether or not the order was served upon the respondent.
- Terms and conditions of any restrictions on the ownership or possession of firearms.

*Existing law* requires that, within one business day of service, any law enforcement officer who served a protective order shall submit the proof of service directly into the DOJ Domestic Violence Restraining Order System. (Fam. Code § 6308 (e).)

*Existing law* states that if a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California, and the county's transmitting agency shall immediately notify the DOJ, by electronic transmission, of terms of the modification, extension, or termination. (Fam. Code § 6308, subd. (f).)

*Existing law* requires Judicial Council to assist local courts charged with the responsibility for issuing protective orders through developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms. (Fam. Code § 6308, subd. (g).)

*This bill* clarifies that all protective orders subject to transmittal to CLETS are required to be so transmitted.

*This bill* does not constitute a change in, but is declaratory of, existing law.

## COMMENTS

### 1. Need for This Bill

The author states:

Under existing law, criminal protective orders and domestic violence protective orders must be input into CLETS. This is because CLETS is then utilized by law enforcement and criminal justice agencies for enforcement purposes. Local law enforcement agencies look to CLETS to see if an enforceable protective order exists when responding to calls that may involve domestic violence or other situations where a protective order may be at play. Additionally, when a victim contacts law enforcement because they believe the order is not being followed, they would likely mention the order and law enforcement would then check CLETS to verify. Thus, existing law requires restraining orders issued pursuant to the Domestic Violence Protection Act (DVPA), and other qualifying protective

orders, to be entered into CLETS to facilitate effective enforcement of the terms of the protective order.

However, recent practices have resulted in parties seeking to have the court enter a stipulated “non-CLETS” protective order, or a protective order that would not be transmitted to CLETS despite the law otherwise requiring the order’s transmittal. This practice has become so common that colloquially these stipulated orders are referred to as a “non-CLETS restraining order.”

This practice of stipulating to protective orders that will not be entered into CLETS results in orders that are contrary to existing law and public policy. This is because existing law requires the impacted protective orders transmittal to CLETS. Without this transmittal the orders are not readily enforceable, since law enforcement officers who are often responsible for the protective order’s enforcement do not have ready access to the order. Thus, such practices essentially result in protective orders that are not readily available to those expected to enforce them.

SB 1089 addresses these concerns of unenforceability by clarifying that all protective orders subject to transmittal to CLETS are required to be so transmitted. This restatement of existing law addresses recent discussion of “non-CLETS restraining orders” at the Appellate Court level. Highlighting that is indeed the intent of the Legislature that all restraining orders issued pursuant to the DVPA, as well as other protective orders, must be entered into CLETS. By ensuring law enforcement have access to these protective orders through CLETS, SB 1089 helps better protect victims who have taken action and put themselves at potential heightened risk by seeking a protective order.

## 2. CLETS and Protective Orders

Implemented in the 1970’s, California Law Enforcement Telecommunications System (CLETS) is a data interchange system for state data files administered by the California Attorney General. CLETS provides law enforcement and criminal justice agencies access to databases, and transmits and receives administrative messages, background information to agencies within California, other states, and Canada. CLETS has mobile data terminals allowing law enforcement officers in the field to inquire directly into the California Restraining and Protective Order System database.<sup>1</sup> Existing law requires a court, upon the issuance of certain types of protective orders, to transmit the order and other specified information to CLETS. (Fam. Code § 6380, subd. (a).)

Protective orders, also known as restraining orders, are court orders which aim to protect a person from being physically or sexually abused, threatened, stalked, harassed, among other threats of safety. In California, a person can issue four types of protective orders: domestic violence restraining orders, elder or dependent adult abuse restraining orders, civil harassment restraining orders, and workplace violence restraining orders. The orders can generally be organized into three categories: personal conduct orders, stay-away orders, and residence exclusion orders. Personal conduct orders stop specific acts against the restrained person to cease

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<sup>1</sup> “CLETS Law and Legal Definition | USLegal, Inc.,” accessed March 12, 2018, <https://definitions.uslegal.com/c/clets/>.

their threatening behavior, stay away orders keep the restrained person at a certain distance, and residence exclusion orders require the restrained person to move out.<sup>2</sup> The protective orders which must be transmit via CLETS to California Restraining and Protective Order System include the following: temporary restraining orders or injunctions for threat of harassment, workplace violence restraining orders, school or campus violence restraining orders, criminal court restraining orders for threat of harm, intimidation, or dissuasion of a victim or witness, domestic violence restraining orders, elder or dependent adult abuse restraining orders, gun violence restraining orders, and juvenile restraining orders. (Civ. Code § 527.6, 527.8, 527.85; Pen. Code §136.2; Welf. & Inst. Code § 213.5, 304, 362.4, 15657, 6401.)

### 3. Non-CLETS Protective Order

While a variety of protective orders are required to be transmitted to CLETS, some family law courts issue “non-CLETS restraining orders” in lieu of statutory restraining orders. Non-CLETS protective orders refer to orders that are not entered into the CLETS system. In some cases, both parties may consent to mutual restraining orders prohibiting the parties from being within a certain distance from one another. These mutual stay away orders are not entered into the CLETS system. It is the intent of this bill is to codify, in part, *Carlisle v. Carlisle* (2017), and ensure all CLETS protective orders are transmit to CLETS.

The Legislature authorizes a specific variety of available procedures, the courts should use them and should normally refrain from exercising their inherent powers to invent alternatives.[...] When a court issues orders not authorized by statute, the court acts outside of its jurisdiction.

The case held that courts have no authority to issue non-CLETS restraining orders, and such orders issued pursuant to the Domestic Violence Prevention Act must be entered into CLETS.

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<sup>2</sup> “Restraining Orders - Abuse\_selfhelp,” accessed March 12, 2018, <http://www.courts.ca.gov/1260.htm>.