

AMENDED IN ASSEMBLY MARCH 10, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1771

Introduced by Assembly Member Ma
*(Coauthors: Assembly Members Aghazarian, Berg, Dymally, Horton,
and Portantino)*

January 10, 2008

An act to amend Section 136.2 of, and to add Section 1463.24 to, and Chapter 3 (commencing with Section 13720) to Title 5 of Part 4 of, the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1771, as amended, Ma. Domestic violence: convictions.

Existing law authorizes a court to issue a domestic violence restraining order upon a good cause belief that harm to a victim has occurred or is reasonably likely to occur.

This bill would provide that "good cause" may be found based on evidence that the person against whom the order is to be issued has previously been convicted of a crime of domestic violence, as defined.

Existing law provides for the imposition of various fines, forfeitures, and penalties upon a criminal conviction.

This bill would authorize an additional assessment to be imposed upon a conviction for a crime of domestic violence, to be used to fund domestic violence prevention programs in the counties. This bill also would require the superior court of a county to provide to any person, upon request, without charge, any information regarding a domestic violence conviction that is currently available to the public, *except personal identifying information about the victim or minor children, as specified*. Because the bill would impose additional duties on local

governmental agencies, the bill would impose a state-mandated local program.

Under existing law, the Department of Justice is responsible for compiling and maintaining criminal record information.

This bill would require the Attorney General to develop an Internet Web site that is available to the public that contains certain information about persons who have been convicted of at least one felony domestic violence offense or at least two misdemeanor domestic violence offenses. The Attorney General would be required to update the Web site on a regular basis. This information would be required to be retained on the Web site for 10 years, as specified.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: 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 136.2 of the Penal Code is amended to
- 2 read:
- 3 136.2. (a) Except as provided in subdivision (c), upon a good
- 4 cause belief that harm to, or intimidation or dissuasion of, a victim
- 5 or witness has occurred or is reasonably likely to occur, any court
- 6 with jurisdiction over a criminal matter may issue orders including,
- 7 but not limited to, the following:
- 8 (1) Any order issued pursuant to Section 6320 of the Family
- 9 Code. For purposes this paragraph, “good cause” may be found
- 10 based on evidence that the person against whom the order is to be
- 11 issued has previously been convicted of a crime of domestic
- 12 violence, as defined in Section 13700.
- 13 (2) An order that a defendant shall not violate any provision of
- 14 Section 136.1.
- 15 (3) An order that a person before the court other than a
- 16 defendant, including, but not limited to, a subpoenaed witness or

1 other person entering the courtroom of the court, shall not violate
2 any provisions of Section 136.1.

3 (4) An order that any person described in this section shall have
4 no communication whatsoever with any specified witness or any
5 victim, except through an attorney under any reasonable restrictions
6 that the court may impose.

7 (5) An order calling for a hearing to determine if an order as
8 described in paragraphs (1) to (4), inclusive, should be issued.

9 (6) An order that a particular law enforcement agency within
10 the jurisdiction of the court provide protection for a victim or a
11 witness, or both, or for immediate family members of a victim or
12 a witness who reside in the same household as the victim or witness
13 or within reasonable proximity of the victim's or witness'
14 household, as determined by the court. The order shall not be made
15 without the consent of the law enforcement agency except for
16 limited and specified periods of time and upon an express finding
17 by the court of a clear and present danger of harm to the victim or
18 witness or immediate family members of the victim or witness.

19 For purposes of this paragraph, "immediate family members"
20 include the spouse, children, or parents of the victim or witness.

21 (7) (A) Any order protecting victims of violent crime from all
22 contact by the defendant, or contact, with the intent to annoy,
23 harass, threaten, or commit acts of violence, by the defendant. The
24 court or its designee shall transmit orders made under this
25 paragraph to law enforcement personnel within one business day
26 of the issuance, modification, extension, or termination of the
27 order, pursuant to subdivision (a) of Section 6380 of the Family
28 Code. It is the responsibility of the court to transmit the
29 modification, extension, or termination orders made under this
30 paragraph to the same agency that entered the original protective
31 order into the Domestic Violence Restraining Order System.

32 (B) (i) If a court does not issue an order pursuant to
33 subparagraph (A) in a case in which the defendant is charged with
34 a crime of domestic violence as defined in Section 13700, the court
35 on its own motion shall consider issuing a protective order upon
36 a good cause belief that harm to, or intimidation or dissuasion of,
37 a victim or witness has occurred or is reasonably likely to occur,
38 that provides as follows:

1 (I) The defendant shall not own, possess, purchase, receive, or
2 attempt to purchase or receive, a firearm while the protective order
3 is in effect.

4 (II) The defendant shall relinquish any firearms that he or she
5 owns or possesses pursuant to Section 527.9 of the Code of Civil
6 Procedure.

7 (ii) Every person who owns, possesses, purchases, or receives,
8 or attempts to purchase or receive, a firearm while this protective
9 order is in effect is punishable pursuant to subdivision (g) of
10 Section 12021.

11 (C) Any order issued, modified, extended, or terminated by a
12 court pursuant to this paragraph shall be issued on forms adopted
13 by the Judicial Council of California and that have been approved
14 by the Department of Justice pursuant to subdivision (i) of Section
15 6380 of the Family Code. However, the fact that an order issued
16 by a court pursuant to this section was not issued on forms adopted
17 by the Judicial Council and approved by the Department of Justice
18 shall not, in and of itself, make the order unenforceable.

19 (b) Any person violating any order made pursuant to paragraphs
20 (1) to (7), inclusive, of subdivision (a) may be punished for any
21 substantive offense described in Section 136.1, or for a contempt
22 of the court making the order. A finding of contempt shall not be
23 a bar to prosecution for a violation of Section 136.1. However,
24 any person so held in contempt shall be entitled to credit for any
25 punishment imposed therein against any sentence imposed upon
26 conviction of an offense described in Section 136.1. Any conviction
27 or acquittal for any substantive offense under Section 136.1 shall
28 be a bar to a subsequent punishment for contempt arising out of
29 the same act.

30 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
31 protective order issued pursuant to Chapter 2 (commencing with
32 Section 6250) of Part 3 of Division 10 of the Family Code or
33 Section 646.91 of the Penal Code shall have precedence in
34 enforcement over any other restraining or protective order, provided
35 the emergency protective order meets all of the following
36 requirements:

37 (A) The emergency protective order is issued to protect one or
38 more individuals who are already protected persons under another
39 restraining or protective order.

1 (B) The emergency protective order restrains the individual who
2 is the restrained person in the other restraining or protective order
3 specified in subparagraph (A).

4 (C) The provisions of the emergency protective order are more
5 restrictive in relation to the restrained person than are the provisions
6 of the other restraining or protective order specified in
7 subparagraph (A).

8 (2) An emergency protective order that meets the requirements
9 of paragraph (1) shall have precedence in enforcement over the
10 provisions of any other restraining or protective order only with
11 respect to those provisions of the emergency protective order that
12 are more restrictive in relation to the restrained person.

13 (d) (1) A person subject to a protective order issued under this
14 section shall not own, possess, purchase, receive, or attempt to
15 purchase or receive a firearm while the protective order is in effect.

16 (2) The court shall order a person subject to a protective order
17 issued under this section to relinquish any firearms he or she owns
18 or possesses pursuant to Section 527.9 of the Code of Civil
19 Procedure.

20 (3) Every person who owns, possesses, purchases or receives,
21 or attempts to purchase or receive a firearm while the protective
22 order is in effect is punishable pursuant to subdivision (g) of
23 Section 12021 of the Penal Code.

24 (e) (1) In all cases where the defendant is charged with a crime
25 of domestic violence, as defined in Section 13700, the court shall
26 consider issuing the above-described orders on its own motion.
27 All interested parties shall receive a copy of those orders. In order
28 to facilitate this, the court's records of all criminal cases involving
29 domestic violence shall be marked to clearly alert the court to this
30 issue.

31 (2) In those cases in which a complaint, information, or
32 indictment charging a crime of domestic violence, as defined in
33 Section 13700, has been issued, a restraining order or protective
34 order against the defendant issued by the criminal court in that
35 case has precedence in enforcement over any civil court order
36 against the defendant, unless a court issues an emergency protective
37 order pursuant to Chapter 2 (commencing with Section 6250) of
38 Part 3 of Division 10 of the Family Code or Section 646.91 of the
39 Penal Code, in which case the emergency protective order shall
40 have precedence in enforcement over any other restraining or

1 protective order, provided the emergency protective order meets
2 the following requirements:

3 (A) The emergency protective order is issued to protect one or
4 more individuals who are already protected persons under another
5 restraining or protective order.

6 (B) The emergency protective order restrains the individual who
7 is the restrained person in the other restraining or protective order
8 specified in subparagraph (A).

9 (C) The provisions of the emergency protective order are more
10 restrictive in relation to the restrained person than are the provisions
11 of the other restraining or protective order specified in
12 subparagraph (A).

13 (3) Custody and visitation with respect to the defendant and his
14 or her minor children may be ordered by a family or juvenile court
15 consistent with the protocol established pursuant to subdivision
16 (f), but if ordered after a criminal protective order has been issued
17 pursuant to this section, the custody and visitation order shall make
18 reference to, and acknowledge the precedence of enforcement of,
19 any appropriate criminal protective order. On or before July 1,
20 2006, the Judicial Council shall modify the criminal and civil court
21 forms consistent with this subdivision.

22 (f) On or before January 1, 2003, the Judicial Council shall
23 promulgate a protocol, for adoption by each local court in
24 substantially similar terms, to provide for the timely coordination
25 of all orders against the same defendant and in favor of the same
26 named victim or victims. The protocol shall include, but shall not
27 be limited to, mechanisms for assuring appropriate communication
28 and information sharing between criminal, family, and juvenile
29 courts concerning orders and cases that involve the same parties,
30 and shall permit a family or juvenile court order to coexist with a
31 criminal court protective order subject to the following conditions:

32 (1) Any order that permits contact between the restrained person
33 and his or her children shall provide for the safe exchange of the
34 children and shall not contain language either printed or
35 handwritten that violates a “no contact order” issued by a criminal
36 court.

37 (2) Safety of all parties shall be the courts’ paramount concern.
38 The family or juvenile court shall specify the time, day, place, and
39 manner of transfer of the child, as provided in Section 3100 of the
40 Family Code.

1 (g) On or before January 1, 2003, the Judicial Council shall
2 modify the criminal and civil court protective order forms
3 consistent with this section.

4 SEC. 2. Section 1463.24 is added to the Penal Code, to read:

5 1463.24. Notwithstanding any other provision of law, in
6 addition to any other fine or penalty assessment, there shall be
7 levied an assessment of not more than _____ dollars (\$____)
8 upon every fine, penalty, or forfeiture imposed and collected by
9 the courts for a crime of domestic violence, as defined in Section
10 13700. Notwithstanding Section 1463 or 1464, money collected
11 pursuant to this section shall be used to fund domestic violence
12 prevention programs in the counties.

13 SEC. 3. Chapter 3 (commencing with Section 13720) is added
14 to Title 5 of Part 4 of the Penal Code, to read:

15
16 CHAPTER 3. INFORMATION DISSEMINATION
17

18 13720. The Attorney General shall develop an Internet Web
19 site that is available to the public that contains the name, date of
20 birth, and date or dates of any conviction or convictions for
21 domestic violence of persons who are convicted of at least one
22 felony domestic violence offense or at least two misdemeanor
23 domestic violence offenses. The Attorney General shall update
24 the Web site on a regular basis. Information shall be retained on
25 the Web site ~~for~~ until a period of 10 years has passed during which
26 the offender remains free of any conviction for domestic violence.

27 13721. Upon request, the superior court of a county shall
28 provide to any person, without charge, any information regarding
29 a domestic violence conviction that is currently available to the
30 public, *except that any personal identifying information about the*
31 *victim, including name, address, and place of employment, or*
32 *about any minor children involved in or witness to the incident,*
33 *including name, address, and school, shall be redacted prior to*
34 *being provided to a requester.* This section does not authorize the
35 release of information that is otherwise made confidential by any
36 other provision of law.

37 SEC. 4. If the Commission on State Mandates determines that
38 this act contains costs mandated by the state, reimbursement to
39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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