

Introduced by Senator PavleyFebruary 18, 2011

An act to amend Section 136.2 of the Penal Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 723, as introduced, Pavley. Restraining orders.

Existing law authorizes any court with jurisdiction over a criminal matter to issue protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Existing case law has construed any order issued pursuant to this provision to be limited in scope and duration to the protection of victims and witnesses in connection with the criminal proceeding in which it is issued. Under existing law, contempt of a court order is a misdemeanor.

This bill would expand the scope and duration of that provision. The bill would require, in all cases in which a criminal defendant has been convicted of a crime of domestic violence, the court to consider, at the time of sentencing, issuing an order restraining the defendant from any contact with the victim, regardless of whether the defendant is sentenced to the state prison or a county jail, or whether imposition of sentence is suspended and the defendant is placed on probation. The order would be valid for up to 10 years, as determined by the court.

The bill would also expand the scope of the provision of existing law described above by authorizing the court to read and consider the arrest reports, or any other written report of law enforcement or witnesses, in order to determine whether good cause exists for the issuance of any protective order pursuant to that provision. The bill would specify that any protective order issued pursuant to this provision may be based

solely upon the harm alleged to have occurred in the arrest or other written report.

Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.

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.

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.

10 (2) An order that a defendant shall not violate any provision of
11 Section 136.1.

12 (3) An order that a person before the court other than a
13 defendant, including, but not limited to, a subpoenaed witness or
14 other person entering the courtroom of the court, shall not violate
15 any provisions of Section 136.1.

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

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

22 (6) (A) An order that a particular law enforcement agency within
23 the jurisdiction of the court provide protection for a victim or a
24 witness, or both, or for immediate family members of a victim or
25 a witness who reside in the same household as the victim or witness
26 or within reasonable proximity of the victim's or witness'

1 household, as determined by the court. The order shall not be made
2 without the consent of the law enforcement agency except for
3 limited and specified periods of time and upon an express finding
4 by the court of a clear and present danger of harm to the victim or
5 witness or immediate family members of the victim or witness.

6 (B) For purposes of this paragraph, “immediate family members”
7 include the spouse, children, or parents of the victim or witness.

8 (7) (A) Any order protecting victims of violent crime from all
9 contact by the defendant, or contact, with the intent to annoy,
10 harass, threaten, or commit acts of violence, by the defendant. The
11 court or its designee shall transmit orders made under this
12 paragraph to law enforcement personnel within one business day
13 of the issuance, modification, extension, or termination of the
14 order, pursuant to subdivision (a) of Section 6380 of the Family
15 Code. It is the responsibility of the court to transmit the
16 modification, extension, or termination orders made under this
17 paragraph to the same agency that entered the original protective
18 order into the Domestic Violence Restraining Order System.

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

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

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

32 (ii) Every person who owns, possesses, purchases, or receives,
33 or attempts to purchase or receive, a firearm while this protective
34 order is in effect is punishable pursuant to Section 29825.

35 (C) Any order issued, modified, extended, or terminated by a
36 court pursuant to this paragraph shall be issued on forms adopted
37 by the Judicial Council of California and that have been approved
38 by the Department of Justice pursuant to subdivision (i) of Section
39 6380 of the Family Code. However, the fact that an order issued
40 by a court pursuant to this section was not issued on forms adopted

1 by the Judicial Council and approved by the Department of Justice
2 shall not, in and of itself, make the order unenforceable.

3 (b) Any person violating any order made pursuant to paragraphs
4 (1) to (7), inclusive, of subdivision (a) may be punished for any
5 substantive offense described in Section 136.1, or for a contempt
6 of the court making the order. A finding of contempt shall not be
7 a bar to prosecution for a violation of Section 136.1. However,
8 any person so held in contempt shall be entitled to credit for any
9 punishment imposed therein against any sentence imposed upon
10 conviction of an offense described in Section 136.1. Any conviction
11 or acquittal for any substantive offense under Section 136.1 shall
12 be a bar to a subsequent punishment for contempt arising out of
13 the same act.

14 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
15 protective order issued pursuant to Chapter 2 (commencing with
16 Section 6250) of Part 3 of Division 10 of the Family Code or
17 Section 646.91 of the Penal Code shall have precedence in
18 enforcement over any other restraining or protective order, provided
19 the emergency protective order meets all of the following
20 requirements:

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

24 (B) The emergency protective order restrains the individual who
25 is the restrained person in the other restraining or protective order
26 specified in subparagraph (A).

27 (C) The provisions of the emergency protective order are more
28 restrictive in relation to the restrained person than are the provisions
29 of the other restraining or protective order specified in
30 subparagraph (A).

31 (2) An emergency protective order that meets the requirements
32 of paragraph (1) shall have precedence in enforcement over the
33 provisions of any other restraining or protective order only with
34 respect to those provisions of the emergency protective order that
35 are more restrictive in relation to the restrained person.

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

39 (2) The court shall order a person subject to a protective order
40 issued under this section to relinquish any firearms he or she owns

1 or possesses pursuant to Section 527.9 of the Code of Civil
2 Procedure.

3 (3) Every person who owns, possesses, purchases or receives,
4 or attempts to purchase or receive a firearm while the protective
5 order is in effect is punishable pursuant to Section 29825.

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

13 (2) In those cases in which a complaint, information, or
14 indictment charging a crime of domestic violence, as defined in
15 Section 13700, has been issued, a restraining order or protective
16 order against the defendant issued by the criminal court in that
17 case has precedence in enforcement over any civil court order
18 against the defendant, unless a court issues an emergency protective
19 order pursuant to Chapter 2 (commencing with Section 6250) of
20 Part 3 of Division 10 of the Family Code or Section 646.91 of the
21 Penal Code, in which case the emergency protective order shall
22 have precedence in enforcement over any other restraining or
23 protective order, provided the emergency protective order meets
24 the following requirements:

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

28 (B) The emergency protective order restrains the individual who
29 is the restrained person in the other restraining or protective order
30 specified in subparagraph (A).

31 (C) The provisions of the emergency protective order are more
32 restrictive in relation to the restrained person than are the provisions
33 of the other restraining or protective order specified in
34 subparagraph (A).

35 (3) Custody and visitation with respect to the defendant and his
36 or her minor children may be ordered by a family or juvenile court
37 consistent with the protocol established pursuant to subdivision
38 (f), but if ordered after a criminal protective order has been issued
39 pursuant to this section, the custody and visitation order shall make
40 reference to, and acknowledge the precedence of enforcement of,

1 any appropriate criminal protective order. On or before July 1,
2 2006, the Judicial Council shall modify the criminal and civil court
3 forms consistent with this subdivision.

4 (f) On or before January 1, 2003, the Judicial Council shall
5 promulgate a protocol, for adoption by each local court in
6 substantially similar terms, to provide for the timely coordination
7 of all orders against the same defendant and in favor of the same
8 named victim or victims. The protocol shall include, but shall not
9 be limited to, mechanisms for assuring appropriate communication
10 and information sharing between criminal, family, and juvenile
11 courts concerning orders and cases that involve the same parties,
12 and shall permit a family or juvenile court order to coexist with a
13 criminal court protective order subject to the following conditions:

14 (1) Any order that permits contact between the restrained person
15 and his or her children shall provide for the safe exchange of the
16 children and shall not contain language either printed or
17 handwritten that violates a “no contact order” issued by a criminal
18 court.

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

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

26 (h) In any case in which a complaint, information, or indictment
27 charging a crime of domestic violence, as defined in Section 13700,
28 has been filed, the court may consider, in determining whether
29 good cause exists to issue an order under paragraph (1) of
30 subdivision (a), the underlying nature of the offense charged, and
31 the information provided to the court pursuant to Section 273.75.

32 (i) *In all cases in which a criminal defendant has been convicted*
33 *of a crime of domestic violence as defined in Section 13700, the*
34 *court, at the time of sentencing, shall consider issuing an order*
35 *restraining the defendant from any contact with the victim. The*
36 *order may be valid for up to 10 years, as determined by the court.*
37 *This protective order may be issued by the court regardless of*
38 *whether the defendant is sentenced to the state prison or a county*
39 *jail, or whether imposition of sentence is suspended and the*
40 *defendant is placed on probation. It is the intent of the Legislature*

1 *in enacting this subdivision that the duration of any restraining*
2 *order issued by the court be based upon the seriousness of the*
3 *facts before the court, the probability of future violations, and the*
4 *safety of the victim and his or her immediate family.*

5 *(j) Notwithstanding any other provision of law, the court may*
6 *read and consider the arrest reports or any other written report*
7 *of law enforcement or witnesses, in order to determine whether*
8 *good cause exists for the issuance of any protective order under*
9 *this section. The issuance of any protective order under this section*
10 *may be based solely upon the harm alleged to have occurred in*
11 *the arrest or other written report.*

12 SEC. 2. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.