

## Assembly Bill No. 238

### CHAPTER 145

An act to amend Section 6271 of, and to repeal Section 6273 of, the Family Code, and to amend Section 646.91 of the Penal Code, relating to protective orders.

[Approved by Governor August 26, 2013. Filed with  
Secretary of State August 26, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 238, Gomez. Protective and restraining orders: computer database system.

Existing law authorizes a judicial officer in a civil proceeding relating to domestic violence to issue an emergency protective order if there is an immediate and present danger of domestic violence, abuse, or abduction of a child, or abuse of an elder or dependent adult. Existing law also authorizes a court in a criminal proceeding to issue an emergency protective order if there is an immediate and present danger of stalking, as specified. Existing law requires a law enforcement officer, as defined, for purposes of court proceedings relating to domestic violence, or a peace officer, in criminal proceedings relating to stalking, who requests an emergency protective order, to carry copies of the order while on duty.

Existing law also requires the Department of Justice to maintain a computer database system for protective and restraining orders and injunctions and make that information available to court clerks and law enforcement personnel.

This bill would delete the requirement that a law enforcement officer or a peace officer, as described above, who requests an emergency protective order carry copies of the order while on duty. The bill would instead require the law enforcement agency to have that order entered into the computer database system for protective and restraining orders maintained by the Department of Justice. By imposing additional duties on local law enforcement agencies, 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, 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.

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

SECTION 1. Section 6271 of the Family Code is amended to read:

6271. A law enforcement officer who requests an emergency protective order shall do all of the following:

(a) Serve the order on the restrained person, if the restrained person can reasonably be located.

(b) Give a copy of the order to the protected person or, if the protected person is a minor child, to a parent or guardian of the endangered child who is not a restrained person, if the parent or guardian can reasonably be located, or to a person having temporary custody of the endangered child.

(c) File a copy of the order with the court as soon as practicable after issuance.

(d) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

SEC. 2. Section 6273 of the Family Code is repealed.

SEC. 3. Section 646.91 of the Penal Code is amended to read:

646.91. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order if a peace officer, as defined in Section 830.1, 830.2, or 830.32, asserts reasonable grounds to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

(3) The address of the superior court for the district or county in which the protected party resides.

(4) The following statements, which shall be printed in English and Spanish:

(A) "To the protected person: This order will last until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(B) "To the restrained person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the

application. You may not own, possess, purchase, or receive, or attempt to purchase or receive, a firearm while this order is in effect.”

(d) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(e) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(f) An emergency protective order shall be issued without prejudice to any person.

(g) An emergency protective order expires at the earlier of the following times:

(1) The close of judicial business on the fifth court day following the day of its issuance.

(2) The seventh calendar day following the day of its issuance.

(h) A peace officer who requests an emergency protective order shall do all of the following:

(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

(3) File a copy of the order with the court as soon as practicable after issuance.

(4) Have the order entered into the computer database system for protective and restraining orders maintained by the Department of Justice.

(i) A peace officer shall use every reasonable means to enforce an emergency protective order.

(j) A peace officer who acts in good faith to enforce an emergency protective order is not civilly or criminally liable.

(k) A peace officer described in subdivision (a) or (b) of Section 830.32 who requests an emergency protective order pursuant to this section shall also notify the sheriff or police chief of the city in whose jurisdiction the peace officer’s college or school is located after issuance of the order.

(l) “Judicial officer,” as used in this section, means a judge, commissioner, or referee.

(m) A person subject to an emergency protective order under this section shall not own, possess, purchase, or receive a firearm while the order is in effect.

(n) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including, but not limited to, picketing and hand billing.

(o) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(p) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.