

AMENDED IN SENATE AUGUST 14, 2013

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 307

Introduced by Assembly Member Campos

February 12, 2013

An act to amend Sections 136.2 and 166 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 307, as amended, Campos. Protective orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue a protective order 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, including an order protecting victims of violent crime from all contact, or contact with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. Under existing law, the court is required to consider, at the time of sentencing, issuing a protective order, which may be valid for up to 10 years, in a case in which a criminal defendant has been convicted of a crime of domestic violence. Under existing law, contempt of a court order is a misdemeanor, as specified.

This bill would *also* require the court to ~~also~~ consider issuing a protective order in a case in which the defendant has been convicted of specified sex crimes, including rape, spousal rape, and crimes for which a person is required to register as a sex offender.

Under existing law, a willful and knowing violation of a protective order or stay-away court order issued relating to a victim or witness in

a pending criminal proceeding involving domestic violence, issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence or elder or dependent adult abuse, or issued under other specified conditions, constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or by both the imprisonment and the fine, except as specified.

This bill would provide that a willful and knowing violation of a protective order or stay-away court order issued relating to a victim or witness in a criminal proceeding, including a proceeding when the conditions of probation are determined, involving domestic violence or elder or dependent adult abuse, or issued upon the conviction of a defendant for a sexual offense involving a minor, or issued under other specified conditions, constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or by both the imprisonment and the fine, except as specified.

This bill would incorporate additional changes in Section 136.2 of the Penal Code proposed by AB 176, that would become operative on the date AB 176 becomes operative only if AB 176 and this bill are both chaptered and become effective on or before January 1, 2014, and this bill is chaptered last.

By expanding the scope of an existing crime, this 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, a court

1 with jurisdiction over a criminal matter may issue orders, including,
2 but not limited to, the following:

3 (1) An order issued pursuant to Section 6320 of the Family
4 Code.

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

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

11 (4) An order that a person described in this section shall have
12 no communication whatsoever with a specified witness or a victim,
13 except through an attorney under reasonable restrictions that the
14 court may impose.

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

17 (6) (A) An order that a particular law enforcement agency
18 within the jurisdiction of the court provide protection for a victim
19 or a witness, or both, or for immediate family members of a victim
20 or a witness who reside in the same household as the victim or
21 witness or within reasonable proximity of the victim's or witness'
22 household, as determined by the court. The order shall not be made
23 without the consent of the law enforcement agency except for
24 limited and specified periods of time and upon an express finding
25 by the court of a clear and present danger of harm to the victim or
26 witness or immediate family members of the victim or witness.

27 (B) For purposes of this paragraph, "immediate family
28 members" include the spouse, children, or parents of the victim
29 or witness.

30 (7) (A) An order protecting victims of violent crime from all
31 contact by the defendant, or contact, with the intent to annoy,
32 harass, threaten, or commit acts of violence, by the defendant. The
33 court or its designee shall transmit orders made under this
34 paragraph to law enforcement personnel within one business day
35 of the issuance, modification, extension, or termination of the
36 order, pursuant to subdivision (a) of Section 6380 of the Family
37 Code. It is the responsibility of the court to transmit the
38 modification, extension, or termination orders made under this
39 paragraph to the same agency that entered the original protective
40 order into the Domestic Violence Restraining Order System.

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

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

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

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

17 (C) An order issued, modified, extended, or terminated by a
18 court pursuant to this paragraph shall be issued on forms adopted
19 by the Judicial Council of California and that have been approved
20 by the Department of Justice pursuant to subdivision (i) of Section
21 6380 of the Family Code. However, the fact that an order issued
22 by a court pursuant to this section was not issued on forms adopted
23 by the Judicial Council and approved by the Department of Justice
24 shall not, in and of itself, make the order unenforceable.

25 (D) A protective order *issued* under this paragraph may require
26 the defendant to be placed on electronic monitoring if the local
27 government, with the concurrence of the county sheriff or the chief
28 probation officer with jurisdiction, adopts a policy to authorize
29 electronic monitoring of defendants and specifies the agency with
30 jurisdiction for this purpose. If the court determines that the
31 defendant has the ability to pay for the monitoring program, the
32 court shall order the defendant to pay for the monitoring. If the
33 court determines that the defendant does not have the ability to
34 pay for the electronic monitoring, the court may order electronic
35 monitoring to be paid for by the local government that adopted
36 the policy to authorize electronic monitoring. The duration of
37 electronic monitoring shall not exceed one year from the date the
38 order is issued. At no time shall the electronic monitoring be in
39 place if the protective order is not in place.

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

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

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

21 (B) The emergency protective order restrains the individual who
22 is the restrained person in the other restraining or protective order
23 specified in subparagraph (A).

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

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

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

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

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

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

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

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

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

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

33 (3) Custody and visitation with respect to the defendant and his
34 or her minor children may be ordered by a family or juvenile court
35 consistent with the protocol established pursuant to subdivision
36 (f), but if ordered after a criminal protective order has been issued
37 pursuant to this section, the custody and visitation order shall make
38 reference to, and acknowledge the precedence of enforcement of,
39 an appropriate criminal protective order. On or before July 1, 2006,

1 the Judicial Council shall modify the criminal and civil court forms
2 consistent with this subdivision.

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

14 (1) An 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”~~ *“no-contact order”* issued
18 by a criminal 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) (1) In all cases in which a criminal defendant has been
33 convicted of a crime of domestic violence as defined in Section
34 13700, a violation of Section 261, 261.5, or 262, or any crime that
35 requires the defendant to register pursuant to subdivision (c) of
36 Section 290, the court, at the time of sentencing, shall consider
37 issuing an order restraining the defendant from any contact with
38 the victim. The order may be valid for up to 10 years, as determined
39 by the court. This protective order may be issued by the court
40 regardless of whether the defendant is sentenced to the state prison

1 or a county jail, or whether imposition of sentence is suspended
2 and the defendant is placed on probation. It is the intent of the
3 Legislature in enacting this subdivision that the duration of any
4 restraining order issued by the court be based upon the seriousness
5 of the facts before the court, the probability of future violations,
6 and the safety of the victim and his or her immediate family.

7 (2) An order under this subdivision may include provisions for
8 electronic monitoring if the local government, upon receiving the
9 concurrence of the county sheriff or the chief probation officer
10 with jurisdiction, adopts a policy authorizing electronic monitoring
11 of defendants and specifies the agency with jurisdiction for this
12 purpose. If the court determines that the defendant has the ability
13 to pay for the monitoring program, the court shall order the
14 defendant to pay for the monitoring. If the court determines that
15 the defendant does not have the ability to pay for the electronic
16 monitoring, the court may order the electronic monitoring to be
17 paid for by the local government that adopted the policy authorizing
18 electronic monitoring. The duration of the electronic monitoring
19 shall not exceed one year from the date the order is issued.

20 (j) For purposes of this section, “local government” means the
21 county that has jurisdiction over the protective order.

22 *SEC. 1.5. Section 136.2 of the Penal Code is amended to read:*

23 136.2. (a) ~~Except as provided in subdivision (e), upon~~ Upon
24 a good cause belief that harm to, or intimidation or dissuasion of,
25 a victim or witness has occurred or is reasonably likely to occur,
26 a court with jurisdiction over a criminal matter may issue ~~orders~~
27 orders, including, but not limited to, the following:

28 (1) An order issued pursuant to Section 6320 of the Family
29 Code.

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

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

36 (4) An order that a person described in this section shall have
37 no communication whatsoever with a specified witness or a victim,
38 except through an attorney under reasonable restrictions that the
39 court may impose.

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

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

13 (B) For purposes of this paragraph, "immediate family
14 members" include the spouse, children, or parents of the victim
15 or witness.

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

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

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

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

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

4 (C) An order issued, modified, extended, or terminated by a
5 court pursuant to this paragraph shall be issued on forms adopted
6 by the Judicial Council of California and that have been approved
7 by the Department of Justice pursuant to subdivision (i) of Section
8 6380 of the Family Code. However, the fact that an order issued
9 by a court pursuant to this section was not issued on forms adopted
10 by the Judicial Council and approved by the Department of Justice
11 shall not, in and of itself, make the order unenforceable.

12 (D) A protective order *issued* under this paragraph may require
13 the defendant to be placed on electronic monitoring if the local
14 government, with the concurrence of the county sheriff or the chief
15 probation officer with jurisdiction, adopts a policy to authorize
16 electronic monitoring of defendants and specifies the agency with
17 jurisdiction for this purpose. If the court determines that the
18 defendant has the ability to pay for the monitoring program, the
19 court shall order the defendant to pay for the monitoring. If the
20 court determines that the defendant does not have the ability to
21 pay for the electronic monitoring, the court may order electronic
22 monitoring to be paid for by the local government that adopted
23 the policy to authorize electronic monitoring. The duration of
24 electronic monitoring shall not exceed one year from the date the
25 order is issued. At no time shall the electronic monitoring be in
26 place if the protective order is not in place.

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

37 (c) (1) (A) Notwithstanding ~~subdivisions (a) and (e);~~
38 *subdivision (e)*, an emergency protective order issued pursuant to
39 Chapter 2 (commencing with Section 6250) of Part 3 of Division
40 10 of the Family Code or Section 646.91 ~~of the Penal Code~~ shall

1 have precedence in enforcement over any other restraining or
2 protective order, provided the emergency protective order meets
3 all of the following requirements:

4 ~~(A)~~

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

8 ~~(B)~~

9 (ii) The emergency protective order restrains the individual who
10 is the restrained person in the other restraining or protective order
11 specified in subparagraph (A).

12 ~~(C)~~

13 (iii) The provisions of the emergency protective order are more
14 restrictive in relation to the restrained person than are the provisions
15 of the other restraining or protective order specified in
16 subparagraph (A).

17 ~~(2)~~

18 (B) An emergency protective order that meets the requirements
19 of paragraph (1) shall have precedence in enforcement over the
20 provisions of any other restraining or protective order only with
21 respect to those provisions of the emergency protective order that
22 are more restrictive in relation to the restrained person.

23 (2) *Except as described in paragraph (1), a no-contact order,*
24 *as described in Section 6320 of the Family Code, shall have*
25 *precedence in enforcement over any other restraining or protective*
26 *order.*

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

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

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

37 (e) (1) In all cases where the defendant is charged with a crime
38 of domestic violence, as defined in Section 13700, the court shall
39 consider issuing the above-described orders on its own motion.
40 All interested parties shall receive a copy of those orders. In order

1 to facilitate this, the court's records of all criminal cases involving
2 domestic violence shall be marked to clearly alert the court to this
3 issue.

4 (2) In those cases in which a complaint, information, or
5 indictment charging a crime of domestic violence, as defined in
6 Section 13700, has been issued, *except as described in subdivision*
7 *(c)*, a restraining order or protective order against the defendant
8 issued by the criminal court in that case has precedence in
9 enforcement over a civil court order against the defendant, unless
10 a court issues an emergency protective order pursuant to Chapter
11 2 (commencing with Section 6250) of Part 3 of Division 10 of the
12 Family Code or Section 646.91 of the Penal Code, in which case
13 the emergency protective order shall have precedence in
14 enforcement over any other restraining or protective order, provided
15 the emergency protective order meets the following requirements:
16 *defendant.*

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

20 (B) The emergency protective order restrains the individual who
21 is the restrained person in the other restraining or protective order
22 specified in subparagraph (A).

23 (C) The provisions of the emergency protective order are more
24 restrictive in relation to the restrained person than are the provisions
25 of the other restraining or protective order specified in
26 subparagraph (A).

27 (3) Custody and visitation with respect to the defendant and his
28 or her minor children may be ordered by a family or juvenile court
29 consistent with the protocol established pursuant to subdivision
30 (f), but if ordered after a criminal protective order has been issued
31 pursuant to this section, the custody and visitation order shall make
32 reference to, ~~and~~ *and, if there is not an emergency protective order*
33 *that has precedence in enforcement pursuant to paragraph (1) of*
34 *subdivision (c), or a no-contact order, as described in Section*
35 *6320 of the Family Code*, acknowledge the precedence of
36 enforcement of, an appropriate criminal protective order. On or
37 before July 1, ~~2006~~, *2014*, the Judicial Council shall modify the
38 criminal and civil court forms consistent with this subdivision.

39 (f) On or before January 1, 2003, the Judicial Council shall
40 promulgate a protocol, for adoption by each local court in

1 substantially similar terms, to provide for the timely coordination
2 of all orders against the same defendant and in favor of the same
3 named victim or victims. The protocol shall include, but shall not
4 be limited to, mechanisms for ~~assuring~~ *ensuring* appropriate
5 communication and information sharing between criminal, family,
6 and juvenile courts concerning orders and cases that involve the
7 same parties, and shall permit a family or juvenile court order to
8 coexist with a criminal court protective order subject to the
9 following conditions:

10 (1) An order that permits contact between the restrained person
11 and his or her children shall provide for the safe exchange of the
12 children and shall not contain language either printed or
13 handwritten that violates a ~~no-contact~~ “no-contact order” issued
14 by a criminal court.

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

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

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

28 (i) (1) In all cases in which a criminal defendant has been
29 convicted of a crime of domestic violence as defined in Section
30 13700, *a violation of Section 261, 261.5, or 262, or any crime that*
31 *requires the defendant to register pursuant to subdivision (c) of*
32 *Section 290*, the court, at the time of sentencing, shall consider
33 issuing an order restraining the defendant from any contact with
34 the victim. The order may be valid for up to 10 years, as determined
35 by the court. This protective order may be issued by the court
36 regardless of whether the defendant is sentenced to the state prison
37 or a county jail, or whether imposition of sentence is suspended
38 and the defendant is placed on probation. It is the intent of the
39 Legislature in enacting this subdivision that the duration of any
40 restraining order issued by the court be based upon the seriousness

1 of the facts before the court, the probability of future violations,
2 and the safety of the victim and his or her immediate family.

3 (2) An order under this subdivision may include provisions for
4 electronic monitoring if the local government, upon receiving the
5 concurrence of the county sheriff or the chief probation officer
6 with jurisdiction, adopts a policy authorizing electronic monitoring
7 of defendants and specifies the agency with jurisdiction for this
8 purpose. If the court determines that the defendant has the ability
9 to pay for the monitoring program, the court shall order the
10 defendant to pay for the monitoring. If the court determines that
11 the defendant does not have the ability to pay for the electronic
12 monitoring, the court may order the electronic monitoring to be
13 paid for by the local government that adopted the policy authorizing
14 electronic monitoring. The duration of the electronic monitoring
15 shall not exceed one year from the date the order is issued.

16 (j) For purposes of this section, “local government” means the
17 county that has jurisdiction over the protective order.

18 SEC. 2. Section 166 of the Penal Code is amended to read:

19 166. (a) Except as provided in subdivisions (b), (c), and (d),
20 a person guilty of any of the following contempts of court is guilty
21 of a misdemeanor:

22 (1) Disorderly, contemptuous, or insolent behavior committed
23 during the sitting of a court of justice, in the immediate view and
24 presence of the court, and directly tending to interrupt its
25 proceedings or to impair the respect due to its authority.

26 (2) Behavior specified in paragraph (1) that is committed in the
27 presence of a referee, while actually engaged in a trial or hearing,
28 pursuant to the order of a court, or in the presence of any jury while
29 actually sitting for the trial of a cause, or upon an inquest or other
30 proceeding authorized by law.

31 (3) A breach of the peace, noise, or other disturbance directly
32 tending to interrupt the proceedings of the court.

33 (4) Willful disobedience of the terms as written of any process
34 or court order or out-of-state court order, lawfully issued by a
35 court, including orders pending trial.

36 (5) Resistance willfully offered by any person to the lawful
37 order or process of a court.

38 (6) Willful disobedience by a juror of a court admonishment
39 related to the prohibition on any form of communication or research

1 about the case, including all forms of electronic or wireless
2 communication or research.

3 (7) The contumacious and unlawful refusal of a person to be
4 sworn as a witness or, when so sworn, the like refusal to answer
5 a material question.

6 (8) The publication of a false or grossly inaccurate report of the
7 proceedings of a court.

8 (9) Presenting to a court having power to pass sentence upon a
9 prisoner under conviction, or to a member of the court, an affidavit,
10 testimony, or representation of any kind, verbal or written, in
11 aggravation or mitigation of the punishment to be imposed upon
12 the prisoner, except as provided in this code.

13 (10) Willful disobedience of the terms of an injunction that
14 restrains the activities of a criminal street gang or any of its
15 members, lawfully issued by a court, including an order pending
16 trial.

17 (b) (1) A person who is guilty of contempt of court under
18 paragraph (4) of subdivision (a) by willfully contacting a victim
19 by telephone or mail, or directly, and who has been previously
20 convicted of a violation of Section 646.9 shall be punished by
21 imprisonment in a county jail for not more than one year, by a fine
22 of five thousand dollars (\$5,000), or by both that fine and
23 imprisonment.

24 (2) For the purposes of sentencing under this subdivision, each
25 contact shall constitute a separate violation of this subdivision.

26 (3) The present incarceration of a person who makes contact
27 with a victim in violation of paragraph (1) is not a defense to a
28 violation of this subdivision.

29 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
30 willful and knowing violation of a protective order or stay-away
31 court order described as follows shall constitute contempt of court,
32 a misdemeanor, punishable by imprisonment in a county jail for
33 not more than one year, by a fine of not more than one thousand
34 dollars (\$1,000), or by both that imprisonment and fine:

35 (A) An order issued pursuant to Section 136.2.

36 (B) An order issued pursuant to paragraph (2) of subdivision
37 (a) of Section 1203.097.

38 (C) An order issued as a condition of probation after a conviction
39 in a criminal proceeding involving elder or dependent adult abuse,
40 as defined in Section 368.

1 (D) An order issued pursuant to Section 1201.3.

2 (E) An order described in paragraph (3).

3 (2) If a violation of paragraph (1) results in a physical injury,
4 the person shall be imprisoned in a county jail for at least 48 hours,
5 whether a fine or imprisonment is imposed, or the sentence is
6 suspended.

7 (3) Paragraphs (1) and (2) apply to the following court orders:

8 (A) An order issued pursuant to Section 6320 or 6389 of the
9 Family Code.

10 (B) An order excluding one party from the family dwelling or
11 from the dwelling of the other.

12 (C) An order enjoining a party from specified behavior that the
13 court determined was necessary to effectuate the orders described
14 in paragraph (1).

15 (4) A second or subsequent conviction for a violation of an order
16 described in paragraph (1) occurring within seven years of a prior
17 conviction for a violation of any of those orders and involving an
18 act of violence or “a credible threat” of violence, as provided in
19 subdivision (c) of Section 139, is punishable by imprisonment in
20 a county jail not to exceed one year, or in the state prison for 16
21 months or two or three years.

22 (5) The prosecuting agency of each county shall have the
23 primary responsibility for the enforcement of the orders described
24 in paragraph (1).

25 (d) (1) A person who owns, possesses, purchases, or receives
26 a firearm knowing he or she is prohibited from doing so by the
27 provisions of a protective order as defined in Section 136.2 of this
28 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
29 of the Code of Civil Procedure, shall be punished under Section
30 29825.

31 (2) A person subject to a protective order described in paragraph
32 (1) shall not be prosecuted under this section for owning,
33 possessing, purchasing, or receiving a firearm to the extent that
34 firearm is granted an exemption pursuant to subdivision (h) of
35 Section 6389 of the Family Code.

36 (e) (1) If probation is granted upon conviction of a violation of
37 subdivision (c), the court shall impose probation consistent with
38 Section 1203.097.

1 (2) If probation is granted upon conviction of a violation of
2 subdivision (c), the conditions of probation may include, in lieu
3 of a fine, one or both of the following requirements:

4 (A) That the defendant make payments to a battered women’s
5 shelter, up to a maximum of one thousand dollars (\$1,000).

6 (B) That the defendant provide restitution to reimburse the
7 victim for reasonable costs of counseling and other reasonable
8 expenses that the court finds are the direct result of the defendant’s
9 offense.

10 (3) For an order to pay a fine, make payments to a battered
11 women’s shelter, or pay restitution as a condition of probation
12 under this subdivision or subdivision (c), the court shall make a
13 determination of the defendant’s ability to pay. In no event shall
14 an order to make payments to a battered women’s shelter be made
15 if it would impair the ability of the defendant to pay direct
16 restitution to the victim or court-ordered child support.

17 (4) If the injury to a married person is caused in whole, or in
18 part, by the criminal acts of his or her spouse in violation of
19 subdivision (c), the community property shall not be used to
20 discharge the liability of the offending spouse for restitution to the
21 injured spouse required by Section 1203.04, as operative on or
22 before August 2, 1995, or Section 1202.4, or to a shelter for costs
23 with regard to the injured spouse and dependents required by this
24 subdivision, until all separate property of the offending spouse is
25 exhausted.

26 (5) A person violating an order described in subdivision (c) may
27 be punished for any substantive offenses described under Section
28 136.1 or 646.9. A finding of contempt shall not be a bar to
29 prosecution for a violation of Section 136.1 or 646.9. However, a
30 person held in contempt for a violation of subdivision (c) shall be
31 entitled to credit for any punishment imposed as a result of that
32 violation against any sentence imposed upon conviction of an
33 offense described in Section 136.1 or 646.9. A conviction or
34 acquittal for a substantive offense under Section 136.1 or 646.9
35 shall be a bar to a subsequent punishment for contempt arising out
36 of the same act.

37 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
38 *Section 136.2 of the Penal Code proposed by both this bill and*
39 *Assembly Bill 176. It shall only become operative if (1) both bills*
40 *are enacted and become effective on or before January 1, 2014,*

1 *but this bill becomes operative first, (2) each bill amends Section*
2 *136.2 of the Penal Code, and (3) this bill is enacted after Assembly*
3 *Bill 176, in which case Section 136.2 of the Penal Code, as*
4 *amended by Section 1 of this bill, shall remain operative only until*
5 *the operative date of Assembly Bill 176, at which time Section 1.5*
6 *of this bill shall become operative.*

7 ~~SEC. 3.~~

8 SEC. 4. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

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