

ASSEMBLY BILL

No. 1498

Introduced by Assembly Member Campos

January 9, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1498, as introduced, Campos. Protective orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue certain 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, including a protective order enjoining a party from, among other things, molesting, attacking, threatening, sexually assaulting, harassing, contacting, or coming within a specified distance of the other party, as specified.

Existing law requires a court to consider issuing a protective order on its own motion in all cases where the defendant is charged with a crime of domestic violence, as defined, and requires the court's records of all criminal cases involving domestic violence be clearly marked to alert the court of the issue. Existing law provides that a restraining order or protective order issued in a domestic violence case has precedence in enforcement over a civil court order, except as provided. Existing law authorizes the court, in any case in which a complaint, information, or indictment charging domestic violence has been filed, to consider the underlying nature of the offense charged and other specified information in determining whether good cause exists to issue a protective order.

This bill would apply these provisions to all cases where the defendant is charged with specified sex crimes, including rape, spousal rape, and crimes for which a person is required to register as a sex offender. The bill would further authorize the court, in any case in which a complaint, information, or indictment charging any of the above-described sex crimes has been filed, to consider the defendant’s relationship to the victim, the likelihood of continuing harm to the victim, the defendant’s criminal history, as specified, and any current protective or restraining order issued by any civil or criminal court involving the defendant.

Existing law provides that a willful and knowing violation of a protective order issued pursuant to the above-described provisions 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.

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) Upon a good cause belief that harm to, or
- 4 intimidation or dissuasion of, a victim or witness has occurred or
- 5 is reasonably likely to occur, a court with jurisdiction over a
- 6 criminal matter may issue orders, including, but not limited to, the
- 7 following:
- 8 (1) An 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

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

3 (4) An order that a person described in this section shall have
4 no communication whatsoever with a specified witness or a victim,
5 except through an attorney under reasonable restrictions that the
6 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) (A) An order that a particular law enforcement agency
10 within the jurisdiction of the court provide protection for a victim
11 or a witness, or both, or for immediate family members of a victim
12 or a witness who reside in the same household as the victim or
13 witness 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 (B) For purposes of this paragraph, "immediate family
20 members" include the spouse, children, or parents of the victim
21 or witness.

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

33 (B) (i) If a court does not issue an order pursuant to
34 subparagraph (A) in a case in which the defendant is charged with
35 a crime of domestic violence as defined in Section 13700, the court
36 on its own motion shall consider issuing a protective order upon
37 a good cause belief that harm to, or intimidation or dissuasion of,
38 a victim or witness has occurred or is reasonably likely to occur,
39 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 Section 29825.

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

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

33 (b) A person violating an order made pursuant to paragraphs
34 (1) to (7), inclusive, of subdivision (a) may be punished for any
35 substantive offense described in Section 136.1, or for a contempt
36 of the court making the order. A finding of contempt shall not be
37 a bar to prosecution for a violation of Section 136.1. However, a
38 person so held in contempt shall be entitled to credit for punishment
39 imposed therein against a sentence imposed upon conviction of
40 an offense described in Section 136.1. A conviction or acquittal

1 for a substantive offense under Section 136.1 shall be a bar to a
2 subsequent punishment for contempt arising out of the same act.

3 (c) (1) (A) Notwithstanding subdivision (e), an emergency
4 protective order issued pursuant to Chapter 2 (commencing with
5 Section 6250) of Part 3 of Division 10 of the Family Code or
6 Section 646.91 shall have precedence in enforcement over any
7 other restraining or protective order, provided the emergency
8 protective order meets all of the following requirements:

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

12 (ii) The emergency protective order restrains the individual who
13 is the restrained person in the other restraining or protective order
14 specified in subparagraph (A).

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

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

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

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

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

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

38 (e) (1) In all cases where the defendant is charged with a crime
39 of domestic violence, as defined in Section 13700, *or a violation*
40 *of Section 261, 261.5, or 262, or any crime that requires the*

1 *defendant to register pursuant to subdivision (c) of Section 290,*
2 *the court shall consider issuing the above-described orders on its*
3 *own motion. All interested parties shall receive a copy of those*
4 *orders. In order to facilitate this, the court's records of all criminal*
5 *cases involving domestic violence or a violation of Section 261,*
6 *261.5, or 262, or any crime that requires the defendant to register*
7 *pursuant to subdivision (c) of Section 290 shall be marked to*
8 *clearly alert the court to this issue.*

9 (2) In those cases in which a complaint, information, or
10 indictment charging a crime of domestic violence, as defined in
11 Section 13700, *or a violation of Section 261, 261.5, or 262, or any*
12 *crime that requires the defendant to register pursuant to*
13 *subdivision (c) of Section 290* has been issued, except as described
14 in subdivision (c), a restraining order or protective order against
15 the defendant issued by the criminal court in that case has
16 precedence in enforcement over a civil court order against the
17 defendant.

18 (3) Custody and visitation with respect to the defendant and his
19 or her minor children may be ordered by a family or juvenile court
20 consistent with the protocol established pursuant to subdivision
21 (f), but if ordered after a criminal protective order has been issued
22 pursuant to this section, the custody and visitation order shall make
23 reference to, and, if there is not an emergency protective order that
24 has precedence in enforcement pursuant to paragraph (1) of
25 subdivision (c), or a no-contact order, as described in Section 6320
26 of the Family Code, acknowledge the precedence of enforcement
27 of, an appropriate criminal protective order. On or before July 1,
28 2014, the Judicial Council shall modify the criminal and civil court
29 forms consistent with this subdivision.

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

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

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

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

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

20 (2) *In any case in which a complaint, information, or indictment*
21 *charging a violation of Section 261, 261.5, or 262, or any crime*
22 *that requires the defendant to register pursuant to subdivision (c)*
23 *of Section 290 has been filed, the court may consider, in*
24 *determining whether good cause exists to issue an order under*
25 *paragraph (1) of subdivision (a), the underlying nature of the*
26 *offense charged, the defendant’s relationship to the victim, the*
27 *likelihood of continuing harm to the victim, any current restraining*
28 *order or protective order issued by any civil or criminal court*
29 *involving the defendant, and the defendant’s criminal history,*
30 *including, but not limited to, prior convictions for a violation of*
31 *Section 261, 261.5, or 262, or any crime that requires the defendant*
32 *to register pursuant to subdivision (c) of Section 290, or any other*
33 *forms of violence, or any weapons offenses.*

34 (i) (1) In all cases in which a criminal defendant has been
35 convicted of a crime of domestic violence as defined in Section
36 13700, a violation of Section 261, 261.5, or 262, or any crime that
37 requires the defendant to register pursuant to subdivision (c) of
38 Section 290, the court, at the time of sentencing, shall consider
39 issuing an order restraining the defendant from any contact with
40 the victim. The order may be valid for up to 10 years, as determined

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

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

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

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.