

**ASSEMBLY BILL**

**No. 1850**

---

---

**Introduced by Assembly Member Waldron**

February 19, 2014

---

---

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as introduced, Waldron. Restraining orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue specified 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, including an order protecting a victim of violent crime from all contact by the defendant. The violation of a restraining order issued pursuant to these provisions is a crime.

This bill would additionally authorize a court with jurisdiction over a criminal matter to issue an order protecting a witness of violent crime from all contact by the defendant upon a good cause belief that harm to, or intimidation or dissuasion of, that witness has occurred or is reasonably likely to occur. The bill would also, for the purposes of these provisions, include within the meaning of the term "harm" the harm to a minor resulting from his or her physical presence at, proximity to, or location near, an act of domestic violence. By expanding the scope of a 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, as amended by  
2 Chapter 291 of the Statutes of 2013, is amended to 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  
14 other person entering the courtroom of the court, shall not violate  
15 any provisions of Section 136.1.  
16 (4) An order that a person described in this section shall have  
17 no communication whatsoever with a specified witness or a victim,  
18 except through an attorney under reasonable restrictions that the  
19 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  
23 within the jurisdiction of the court provide protection for a victim  
24 or a witness, or both, or for immediate family members of a victim  
25 or a witness who reside in the same household as the victim or  
26 witness or within reasonable proximity of the victim’s or witness’  
27 household, as determined by the court. The order shall not be made  
28 without the consent of the law enforcement agency except for  
29 limited and specified periods of time and upon an express finding  
30 by the court of a clear and present danger of harm to the victim or  
31 witness or immediate family members of the victim or witness.  
32 (B) For purposes of this paragraph, “immediate family  
33 members” include the spouse, children, or parents of the victim  
34 or witness.

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

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

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

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

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

29 (C) An order issued, modified, extended, or terminated by a  
30 court pursuant to this paragraph shall be issued on forms adopted  
31 by the Judicial Council of California and that have been approved  
32 by the Department of Justice pursuant to subdivision (i) of Section  
33 6380 of the Family Code. However, the fact that an order issued  
34 by a court pursuant to this section was not issued on forms adopted  
35 by the Judicial Council and approved by the Department of Justice  
36 shall not, in and of itself, make the order unenforceable.

37 (D) A protective order issued under this paragraph may require  
38 the defendant to be placed on electronic monitoring if the local  
39 government, with the concurrence of the county sheriff or the chief  
40 probation officer with jurisdiction, adopts a policy to authorize

1 electronic monitoring of defendants and specifies the agency with  
2 jurisdiction for this purpose. If the court determines that the  
3 defendant has the ability to pay for the monitoring program, the  
4 court shall order the defendant to pay for the monitoring. If the  
5 court determines that the defendant does not have the ability to  
6 pay for the electronic monitoring, the court may order electronic  
7 monitoring to be paid for by the local government that adopted  
8 the policy to authorize electronic monitoring. The duration of  
9 electronic monitoring shall not exceed one year from the date the  
10 order is issued. At no time shall the electronic monitoring be in  
11 place if the protective order is not in place.

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

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

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

31 (ii) The emergency protective order restrains the individual who  
32 is the restrained person in the other restraining or protective order  
33 specified in subparagraph (A).

34 (iii) The provisions of the emergency protective order are more  
35 restrictive in relation to the restrained person than are the provisions  
36 of the other restraining or protective order specified in  
37 subparagraph (A).

38 (B) An emergency protective order that meets the requirements  
39 of paragraph (1) shall have precedence in enforcement over the  
40 provisions of any other restraining or protective order only with

1 respect to those provisions of the emergency protective order that  
2 are more restrictive in relation to the restrained person.

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

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

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

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

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

24 (2) In those cases in which a complaint, information, or  
25 indictment charging a crime of domestic violence, as defined in  
26 Section 13700, has been issued, except as described in subdivision  
27 (c), a restraining order or protective order against the defendant  
28 issued by the criminal court in that case has precedence in  
29 enforcement over a civil court order against the defendant.

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

1 2014, the Judicial Council shall modify the criminal and civil court  
2 forms 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 ensuring appropriate communication  
9 and information sharing between criminal, family, and juvenile  
10 courts concerning orders and cases that involve the same parties,  
11 and shall permit a family or juvenile court order to coexist with a  
12 criminal court protective order subject to the following conditions:

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

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

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

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

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

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

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

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

21 (k) *For purposes of this section, the term “harm” includes the*  
22 *harm to a minor resulting from his or her physical presence at,*  
23 *proximity to, or location near, an act of domestic violence.*

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.