

AMENDED IN ASSEMBLY MARCH 17, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1850**

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**Introduced by Assembly Member Waldron**  
*(Coauthor: Assembly Member Gonzalez)*

February 19, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1850, as amended, 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.~~ *provide that a minor who was not a victim of, but who was physically present during or located near, an act of domestic violence, is a witness and is deemed to have suffered harm.* 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 Section 1.5 of the Statutes Chapter 291 of the Statutes~~  
 3 of 2013, is amended to read:  
 4 136.2. (a) (1) Upon a good cause belief that harm to, or  
 5 intimidation or dissuasion of, a victim or witness has occurred or  
 6 is reasonably likely to occur, a court with jurisdiction over a  
 7 criminal matter may issue orders, including, but not limited to, the  
 8 following:  
 9 (1)  
 10 (A) An order issued pursuant to Section 6320 of the Family  
 11 Code.  
 12 (2)  
 13 (B) An order that a defendant shall not violate any provision of  
 14 Section 136.1.  
 15 (3)  
 16 (C) An order that a person before the court other than a  
 17 defendant, including, but not limited to, a subpoenaed witness or  
 18 other person entering the courtroom of the court, shall not violate  
 19 any provisions of Section 136.1.  
 20 (4)  
 21 (D) An order that a person described in this section shall have  
 22 no communication whatsoever with a specified witness or a victim,  
 23 except through an attorney under reasonable restrictions that the  
 24 court may impose.  
 25 (5)  
 26 (E) An order calling for a hearing to determine if an order as  
 27 described in paragraphs (1) to (4), subparagraphs (A) to (D),  
 28 inclusive, should be issued.  
 29 (6) (A) —

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

11 ~~(B)~~

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

14 ~~(7) (A)~~

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

27 ~~(B) (i)~~

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

35 ~~(I)~~

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

39 ~~(II)~~

1 (ib) The defendant shall relinquish any firearms that he or she  
2 owns or possesses pursuant to Section 527.9 of the Code of Civil  
3 Procedure.

4 (ii)

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

8 (C)

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

18 (D)

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

34 (2) *For purposes of this subdivision, a minor who was not a*  
35 *victim of, but who was physically present during or located near,*  
36 *an act of domestic violence, is a witness and is deemed to have*  
37 *suffered harm within the meaning of paragraph (1).*

38 (b) A person violating an order made pursuant to ~~paragraphs~~  
39 ~~(1) to (7)~~, *subparagraphs (A) to (G), inclusive, of paragraph (1)*  
40 *of subdivision (a) may be punished for any substantive offense*

1 described in Section 136.1, or for a contempt of the court making  
2 the order. A finding of contempt shall not be a bar to prosecution  
3 for a violation of Section 136.1. However, a person so held in  
4 contempt shall be entitled to credit for punishment imposed therein  
5 against a sentence imposed upon conviction of an offense described  
6 in Section 136.1. A conviction or acquittal for a substantive offense  
7 under Section 136.1 shall be a bar to a subsequent punishment for  
8 contempt arising out of the same act.

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

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

18 (ii) The emergency protective order restrains the individual who  
19 is the restrained person in the other restraining or protective order  
20 specified in ~~subparagraph (A)~~: *clause (i)*.

21 (iii) The provisions of the emergency protective order are more  
22 restrictive in relation to the restrained person than are the provisions  
23 of the other restraining or protective order specified in  
24 ~~subparagraph (A)~~: *clause (i)*.

25 (B) An emergency protective order that meets the requirements  
26 of ~~paragraph (1)~~ *subparagraph (A)* shall have precedence in  
27 enforcement over the provisions of any other restraining or  
28 protective order only with respect to those provisions of the  
29 emergency protective order that are more restrictive in relation to  
30 the restrained person.

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

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

38 (2) The court shall order a person subject to a protective order  
39 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) A person who owns, possesses, purchases or receives, or  
4 attempts to purchase or receive a firearm while the protective order  
5 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, except as described in subdivision  
16 (c), a restraining order or protective order against the defendant  
17 issued by the criminal court in that case has precedence in  
18 enforcement over a civil court order against the defendant.

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

31 (f) On or before January 1, 2003, the Judicial Council shall  
32 promulgate a protocol, for adoption by each local court in  
33 substantially similar terms, to provide for the timely coordination  
34 of all orders against the same defendant and in favor of the same  
35 named victim or victims. The protocol shall include, but shall not  
36 be limited to, mechanisms for ensuring appropriate communication  
37 and information sharing between criminal, family, and juvenile  
38 courts concerning orders and cases that involve the same parties,  
39 and shall permit a family or juvenile court order to coexist with a  
40 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) In any case in which a complaint, information, or indictment  
14 charging a crime of domestic violence, as defined in Section 13700,  
15 has been filed, the court may consider, in determining whether  
16 good cause exists to issue an order under *subparagraph (A) of*  
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 (i) (1) In all cases in which a criminal defendant has been  
21 convicted of a crime of domestic violence as defined in Section  
22 13700, a violation of Section 261, 261.5, or 262, or any crime that  
23 requires the defendant to register pursuant to subdivision (c) of  
24 Section 290, the court, at the time of sentencing, shall consider  
25 issuing an order restraining the defendant from any contact with  
26 the victim. The order may be valid for up to 10 years, as determined  
27 by the court. This protective order may be issued by the court  
28 regardless of whether the defendant is sentenced to the state prison  
29 or a county jail, or whether imposition of sentence is suspended  
30 and the defendant is placed on probation. It is the intent of the  
31 Legislature in enacting this subdivision that the duration of any  
32 restraining order issued by the court be based upon the seriousness  
33 of the facts before the court, the probability of future violations,  
34 and the safety of the victim and his or her immediate family.

35 (2) An order under this subdivision may include provisions for  
36 electronic monitoring if the local government, upon receiving the  
37 concurrence of the county sheriff or the chief probation officer  
38 with jurisdiction, adopts a policy authorizing electronic monitoring  
39 of defendants and specifies the agency with jurisdiction for this  
40 purpose. If the court determines that the defendant has the ability

1 to pay for the monitoring program, the court shall order the  
2 defendant to pay for the monitoring. If the court determines that  
3 the defendant does not have the ability to pay for the electronic  
4 monitoring, the court may order the electronic monitoring to be  
5 paid for by the local government that adopted the policy authorizing  
6 electronic monitoring. The duration of the electronic monitoring  
7 shall not exceed one year from the date the order is issued.

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

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

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