

Introduced by Senator Pavley

January 23, 2014

An act to amend Section 136.2 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 910, as amended, Pavley. Domestic violence: restraining orders.

Existing law authorizes a court to issue specified protective orders upon a good cause belief that harm to, or intimidation or dissuasion of, a victim has occurred or is reasonably likely to occur. Existing law requires the court to consider issuing those protective orders in cases in which the defendant is charged with a crime of domestic violence. Existing law provides that in determining whether good cause exists to issue those orders in domestic ~~violence~~ *violence* cases, the court may consider the underlying nature of the offense charged and information provided to the court pursuant to a criminal history search, as specified. Existing law also requires the court, in cases in which the defendant was convicted of a crime of domestic violence, to consider issuing an order restraining the defendant from any contact with the victim for a period of up to 10 years. For the purposes of these provisions, domestic violence includes abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. The violation of a restraining order issued pursuant to these provisions is a crime.

This bill would, for the purposes of these provisions, expand the definition of domestic violence to include abuse perpetrated against a

child of a party to the domestic violence proceedings or a child who is the subject of an action under the Uniform Parentage Act, as specified, or against any other person related to the defendant by consanguinity or affinity within the 2nd degree. 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

1 witness or within reasonable proximity of the victim’s or witness’
2 household, as determined by the court. The order shall not be made
3 without the consent of the law enforcement agency except for
4 limited and specified periods of time and upon an express finding
5 by the court of a clear and present danger of harm to the victim or
6 witness or immediate family members of the victim or witness.

7 (B) For purposes of this paragraph, “immediate family
8 members” include the spouse, children, or parents of the victim
9 or witness.

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

21 (B) (i) If a court does not issue an order pursuant to
22 subparagraph (A) in a case in which the defendant is charged with
23 a crime ~~of~~ *involving* domestic violence as defined in Section 13700
24 or in Section 6211 of the Family Code, the court on its own motion
25 shall consider issuing a protective order upon a good cause belief
26 that harm to, or intimidation or dissuasion of, a victim or witness
27 has occurred or is reasonably likely to occur, that provides as
28 follows:

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

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

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

38 (C) An order issued, modified, extended, or terminated by a
39 court pursuant to this paragraph shall be issued on forms adopted
40 by the Judicial Council of California and that have been approved

1 by the Department of Justice pursuant to subdivision (i) of Section
2 6380 of the Family Code. However, the fact that an order issued
3 by a court pursuant to this section was not issued on forms adopted
4 by the Judicial Council and approved by the Department of Justice
5 shall not, in and of itself, make the order unenforceable.

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

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

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

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

1 (ii) The emergency protective order restrains the individual who
2 is the restrained person in the other restraining or protective order
3 specified in subparagraph (A).

4 (iii) The provisions of the emergency protective order are more
5 restrictive in relation to the restrained person than are the provisions
6 of the other restraining or protective order specified in
7 subparagraph (A).

8 (B) An emergency protective order that meets the requirements
9 of paragraph (1) shall have precedence in enforcement over the
10 provisions of any other restraining or protective order only with
11 respect to those provisions of the emergency protective order that
12 are more restrictive in relation to the restrained person.

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

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

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

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

27 (e) (1) In all cases where the defendant is charged with a crime
28 of *involving* domestic violence, as defined in Section 13700 or in
29 Section 6211 of the Family Code, the court shall consider issuing
30 the above-described orders on its own motion. All interested parties
31 shall receive a copy of those orders. In order to facilitate this, the
32 court's records of all criminal cases involving domestic violence
33 shall be marked to clearly alert the court to this issue.

34 (2) In those cases in which a complaint, information, or
35 indictment charging a crime of *involving* domestic violence, as
36 defined in Section 13700 or in Section 6211 of the Family Code,
37 has been issued, except as described in subdivision (c), a restraining
38 order or protective order against the defendant issued by the
39 criminal court in that case has precedence in enforcement over a
40 civil court order against the defendant.

1 (3) Custody and visitation with respect to the defendant and his
2 or her minor children may be ordered by a family or juvenile court
3 consistent with the protocol established pursuant to subdivision
4 (f), but if ordered after a criminal protective order has been issued
5 pursuant to this section, the custody and visitation order shall make
6 reference to, and, if there is not an emergency protective order that
7 has precedence in enforcement pursuant to paragraph (1) of
8 subdivision (c), or a no-contact order, as described in Section 6320
9 of the Family Code, acknowledge the precedence of enforcement
10 of, an appropriate criminal protective order. On or before July 1,
11 2014, the Judicial Council shall modify the criminal and civil court
12 forms consistent with this subdivision.

13 (f) On or before January 1, 2003, the Judicial Council shall
14 promulgate a protocol, for adoption by each local court in
15 substantially similar terms, to provide for the timely coordination
16 of all orders against the same defendant and in favor of the same
17 named victim or victims. The protocol shall include, but shall not
18 be limited to, mechanisms for ensuring appropriate communication
19 and information sharing between criminal, family, and juvenile
20 courts concerning orders and cases that involve the same parties,
21 and shall permit a family or juvenile court order to coexist with a
22 criminal court protective order subject to the following conditions:

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

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

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

35 (h) In any case in which a complaint, information, or indictment
36 charging a crime ~~of~~ *involving* domestic violence, as defined in
37 Section 13700 or in Section 6211 of the Family Code, has been
38 filed, the court may consider, in determining whether good cause
39 exists to issue an order under paragraph (1) of subdivision (a), the

1 underlying nature of the offense charged, and the information
2 provided to the court pursuant to Section 273.75.

3 (i) (1) In all cases in which a criminal defendant has been
4 convicted of a crime ~~of~~ *involving* domestic violence as defined in
5 Section 13700 or in Section 6211 of the Family Code, a violation
6 of Section 261, 261.5, or 262, or any crime that requires the
7 defendant to register pursuant to subdivision (c) of Section 290,
8 the court, at the time of sentencing, shall consider issuing an order
9 restraining the defendant from any contact with the victim. The
10 order may be valid for up to 10 years, as determined by the court.
11 This protective order may be issued by the court regardless of
12 whether the defendant is sentenced to the state prison or a county
13 jail, or whether imposition of sentence is suspended and the
14 defendant is placed on probation. It is the intent of the Legislature
15 in enacting this subdivision that the duration of any restraining
16 order issued by the court be based upon the seriousness of the facts
17 before the court, the probability of future violations, and the safety
18 of the victim and his or her immediate family.

19 (2) An order under this subdivision may include provisions for
20 electronic monitoring if the local government, upon receiving the
21 concurrence of the county sheriff or the chief probation officer
22 with jurisdiction, adopts a policy authorizing electronic monitoring
23 of defendants and specifies the agency with jurisdiction for this
24 purpose. If the court determines that the defendant has the ability
25 to pay for the monitoring program, the court shall order the
26 defendant to pay for the monitoring. If the court determines that
27 the defendant does not have the ability to pay for the electronic
28 monitoring, the court may order the electronic monitoring to be
29 paid for by the local government that adopted the policy authorizing
30 electronic monitoring. The duration of the electronic monitoring
31 shall not exceed one year from the date the order is issued.

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

34 SEC. 2. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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