

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 910

Introduced by Senator Pavley
(Coauthor: Senator Anderson)

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 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.

This bill would incorporate additional changes to Section 136.2 of the Penal Code, proposed by AB 1498 and AB 1850, that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2015, and this bill is chaptered last.

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) 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) An order issued pursuant to Section 6320 of the Family
10 Code.
11 (2) An order that a defendant shall not violate any provision of
12 Section 136.1.
13 (3) An order that a person before the court other than a
14 defendant, including, but not limited to, a subpoenaed witness or
15 other person entering the courtroom of the court, shall not violate
16 any provisions of Section 136.1.
17 (4) An order that a person described in this section shall have
18 no communication whatsoever with a specified witness or a victim,

1 except through an attorney under reasonable restrictions that the
2 court may impose.

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

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

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

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

29 (B) (i) If a court does not issue an order pursuant to
30 subparagraph (A) in a case in which the defendant is charged with
31 a crime involving domestic violence as defined in Section 13700
32 or in Section 6211 of the Family Code, the court on its own motion
33 shall consider issuing a protective order upon a good cause belief
34 that harm to, or intimidation or dissuasion of, a victim or witness
35 has occurred or is reasonably likely to occur, that provides as
36 follows:

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

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

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

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

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

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

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

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

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)~~. *clause (i)*.

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

23 (2) Except as described in paragraph (1), a no-contact order, as
24 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, *or* receive, or attempt to
29 purchase or ~~receive~~ *receive*, a firearm while the protective order
30 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~~ *purchases*, or
36 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
37 the protective order is in effect is punishable pursuant to Section
38 29825.

39 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
40 with a crime involving domestic violence, as defined in Section

1 13700 or in Section 6211 of the Family Code, the court shall
2 consider issuing the above-described orders on its own motion.
3 All interested parties shall receive a copy of those orders. In order
4 to facilitate this, the court's records of all criminal cases involving
5 domestic violence shall be marked to clearly alert the court to this
6 issue.

7 (2) In those cases in which a complaint, information, or
8 indictment charging a crime involving domestic violence, as
9 defined in Section 13700 or in Section 6211 of the Family Code,
10 has been issued, except as described in subdivision (c), a restraining
11 order or protective order against the defendant issued by the
12 criminal court in that case has precedence in enforcement over a
13 civil court order against the defendant.

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

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

36 (1) An order that permits contact between the restrained person
37 and his or her children shall provide for the safe exchange of the
38 children and shall not contain language either printed or
39 handwritten that violates a "no-contact order" issued by a criminal
40 court.

1 (2) Safety of all parties shall be the courts' paramount concern.
2 The family or juvenile court shall specify the time, day, place, and
3 manner of transfer of the child, as provided in Section 3100 of the
4 Family Code.

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

8 (h) In any case in which a complaint, information, or indictment
9 charging a crime involving domestic violence, as defined in Section
10 13700 or in Section 6211 of the Family Code, has been filed, the
11 court may consider, in determining whether good cause exists to
12 issue an order under paragraph (1) of subdivision (a), the
13 underlying nature of the offense charged, and the information
14 provided to the court pursuant to Section 273.75.

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

31 (2) An order under this subdivision may include provisions for
32 electronic monitoring if the local government, upon receiving the
33 concurrence of the county sheriff or the chief probation officer
34 with jurisdiction, adopts a policy authorizing electronic monitoring
35 of defendants and specifies the agency with jurisdiction for this
36 purpose. If the court determines that the defendant has the ability
37 to pay for the monitoring program, the court shall order the
38 defendant to pay for the monitoring. If the court determines that
39 the defendant does not have the ability to pay for the electronic
40 monitoring, the court may order the electronic monitoring to be

1 paid for by the local government that adopted the policy authorizing
2 electronic monitoring. The duration of the electronic monitoring
3 shall not exceed one year from the date the order is issued.

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

6 *SEC. 1.1. Section 136.2 of the Penal Code, as amended by*
7 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
8 *read:*

9 136.2. (a) Upon a good cause belief that harm to, or
10 intimidation or dissuasion of, a victim or witness has occurred or
11 is reasonably likely to occur, a court with jurisdiction over a
12 criminal matter may issue orders, including, but not limited to, the
13 following:

14 (1) An order issued pursuant to Section 6320 of the Family
15 Code.

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

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

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

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

28 (6) (A) An order that a particular law enforcement agency
29 within the jurisdiction of the court provide protection for a victim
30 or a witness, or both, or for immediate family members of a victim
31 or a witness who reside in the same household as the victim or
32 witness or within reasonable proximity of the victim’s or witness’
33 household, as determined by the court. The order shall not be made
34 without the consent of the law enforcement agency except for
35 limited and specified periods of time and upon an express finding
36 by the court of a clear and present danger of harm to the victim or
37 witness or immediate family members of the victim or witness.

38 (B) For purposes of this paragraph, “immediate family
39 members” include the spouse, children, or parents of the victim
40 or witness.

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

12 (B) (i) If a court does not issue an order pursuant to
13 subparagraph (A) in a case in which the defendant is charged with
14 a crime of *involving* domestic violence as defined in Section ~~13700;~~
15 *13700 or in Section 6211 of the Family Code*, the court on its own
16 motion shall consider issuing a protective order upon a good cause
17 belief that harm to, or intimidation or dissuasion of, a victim or
18 witness has occurred or is reasonably likely to occur, that provides
19 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): clause (i)~~.

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): clause (i)~~.

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

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

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

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

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

16 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
17 receives, or attempts to purchase ~~or receive~~ *receive*, a firearm while
18 the protective order is in effect is punishable pursuant to Section
19 29825.

20 (e) (1) In all cases ~~where in which~~ the defendant is charged
21 with a crime ~~of involving~~ domestic violence, as defined in Section
22 ~~43700, 13700 or in Section 6211 of the Family Code, or a violation~~
23 *of Section 261, 261.5, or 262, or any crime that requires the*
24 *defendant to register pursuant to subdivision (c) of Section 290,*
25 the court shall consider issuing the above-described orders on its
26 own motion. All interested parties shall receive a copy of those
27 orders. In order to facilitate this, the court's records of all criminal
28 cases involving domestic violence *or a violation of Section 261,*
29 *261.5, or 262, or any crime that requires the defendant to register*
30 *pursuant to subdivision (c) of Section 290,* shall be marked to
31 clearly alert the court to this issue.

32 (2) In those cases in which a complaint, information, or
33 indictment charging a crime ~~of involving~~ domestic violence, as
34 defined in Section ~~43700, 13700 or in Section 6211 of the Family~~
35 *Code, or a violation of Section 261, 261.5, or 262, or any crime*
36 *that requires the defendant to register pursuant to subdivision (c)*
37 *of Section 290,* has been issued, except as described in subdivision
38 (c), a restraining order or protective order against the defendant
39 issued by the criminal court in that case has precedence in
40 enforcement over a 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) (1) In any case in which a complaint, information, or
36 indictment charging a crime ~~of involving~~ domestic violence, as
37 defined in Section ~~13700, 13700 or in Section 6211 of the Family~~
38 Code, has been filed, the court may consider, in determining
39 whether good cause exists to issue an order under paragraph (1)
40 of subdivision (a), the underlying nature of the offense charged,

1 and the information provided to the court pursuant to Section
2 273.75.

3 (2) *In any case in which a complaint, information, or indictment*
4 *charging a violation of Section 261, 261.5, or 262, or any crime*
5 *that requires the defendant to register pursuant to subdivision (c)*
6 *of Section 290, has been filed, the court may consider, in*
7 *determining whether good cause exists to issue an order under*
8 *paragraph (1) of subdivision (a), the underlying nature of the*
9 *offense charged, the defendant's relationship to the victim, the*
10 *likelihood of continuing harm to the victim, any current restraining*
11 *order or protective order issued by any civil or criminal court*
12 *involving the defendant, and the defendant's criminal history,*
13 *including, but not limited to, prior convictions for a violation of*
14 *Section 261, 261.5, or 262, or any crime that requires the defendant*
15 *to register pursuant to subdivision (c) of Section 290, or any other*
16 *forms of violence, or any weapons offenses.*

17 (i) (1) In all cases in which a criminal defendant has been
18 convicted of a crime ~~of~~ involving domestic violence as defined in
19 ~~Section 13700, 13700~~ or in Section 6211 of the Family Code, a
20 violation of Section 261, 261.5, or 262, or any crime that requires
21 the defendant to register pursuant to subdivision (c) of Section
22 290, the court, at the time of sentencing, shall consider issuing an
23 order restraining the defendant from any contact with the victim.
24 The order may be valid for up to 10 years, as determined by the
25 court. This protective order may be issued by the court regardless
26 of whether the defendant is sentenced to the state prison or a county
27 jail, or whether imposition of sentence is suspended and the
28 defendant is placed on probation. It is the intent of the Legislature
29 in enacting this subdivision that the duration of any restraining
30 order issued by the court be based upon the seriousness of the facts
31 before the court, the probability of future violations, and the safety
32 of the victim and his or her immediate family.

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

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

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

8 *SEC. 1.2. Section 136.2 of the Penal Code, as amended by*
9 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
10 *read:*

11 136.2. (a) (1) Upon a good cause belief that harm to, or
12 intimidation or dissuasion of, a victim or witness has occurred or
13 is reasonably likely to occur, a court with jurisdiction over a
14 criminal matter may issue orders, including, but not limited to, the
15 following:

16 ~~(1)~~

17 (A) An order issued pursuant to Section 6320 of the Family
18 Code.

19 ~~(2)~~

20 (B) An order that a defendant shall not violate any provision of
21 Section 136.1.

22 ~~(3)~~

23 (C) An order that a person before the court other than a
24 defendant, including, but not limited to, a subpoenaed witness or
25 other person entering the courtroom of the court, shall not violate
26 any provisions of Section 136.1.

27 ~~(4)~~

28 (D) An order that a person described in this section shall have
29 no communication whatsoever with a specified witness or a victim,
30 except through an attorney under reasonable restrictions that the
31 court may impose.

32 ~~(5)~~

33 (E) An order calling for a hearing to determine if an order as
34 described in ~~paragraphs (1) to (4)~~, *subparagraphs (A) to (D)*,
35 inclusive, should be issued.

36 ~~(6) (A)~~

37 (F) (i) An order that a particular law enforcement agency within
38 the jurisdiction of the court provide protection for a victim or a
39 witness, or both, or for immediate family members of a victim or
40 a witness who reside in the same household as the victim or witness

1 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)~~

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

10 ~~(7)(A)~~

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

23 ~~(B)(i)~~

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

32 ~~(F)~~

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

36 ~~(H)~~

37 (ib) 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.

40 (ii)

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)~~

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

14 ~~(D)~~

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

30 (2) *For purposes of this subdivision, a minor who was not a*
 31 *victim of, but who was physically present at the time of, an act of*
 32 *domestic violence, is a witness and is deemed to have suffered*
 33 *harm within the meaning of paragraph (1).*

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

1 against a sentence imposed upon conviction of an offense described
2 in Section 136.1. A conviction or acquittal for a substantive offense
3 under Section 136.1 shall be a bar to a subsequent punishment for
4 contempt arising out of the same act.

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

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

14 (ii) The emergency protective order restrains the individual who
15 is the restrained person in the other restraining or protective order
16 specified in ~~subparagraph (A): clause (i)~~.

17 (iii) The provisions of the emergency protective order are more
18 restrictive in relation to the restrained person than are the provisions
19 of the other restraining or protective order specified in
20 ~~subparagraph (A): clause (i)~~.

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

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

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

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

39 (3) A person who owns, possesses, ~~purchases~~ *purchases*, or
40 receives, or attempts to purchase ~~or receive~~ *receive*, a firearm while

1 the protective order is in effect is punishable pursuant to Section
2 29825.

3 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
4 with a crime ~~of involving~~ domestic violence, as defined in Section
5 ~~13700, 13700 or in Section 6211 of the Family Code~~, the court
6 shall consider issuing the above-described orders on its own
7 motion. All interested parties shall receive a copy of those orders.
8 In order to facilitate this, the court's records of all criminal cases
9 involving domestic violence shall be marked to clearly alert the
10 court to this issue.

11 (2) In those cases in which a complaint, information, or
12 indictment charging a crime ~~of involving~~ domestic violence, as
13 defined in Section ~~13700, 13700 or in Section 6211 of the Family~~
14 *Code*, has been issued, except as described in subdivision (c), a
15 restraining order or protective order against the defendant issued
16 by the criminal court in that case has precedence in enforcement
17 over a civil court order against the 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) In any case in which a complaint, information, or indictment
14 charging a crime ~~of~~ *involving* domestic violence, as defined in
15 ~~Section 13700, 13700 or in Section 6211 of the Family Code,~~ has
16 been filed, the court may consider, in determining whether good
17 cause exists to issue an order under *subparagraph (A) of* paragraph
18 (1) of subdivision (a), the underlying nature of the offense charged,
19 and the information provided to the court pursuant to Section
20 273.75.

21 (i) (1) In all cases in which a criminal defendant has been
22 convicted of a crime ~~of~~ *involving* domestic violence as defined in
23 ~~Section 13700, 13700 or in Section 6211 of the Family Code,~~ a
24 violation of Section 261, 261.5, or 262, or any crime that requires
25 the defendant to register pursuant to subdivision (c) of Section
26 290, the court, at the time of sentencing, shall consider issuing an
27 order restraining the defendant from any contact with the victim.
28 The order may be valid for up to 10 years, as determined by the
29 court. This protective order may be issued by the court regardless
30 of whether the defendant is sentenced to the state prison or a county
31 jail, or whether imposition of sentence is suspended and the
32 defendant is placed on probation. It is the intent of the Legislature
33 in enacting this subdivision that the duration of any restraining
34 order issued by the court be based upon the seriousness of the facts
35 before the court, the probability of future violations, and the safety
36 of the victim and his or her immediate family.

37 (2) An order under this subdivision may include provisions for
38 electronic monitoring if the local government, upon receiving the
39 concurrence of the county sheriff or the chief probation officer
40 with jurisdiction, adopts a policy authorizing electronic monitoring

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

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

12 *SEC. 1.3. Section 136.2 of the Penal Code, as amended by*
 13 *Section 1.5 of Chapter 291 of the Statutes of 2013, is amended to*
 14 *read:*

15 136.2. (a) (1) Upon a good cause belief that harm to, or
 16 intimidation or dissuasion of, a victim or witness has occurred or
 17 is reasonably likely to occur, a court with jurisdiction over a
 18 criminal matter may issue orders, including, but not limited to, the
 19 following:

20 ~~(1)~~

21 (A) An order issued pursuant to Section 6320 of the Family
 22 Code.

23 ~~(2)~~

24 (B) An order that a defendant shall not violate any provision of
 25 Section 136.1.

26 ~~(3)~~

27 (C) An order that a person before the court other than a
 28 defendant, including, but not limited to, a subpoenaed witness or
 29 other person entering the courtroom of the court, shall not violate
 30 any provisions of Section 136.1.

31 ~~(4)~~

32 (D) An order that a person described in this section shall have
 33 no communication whatsoever with a specified witness or a victim,
 34 except through an attorney under reasonable restrictions that the
 35 court may impose.

36 ~~(5)~~

37 (E) An order calling for a hearing to determine if an order as
 38 described in ~~paragraphs (1) to (4)~~, *subparagraphs (A) to (D)*,
 39 inclusive, should be issued.

40 ~~(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 ~~victims~~ *a victim or witness* of violent
16 crime from all contact by the defendant, or contact, with the intent
17 to 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~~ *involving* domestic violence as defined in
31 ~~Section 13700, 13700 or in Section 6211 of the Family Code~~, the
32 court on its own motion shall consider issuing a protective order
33 upon a good cause belief that harm to, or intimidation or dissuasion
34 of, a victim or witness has occurred or is reasonably likely to occur,
35 that provides as follows:

36 ~~(H)~~

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

40 ~~(H)~~

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 at the time of, an act of*
36 *domestic violence, is a witness and is deemed to have suffered*
37 *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, *or* receive, or attempt to
37 purchase or ~~receive~~ *receive*, a firearm while the protective order
38 is in effect.

39 (2) The court shall order a person subject to a protective order
40 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~~ *purchases*, or
4 receives, or attempts to purchase or ~~receive~~ *receive*, a firearm while
5 the protective order is in effect is punishable pursuant to Section
6 29825.

7 (e) (1) In all cases ~~where~~ *in which* the defendant is charged
8 with a crime ~~of involving~~ domestic violence, as defined in Section
9 ~~43700, 13700~~ *13700 or in Section 6211 of the Family Code, or a violation*
10 *of Section 261, 261.5, or 262, or any crime that requires the*
11 *defendant to register pursuant to subdivision (c) of Section 290,*
12 the court shall consider issuing the above-described orders on its
13 own motion. All interested parties shall receive a copy of those
14 orders. In order to facilitate this, the court's records of all criminal
15 cases involving domestic violence *or a violation of Section 261,*
16 *261.5, or 262, or any crime that requires the defendant to register*
17 *pursuant to subdivision (c) of Section 290,* shall be marked to
18 clearly alert the court to this issue.

19 (2) In those cases in which a complaint, information, or
20 indictment charging a crime ~~of involving~~ domestic violence, as
21 defined in Section ~~43700, 13700~~ *13700 or in Section 6211 of the Family*
22 *Code, or a violation of Section 261, 261.5, or 262, or any crime*
23 *that requires the defendant to register pursuant to subdivision (c)*
24 *of Section 290,* has been issued, except as described in subdivision
25 (c), a restraining order or protective order against the defendant
26 issued by the criminal court in that case has precedence in
27 enforcement over a civil court order against the defendant.

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

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

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

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

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

23 (h) (1) In any case in which a complaint, information, or
24 indictment charging a crime ~~of involving~~ domestic violence, as
25 defined in Section ~~13700, 13700 or in Section 6211~~ of the Family
26 Code, has been filed, the court may consider, in determining
27 whether good cause exists to issue an order under *subparagraph*
28 (A) of paragraph (1) of subdivision (a), the underlying nature of
29 the offense charged, and the information provided to the court
30 pursuant to Section 273.75.

31 (2) *In any case in which a complaint, information, or indictment*
32 *charging a violation of Section 261, 261.5, or 262, or any crime*
33 *that requires the defendant to register pursuant to subdivision (c)*
34 *of Section 290, has been filed, the court may consider, in*
35 *determining whether good cause exists to issue an order under*
36 *paragraph (1) of subdivision (a), the underlying nature of the*
37 *offense charged, the defendant’s relationship to the victim, the*
38 *likelihood of continuing harm to the victim, any current restraining*
39 *order or protective order issued by any civil or criminal court*
40 *involving the defendant, and the defendant’s criminal history,*

1 *including, but not limited to, prior convictions for a violation of*
2 *Section 261, 261.5, or 262, or any crime that requires the defendant*
3 *to register pursuant to subdivision (c) of Section 290, or any other*
4 *forms of violence, or any weapons offenses.*

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

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

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

36 *SEC. 2. (a) Section 1.1 of this bill incorporates amendments*
37 *to Section 136.2 of the Penal Code proposed by both this bill and*
38 *Assembly Bill 1498. It shall only become operative if (1) both bills*
39 *are enacted and become effective on or before January 1, 2015,*
40 *(2) each bill amends Section 136.2 of the Penal Code, and (3)*

1 *Assembly Bill 1850 is not enacted or as enacted does not amend*
2 *that section, and (4) this bill is enacted after Assembly Bill 1498,*
3 *in which case Sections 1, 1.2, and 1.3 of this bill shall not become*
4 *operative.*

5 *(b) Section 1.2 of this bill incorporates amendments to Section*
6 *136.2 of the Penal Code proposed by both this bill and Assembly*
7 *Bill 1850. It shall only become operative if (1) both bills are*
8 *enacted and become effective on or before January 1, 2015, (2)*
9 *each bill amends Section 136.2 of the Penal Code, (3) Assembly*
10 *Bill 1498 is not enacted or as enacted does not amend that section,*
11 *and (4) this bill is enacted after Assembly Bill 1850 in which case*
12 *Sections 1, 1.1, and 1.3 of this bill shall not become operative.*

13 *(c) Section 1.3 of this bill incorporates amendments to Section*
14 *136.2 of the Penal Code proposed by this bill, Assembly Bill 1498,*
15 *and Assembly Bill 1850. It shall only become operative if (1) all*
16 *three bills are enacted and become effective on or before January*
17 *1, 2015, (2) all three bills amend Section 136.2 of the Penal Code,*
18 *and (3) this bill is enacted after Assembly Bill 1498 and Assembly*
19 *Bill 1850, in which case Sections 1, 1.1, and 1.2 of this bill shall*
20 *not become operative.*

21 ~~SEC. 2.~~

22 *SEC. 3.* No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.