

Introduced by Senator Pavley

February 23, 2015

An act to amend Sections 136.2, 273.5, and 646.9 of the Penal Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 307, as introduced, Pavley. Restraining orders.

Existing law requires in all cases in which a criminal defendant is convicted of specified crimes, including any crime for which the defendant must register as a sex offender, the court to consider issuing an order, valid for up to 10 years, restraining the defendant from any contact with the victim. Existing law authorizes the order to be issued by the court regardless of whether the defendant is sentenced to state prison or a county jail, or whether the imposition of sentence is suspended and the defendant is placed on probation.

This bill would additionally authorize the order to be issued by the court regardless of whether the imposition of sentence is suspended and the defendant is placed on mandatory supervision.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 136.2 of the Penal Code is amended to
- 2 read:
- 3 136.2. (a) (1) 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

1 criminal matter may issue orders, including, but not limited to, the
2 following:

3 (A) An order issued pursuant to Section 6320 of the Family
4 Code.

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

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

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

15 (E) An order calling for a hearing to determine if an order as
16 described in subparagraphs (A) to (D), inclusive, should be issued.

17 (F) (i) An order that a particular law enforcement agency within
18 the jurisdiction of the court provide protection for a victim or a
19 witness, or both, or for immediate family members of a victim or
20 a witness who reside in the same household as the victim or witness
21 or within reasonable proximity of the victim's or witness'
22 household, as determined by the court. The order shall not be made
23 without the consent of the law enforcement agency except for
24 limited and specified periods of time and upon an express finding
25 by the court of a clear and present danger of harm to the victim or
26 witness or immediate family members of the victim or witness.

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

29 (G) (i) An order protecting a victim or witness of violent crime
30 from all contact by the defendant, or contact, with the intent to
31 annoy, harass, threaten, or commit acts of violence, by the
32 defendant. The court or its designee shall transmit orders made
33 under this paragraph to law enforcement personnel within one
34 business day of the issuance, modification, extension, or
35 termination of the order, pursuant to subdivision (a) of Section
36 6380 of the Family Code. It is the responsibility of the court to
37 transmit the modification, extension, or termination orders made
38 under this paragraph to the same agency that entered the original
39 protective order into the Domestic Violence Restraining Order
40 System.

1 (ii) (I) If a court does not issue an order pursuant to clause (i)
2 in a case in which the defendant is charged with a crime involving
3 domestic violence as defined in Section 13700 or in Section 6211
4 of the Family Code, the court on its own motion shall consider
5 issuing a protective order upon a good cause belief that harm to,
6 or intimidation or dissuasion of, a victim or witness has occurred
7 or is reasonably likely to occur, that provides as follows:

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

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

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

17 (iii) An order issued, modified, extended, or terminated by a
18 court pursuant to this subparagraph shall be issued on forms
19 adopted by the Judicial Council of California and that have been
20 approved by the Department of Justice pursuant to subdivision (i)
21 of Section 6380 of the Family Code. However, the fact that an
22 order issued by a court pursuant to this section was not issued on
23 forms adopted by the Judicial Council and approved by the
24 Department of Justice shall not, in and of itself, make the order
25 unenforceable.

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

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

5 (b) A person violating an order made pursuant to subparagraphs
6 (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be
7 punished for any substantive offense described in Section 136.1,
8 or for a contempt of the court making the order. A finding of
9 contempt shall not be a bar to prosecution for a violation of Section
10 136.1. However, a person so held in contempt shall be entitled to
11 credit for punishment imposed therein against a sentence imposed
12 upon conviction of an offense described in Section 136.1. A
13 conviction or acquittal for a substantive offense under Section
14 136.1 shall be a bar to a subsequent punishment for contempt
15 arising out of the same act.

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

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

25 (ii) The emergency protective order restrains the individual who
26 is the restrained person in the other restraining or protective order
27 specified in clause (i).

28 (iii) The provisions of the emergency protective order are more
29 restrictive in relation to the restrained person than are the provisions
30 of the other restraining or protective order specified in clause (i).

31 (B) An emergency protective order that meets the requirements
32 of subparagraph (A) shall have precedence in enforcement over
33 the provisions of any other restraining or protective order only
34 with respect to those provisions of the emergency protective order
35 that are more restrictive in relation to the restrained person.

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

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

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

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

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

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

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

1 of, an appropriate criminal protective order. On or before July 1,
2 2014, the Judicial Council shall modify the criminal and civil court
3 forms consistent with this subdivision.

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

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

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

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

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

34 (2) In any case in which a complaint, information, or indictment
35 charging 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 filed, the court may consider, in
38 determining whether good cause exists to issue an order under
39 paragraph (1) of subdivision (a), the underlying nature of the
40 offense charged, the defendant’s relationship to the victim, the

1 likelihood of continuing harm to the victim, any current restraining
2 order or protective order issued by any civil or criminal court
3 involving the defendant, and the defendant’s criminal history,
4 including, but not limited to, prior convictions for a violation of
5 Section 261, 261.5, or 262, or any crime that requires the defendant
6 to register pursuant to subdivision (c) of Section 290, or any other
7 forms of violence, or any weapons offenses.

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

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

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

40 SEC. 2. Section 273.5 of the Penal Code is amended to read:

1 273.5. (a) Any person who willfully inflicts corporal injury
2 resulting in a traumatic condition upon a victim described in
3 subdivision (b) is guilty of a felony, and upon conviction thereof
4 shall be punished by imprisonment in the state prison for two,
5 three, or four years, or in a county jail for not more than one year,
6 or by a fine of up to six thousand dollars (\$6,000), or by both that
7 fine and imprisonment.

8 (b) Subdivision (a) shall apply if the victim is or was one or
9 more of the following:

10 (1) The offender's spouse or former spouse.

11 (2) The offender's cohabitant or former cohabitant.

12 (3) The offender's fiancé or fiancée, or someone with whom
13 the offender has, or previously had, an engagement or dating
14 relationship, as defined in paragraph (10) of subdivision (f) of
15 Section 243.

16 (4) The mother or father of the offender's child.

17 (c) Holding oneself out to be the husband or wife of the person
18 with whom one is cohabiting is not necessary to constitute
19 cohabitation as the term is used in this section.

20 (d) As used in this section, "traumatic condition" means a
21 condition of the body, such as a wound, or external or internal
22 injury, including, but not limited to, injury as a result of
23 strangulation or suffocation, whether of a minor or serious nature,
24 caused by a physical force. For purposes of this section,
25 "strangulation" and "suffocation" include impeding the normal
26 breathing or circulation of the blood of a person by applying
27 pressure on the throat or neck.

28 (e) For the purpose of this section, a person shall be considered
29 the father or mother of another person's child if the alleged male
30 parent is presumed the natural father under Sections 7611 and 7612
31 of the Family Code.

32 (f) (1) Any person convicted of violating this section for acts
33 occurring within seven years of a previous conviction under
34 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
35 244, 244.5, or 245, shall be punished by imprisonment in a county
36 jail for not more than one year, or by imprisonment in the state
37 prison for two, four, or five years, or by both imprisonment and a
38 fine of up to ten thousand dollars (\$10,000).

39 (2) Any person convicted of a violation of this section for acts
40 occurring within seven years of a previous conviction under

1 subdivision (e) of Section 243 shall be punished by imprisonment
2 in the state prison for two, three, or four years, or in a county jail
3 for not more than one year, or by a fine of up to ten thousand
4 dollars (\$10,000), or by both that imprisonment and fine.

5 (g) If probation is granted to any person convicted under
6 subdivision (a), the court shall impose probation consistent with
7 the provisions of Section 1203.097.

8 (h) If probation is granted, or the execution or imposition of a
9 sentence is suspended, for any defendant convicted under
10 subdivision (a) who has been convicted of any prior offense
11 specified in subdivision (f), the court shall impose one of the
12 following conditions of probation:

13 (1) If the defendant has suffered one prior conviction within the
14 previous seven years for a violation of any offense specified in
15 subdivision (f), it shall be a condition of probation, in addition to
16 the provisions contained in Section 1203.097, that he or she be
17 imprisoned in a county jail for not less than 15 days.

18 (2) If the defendant has suffered two or more prior convictions
19 within the previous seven years for a violation of any offense
20 specified in subdivision (f), it shall be a condition of probation, in
21 addition to the provisions contained in Section 1203.097, that he
22 or she be imprisoned in a county jail for not less than 60 days.

23 (3) The court, upon a showing of good cause, may find that the
24 mandatory imprisonment required by this subdivision shall not be
25 imposed and shall state on the record its reasons for finding good
26 cause.

27 (i) If probation is granted upon conviction of a violation of
28 subdivision (a), the conditions of probation may include, consistent
29 with the terms of probation imposed pursuant to Section 1203.097,
30 in lieu of a fine, one or both of the following requirements:

31 (1) That the defendant make payments to a battered women's
32 shelter, up to a maximum of five thousand dollars (\$5,000),
33 pursuant to Section 1203.097.

34 (2) (A) That the defendant reimburse the victim for reasonable
35 costs of counseling and other reasonable expenses that the court
36 finds are the direct result of the defendant's offense.

37 (B) For any order to pay a fine, make payments to a battered
38 women's shelter, or pay restitution as a condition of probation
39 under this subdivision, the court shall make a determination of the
40 defendant's ability to pay. An order to make payments to a battered

1 women's shelter shall not be made if it would impair the ability
2 of the defendant to pay direct restitution to the victim or
3 court-ordered child support. If the injury to a married person is
4 caused in whole or in part by the criminal acts of his or her spouse
5 in violation of this section, the community property may not be
6 used to discharge the liability of the offending spouse for restitution
7 to the injured spouse, required by Section 1203.04, as operative
8 on or before August 2, 1995, or Section 1202.4, or to a shelter for
9 costs with regard to the injured spouse and dependents, required
10 by this section, until all separate property of the offending spouse
11 is exhausted.

12 (j) Upon conviction under subdivision (a), the sentencing court
13 shall also consider issuing an order restraining the defendant from
14 any contact with the victim, which may be valid for up to 10 years,
15 as determined by the court. It is the intent of the Legislature that
16 the length of any restraining order be based upon the seriousness
17 of the facts before the court, the probability of future violations,
18 and the safety of the victim and his or her immediate family. This
19 protective order may be issued by the court whether the defendant
20 is sentenced to state prison or county jail, or if imposition of
21 sentence is suspended and the defendant is placed on ~~probation~~
22 *probation or mandatory supervision*.

23 (k) If a peace officer makes an arrest for a violation of this
24 section, the peace officer is not required to inform the victim of
25 his or her right to make a citizen's arrest pursuant to subdivision
26 (b) of Section 836.

27 SEC. 3. Section 646.9 of the Penal Code is amended to read:

28 646.9. (a) Any person who willfully, maliciously, and
29 repeatedly follows or willfully and maliciously harasses another
30 person and who makes a credible threat with the intent to place
31 that person in reasonable fear for his or her safety, or the safety of
32 his or her immediate family is guilty of the crime of stalking,
33 punishable by imprisonment in a county jail for not more than one
34 year, or by a fine of not more than one thousand dollars (\$1,000),
35 or by both that fine and imprisonment, or by imprisonment in the
36 state prison.

37 (b) Any person who violates subdivision (a) when there is a
38 temporary restraining order, injunction, or any other court order
39 in effect prohibiting the behavior described in subdivision (a)

1 against the same party, shall be punished by imprisonment in the
2 state prison for two, three, or four years.

3 (c) (1) Every person who, after having been convicted of a
4 felony under Section 273.5, 273.6, or 422, commits a violation of
5 subdivision (a) shall be punished by imprisonment in a county jail
6 for not more than one year, or by a fine of not more than one
7 thousand dollars (\$1,000), or by both that fine and imprisonment,
8 or by imprisonment in the state prison for two, three, or five years.

9 (2) Every person who, after having been convicted of a felony
10 under subdivision (a), commits a violation of this section shall be
11 punished by imprisonment in the state prison for two, three, or
12 five years.

13 (d) In addition to the penalties provided in this section, the
14 sentencing court may order a person convicted of a felony under
15 this section to register as a sex offender pursuant to Section
16 290.006.

17 (e) For the purposes of this section, “harasses” means engages
18 in a knowing and willful course of conduct directed at a specific
19 person that seriously alarms, annoys, torments, or terrorizes the
20 person, and that serves no legitimate purpose.

21 (f) For the purposes of this section, “course of conduct” means
22 two or more acts occurring over a period of time, however short,
23 evidencing a continuity of purpose. Constitutionally protected
24 activity is not included within the meaning of “course of conduct.”

25 (g) For the purposes of this section, “credible threat” means a
26 verbal or written threat, including that performed through the use
27 of an electronic communication device, or a threat implied by a
28 pattern of conduct or a combination of verbal, written, or
29 electronically communicated statements and conduct, made with
30 the intent to place the person that is the target of the threat in
31 reasonable fear for his or her safety or the safety of his or her
32 family, and made with the apparent ability to carry out the threat
33 so as to cause the person who is the target of the threat to
34 reasonably fear for his or her safety or the safety of his or her
35 family. It is not necessary to prove that the defendant had the intent
36 to actually carry out the threat. The present incarceration of a
37 person making the threat shall not be a bar to prosecution under
38 this section. Constitutionally protected activity is not included
39 within the meaning of “credible threat.”

1 (h) For purposes of this section, the term “electronic
2 communication device” includes, but is not limited to, telephones,
3 cellular phones, computers, video recorders, fax machines, or
4 pagers. “Electronic communication” has the same meaning as the
5 term defined in Subsection 12 of Section 2510 of Title 18 of the
6 United States Code.

7 (i) This section shall not apply to conduct that occurs during
8 labor picketing.

9 (j) If probation is granted, or the execution or imposition of a
10 sentence is suspended, for any person convicted under this section,
11 it shall be a condition of probation that the person participate in
12 counseling, as designated by the court. However, the court, upon
13 a showing of good cause, may find that the counseling requirement
14 shall not be imposed.

15 (k) (1) The sentencing court also shall consider issuing an order
16 restraining the defendant from any contact with the victim, that
17 may be valid for up to 10 years, as determined by the court. It is
18 the intent of the Legislature that the length of any restraining order
19 be based upon the seriousness of the facts before the court, the
20 probability of future violations, and the safety of the victim and
21 his or her immediate family.

22 (2) This protective order may be issued by the court whether
23 the defendant is sentenced to state prison, county jail, or if
24 imposition of sentence is suspended and the defendant is placed
25 ~~on probation.~~ *probation or mandatory supervision.*

26 (l) For purposes of this section, “immediate family” means any
27 spouse, parent, child, any person related by consanguinity or
28 affinity within the second degree, or any other person who regularly
29 resides in the household, or who, within the prior six months,
30 regularly resided in the household.

31 (m) The court shall consider whether the defendant would
32 benefit from treatment pursuant to Section 2684. If it is determined
33 to be appropriate, the court shall recommend that the Department
34 of Corrections and Rehabilitation make a certification as provided
35 in Section 2684. Upon the certification, the defendant shall be
36 evaluated and transferred to the appropriate hospital for treatment
37 pursuant to Section 2684.