

AMENDED IN SENATE SEPTEMBER 5, 1997

AMENDED IN SENATE JULY 22, 1997

AMENDED IN SENATE JUNE 26, 1997

AMENDED IN ASSEMBLY MARCH 17, 1997

AMENDED IN ASSEMBLY MARCH 3, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 45

Introduced by Assembly Member Murray

December 2, 1996

An act to amend Sections 136.2, ~~273.5~~, and 1269c of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 45, as amended, Murray. Domestic violence: punishment.

(1) Existing law requires a court to consider issuing various restraining orders on its own motion, in any case where the defendant is charged with a crime of domestic violence.

This bill would require the court to provide a copy of those orders to all interested parties. *By imposing new duties on court personnel, the bill would impose a state-mandated local program.*

~~(2) Existing law provides that any person who willfully inflicts upon his or her spouse, a person with whom he or she is cohabiting, or a person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition;~~

~~shall be punished by imprisonment in the state prison or in a county jail for a specified time, or by a specified fine, or by both that fine and imprisonment.~~

~~This bill would add a former spouse, or person with whom the defendant has cohabited, to the list of victims to which that provision would apply. Because the bill would expand the scope of an existing crime, the bill would impose a state-mandated local program.~~

~~(3) Existing law authorizes a magistrate or commissioner to set bail in an amount that he or she deems sufficient to assure that a defendant who has been arrested without a warrant for a bailable felony offense will appear in court.~~

~~This bill would additionally authorize a magistrate or commissioner to set bail in an amount that he or she deems sufficient to assure the protection of a victim, or family member of a victim, of domestic violence, for a person who has been arrested for the misdemeanor offense of violating a domestic violence restraining order.~~

~~(4)~~

~~(3) This bill would incorporate the additional changes in Section 136.2 of the Penal Code proposed by AB 340, to be operative if AB 340 and this bill are both enacted and become effective on or before January 1, 1998, and this bill is enacted last.~~

~~(5) 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.~~

~~(4) *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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*~~

~~*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by*~~



the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 is
2 amended to read:

3 136.2. Upon a good cause belief that harm to, or
4 intimidation or dissuasion of, a victim or witness has
5 occurred or is reasonably likely to occur, any court with
6 jurisdiction over a criminal matter may issue orders
7 including, but not limited to, the following:

8 (a) Any order issued pursuant to Section 6320 of the
9 Family Code.

10 (b) An order that a defendant shall not violate any
11 provision of Section 136.1.

12 (c) An order that a person before the court other than
13 a defendant, including, but not limited to, a subpoenaed
14 witness or other person entering the courtroom of the
15 court, shall not violate any provisions of Section 136.1.

16 (d) An order that any person described in this section
17 shall have no communication whatsoever with any
18 specified witness or any victim, except through an
19 attorney under any reasonable restrictions that the court
20 may impose.

21 (e) An order calling for a hearing to determine if an
22 order as described in subdivisions (a) to (d), inclusive,
23 should be issued.

24 (f) An order that a particular law enforcement agency
25 within the jurisdiction of the court provide protection for
26 a victim or a witness, or both, or for immediate family
27 members of a victim or a witness who reside in the same
28 household as the victim or witness or within reasonable
29 proximity of the victim's or witness's household, as
30 determined by the court. The order shall not be made
31 without the consent of the law enforcement agency
32 except for limited and specified periods of time and upon
33 an express finding by the court of a clear and present



1 danger of harm to the victim or witness or immediate
2 family members of the victim or witness.

3 For purposes of this subdivision, “immediate family
4 members” include the spouse, children, or parents of the
5 victim or witness.

6 (g) Any order protecting victims of violent crime from
7 contact, with the intent to annoy, harass, threaten, or
8 commit acts of violence, by the defendant.

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

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

29 (i) The Judicial Council shall adopt forms for orders
30 under this section.

31 SEC. 1.5. Section 136.2 of the Penal Code is amended
32 to read:

33 136.2. Upon a good cause belief that harm to, or
34 intimidation or dissuasion of, a victim or witness has
35 occurred or is reasonably likely to occur, any court with
36 jurisdiction over a criminal matter may issue orders
37 including, but not limited to, the following:

38 (a) Any order issued pursuant to Section 6320 of the
39 Family Code.



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

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

7 (d) An order that any person described in this section
8 shall have no communication whatsoever with any
9 specified witness or any victim, except through an
10 attorney under any reasonable restrictions that the court
11 may impose.

12 (e) An order calling for a hearing to determine if an
13 order as described in subdivisions (a) to (d), inclusive,
14 should be issued.

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

27 For purposes of this subdivision, "immediate family
28 members" include the spouse, children, or parents of the
29 victim or witness.

30 (g) Any order protecting victims of violent crime from
31 contact, with the intent to annoy, harass, threaten, or
32 commit acts of violence, by the defendant.

33 Any person violating any order made pursuant to
34 subdivisions (a) to (g), inclusive, may be punished for any
35 substantive offense described in Section 136.1, or for a
36 contempt of the court making the order. A finding of
37 contempt shall not be a bar to prosecution for a violation
38 of Section 136.1. However, any person so held in
39 contempt shall be entitled to credit for any punishment
40 imposed therein against any sentence imposed upon



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

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

13 (2) In those cases in which a complaint, information,
14 or indictment charging a crime of domestic violence, as
15 defined in Section 13700, has been issued, a restraining
16 order or protective order against the defendant issued by
17 the criminal court in that case has precedence over any
18 other outstanding court order against the defendant.

19 (i) The Judicial Council shall adopt forms for orders
20 under this section.

21 ~~SEC. 2. Section 273.5 of the Penal Code is amended to~~
22 ~~read:~~

23 ~~273.5. (a) Any person who willfully inflicts upon his~~
24 ~~or her spouse or former spouse, or any person who~~
25 ~~willfully inflicts upon any person with whom he or she is~~
26 ~~cohabiting or has cohabited, or any person who willfully~~
27 ~~inflicts upon any person who is the mother or father of his~~
28 ~~or her child, corporal injury resulting in a traumatic~~
29 ~~condition is guilty of a felony, and upon conviction~~
30 ~~thereof shall be punished by imprisonment in the state~~
31 ~~prison for two, three, or four years, or in a county jail for~~
32 ~~not more than one year, or by a fine of up to six thousand~~
33 ~~dollars (\$6,000), or by both that fine and punishment.~~

34 ~~(b) Holding oneself out to be the husband or wife of~~
35 ~~the person with whom one is cohabiting is not necessary~~
36 ~~to constitute cohabitation as the term is used in this~~
37 ~~section.~~

38 ~~(c) As used in this section, "traumatic condition"~~
39 ~~means a condition of the body, such as a wound or~~



1 external or internal injury, whether of a minor or serious
2 nature, caused by a physical force.

3 (d) For the purpose of this section, a person shall be
4 considered the father or mother of another person's child
5 if the alleged male parent is presumed the natural father
6 under Sections 7611 and 7612 of the Family Code.

7 (e) In any case in which a person is convicted of
8 violating this section and probation is granted, the court
9 shall require participation in a batterer's treatment
10 program as a condition of probation, as specified in
11 Section 1203.097.

12 (f) If probation is granted, or the execution or
13 imposition of a sentence is suspended, for any person
14 convicted under subdivision (a) who previously has been
15 convicted under subdivision (a) for an offense that
16 occurred within seven years of the offense of the second
17 conviction, it shall be a condition thereof that he or she
18 be imprisoned in a county jail for not less than 96 hours
19 and that he or she participate in, for no less than one year,
20 and successfully complete, a batterer's treatment
21 program, as designated by the court pursuant to Section
22 1203.097. However, the court, upon a showing of good
23 cause, may find that the mandatory minimum
24 imprisonment, as required by this subdivision, shall not be
25 imposed and grant probation or the suspension of the
26 execution or imposition of a sentence.

27 (g) If probation is granted, or the execution or
28 imposition of a sentence is suspended, for any person
29 convicted under subdivision (a) who previously has been
30 convicted of two or more violations of subdivision (a) for
31 offenses that occurred within seven years of the most
32 recent conviction, it shall be a condition thereof that he
33 or she be imprisoned in a county jail for not less than 30
34 days and that he or she participate in for no less than one
35 year, and successfully complete, a batterer's treatment
36 program as designated by the court pursuant to Section
37 1203.097. However, the court, upon a showing of good
38 cause, may find that the mandatory minimum
39 imprisonment, as required by this subdivision, shall not be



1 ~~imposed and grant probation or the suspension of the~~
2 ~~execution or imposition of a sentence.~~

3 ~~(h) If probation is granted upon conviction of a~~
4 ~~violation of subdivision (a), the conditions of probation~~
5 ~~may include, in lieu of a fine, one or both of the following~~
6 ~~requirements:~~

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

10 ~~(2) That the defendant reimburse the victim for~~
11 ~~reasonable costs of counseling and other reasonable~~
12 ~~expenses that the court finds are the direct result of the~~
13 ~~defendant's offense.~~

14 ~~For any order to pay a fine, make payments to a~~
15 ~~battered women's shelter, or pay restitution as a~~
16 ~~condition of probation under this subdivision, the court~~
17 ~~shall make a determination of the defendant's ability to~~
18 ~~pay. In no event shall any order to make payments to a~~
19 ~~battered women's shelter be made if it would impair the~~
20 ~~ability of the defendant to pay direct restitution to the~~
21 ~~victim or court-ordered child support. Where the injury~~
22 ~~to a married person is caused in whole or in part by the~~
23 ~~criminal acts of his or her spouse in violation of this~~
24 ~~section, the community property may not be used to~~
25 ~~discharge the liability of the offending spouse for~~
26 ~~restitution to the injured spouse, required by Section~~
27 ~~1203.04, as operative on or before August 2, 1995, or~~
28 ~~Section 1202.4, or to a shelter for costs with regard to the~~
29 ~~injured spouse and dependents, required by this section,~~
30 ~~until all separate property of the offending spouse is~~
31 ~~exhausted.~~

32 ~~SEC. 3.~~

33 ~~SEC. 2.~~ Section 1269c of the Penal Code is amended
34 to read:

35 1269c. If a defendant is arrested without a warrant for
36 a bailable felony offense or for the misdemeanor offense
37 of violating a domestic violence restraining order, and a
38 peace officer has reasonable cause to believe that the
39 amount of bail set forth in the schedule of bail for that
40 offense is insufficient to assure defendant's appearance or



1 to assure the protection of a victim, or family member of
2 a victim, of domestic violence, the peace officer shall
3 prepare a declaration under penalty of perjury setting
4 forth the facts and circumstances in support of his or her
5 belief and file it with a magistrate, as defined in Section
6 808, or his or her commissioner, in the county in which the
7 offense is alleged to have been committed or having
8 personal jurisdiction over the defendant, requesting an
9 order setting a higher bail. The defendant, either
10 personally or through his or her attorney, friend, or family
11 member, also may make application to the magistrate for
12 release on bail lower than that provided in the schedule
13 of bail or on his or her own recognizance. The magistrate
14 or commissioner to whom the application is made is
15 authorized to set bail in an amount that he or she deems
16 sufficient to assure the defendant's appearance or to
17 assure the protection of a victim, or family member of a
18 victim, of domestic violence, and to set bail on the terms
19 and conditions that he or she, in his or her discretion,
20 deems appropriate, or he or she may authorize the
21 defendant's release on his or her own recognizance. If,
22 after the application is made, no order changing the
23 amount of bail is issued within eight hours after booking,
24 the defendant shall be entitled to be released on posting
25 the amount of bail set forth in the applicable bail
26 schedule.

27 ~~SEC. 4.~~

28 *SEC. 3.* Section 1.5 of this bill incorporates
29 amendments to Section 136.2 of the Penal Code proposed
30 by both this bill and AB 340. It shall only become
31 operative if (1) both bills are enacted and become
32 effective on or before January 1, 1998, (2) each bill
33 amends Section 136.2 of the Penal Code, and (3) this bill
34 is enacted after AB 340, in which case Section 1 of this bill
35 shall not become operative.

36 ~~SEC. 5. No reimbursement is required by this act~~
37 ~~pursuant to Section 6 of Article XIII B of the California~~
38 ~~Constitution because the only costs that may be incurred~~
39 ~~by a local agency or school district will be incurred~~
40 ~~because this act creates a new crime or infraction;~~



1 ~~eliminates a crime or infraction, or changes the penalty~~
 2 ~~for a crime or infraction, within the meaning of Section~~
 3 ~~17556 of the Government Code, or changes the definition~~
 4 ~~of a crime within the meaning of Section 6 of Article~~
 5 ~~XIII B of the California Constitution.~~

6 ~~Notwithstanding Section 17580 of the Government~~
 7 ~~Code, unless otherwise specified, the provisions of this act~~
 8 ~~shall become operative on the same date that the act~~
 9 ~~takes effect pursuant to the California Constitution.~~

10 *SEC. 4. Notwithstanding Section 17610 of the*
 11 *Government Code, if the Commission on State Mandates*
 12 *determines that this act contains costs mandated by the*
 13 *state, reimbursement to local agencies and school*
 14 *districts for those costs shall be made pursuant to Part 7*
 15 *(commencing with Section 17500) of Division 4 of Title*
 16 *2 of the Government Code. If the statewide cost of the*
 17 *claim for reimbursement does not exceed one million*
 18 *dollars (\$1,000,000), reimbursement shall be made from*
 19 *the State Mandates Claims Fund.*

20 *Notwithstanding Section 17580 of the Government*
 21 *Code, unless otherwise specified, the provisions of this act*
 22 *shall become operative on the same date that the act*
 23 *takes effect pursuant to the California Constitution.*

