

**ASSEMBLY BILL**

**No. 340**

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**Introduced by Assembly Member Alby**

February 18, 1997

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

LEGISLATIVE COUNSEL'S DIGEST

AB 340, as introduced, Alby. Domestic violence: protective orders.

Existing law provides that, in all cases where the defendant is charged with a crime of domestic violence, the court, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, shall consider issuing specified orders on its own motion.

This bill would provide, in addition, that in those cases in which a complaint, information, or indictment charging a felony crime of domestic violence has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence over any other outstanding court order against the defendant.

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  
2 amended to read:

1 136.2. Upon a good cause belief that harm to, or  
2 intimidation or dissuasion of, a victim or witness has  
3 occurred or is reasonably likely to occur, any court with  
4 jurisdiction over a criminal matter may issue orders  
5 including, but not limited to, the following:

6 (a) Any order issued pursuant to Section 6320 of the  
7 Family Code.

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

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

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

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

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

34 For purposes of this subdivision, "immediate family  
35 members" include the spouse, children, or parents of the  
36 victim or witness.

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



1 Any person violating any order made pursuant to  
2 subdivisions (a) to (g), inclusive, may be punished for any  
3 substantive offense described in Section 136.1, or for a  
4 contempt of the court making the order. No finding of  
5 contempt shall be a bar to prosecution for a violation of  
6 Section 136.1. However, any person so held in contempt  
7 shall be entitled to credit for any punishment imposed  
8 therein against any sentence imposed upon conviction of  
9 an offense described in Section 136.1. Any conviction or  
10 acquittal for any substantive offense under Section 136.1  
11 shall be a bar to a subsequent punishment for contempt  
12 arising out of the same act.

13 (h) (1) In all cases where the defendant is charged  
14 with a crime of domestic violence, as defined in Section  
15 13700, the court shall consider issuing the  
16 above-described orders on its own motion. In order to  
17 facilitate this, the court's records of all criminal cases  
18 involving domestic violence shall be marked to clearly  
19 alert the court to this issue.

20 (2) *In those cases in which a complaint, information,*  
21 *or indictment charging a felony crime of domestic*  
22 *violence, as defined in Section 13700, has been issued, a*  
23 *restraining order or protective order against the*  
24 *defendant issued by the criminal court in that case has*  
25 *precedence over any other outstanding court order*  
26 *against the defendant.*

27 (i) The Judicial Council shall adopt forms for orders  
28 under this section.

