

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 112**

**Introduced by Assembly Member Cohn**  
(Principal coauthor: Senator Alquist)

January 12, 2005

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An act to ~~add Section 6347 to the Family~~ *amend Section 136.2 of the Penal Code*, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 112, as amended, Cohn. Protective orders: ~~modification: enforcement priority.~~

Existing law authorizes the court to issue certain protective orders after notice and a hearing. ~~These orders may have a duration of not more than 3 years, in the discretion of the court, subject to termination or modification by further order of the court either on written stipulation filed with the court or on the motion of a party.~~

~~This bill would require the court, prior to the modification of a protective order, to confirm the identity of the party petitioning for the modification.~~

*This bill would provide that an emergency protective order issued under specified provisions shall have precedence in enforcement over any other restraining or protective order.*

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 6347 is added to the Family Code, to~~  
2 read:

1 ~~6347. Prior to the modification of any order issued under this~~  
2 ~~part, the court shall confirm the identity of the petitioner.~~

3 SECTION 1. Section 136.2 of the Penal Code is amended to  
4 read:

5 136.2. ~~Upon~~(a) Except as provided in subdivision (b), upon  
6 a good cause belief that harm to, or intimidation or dissuasion of,  
7 a victim or witness has occurred or is reasonably likely to occur,  
8 any court with jurisdiction over a criminal matter may issue  
9 orders including, but not limited to, the following:

10 (a)  
11 (1) Any order issued pursuant to Section 6320 of the Family  
12 Code.

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

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

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

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

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

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

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

6 ~~(g)~~

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

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

27 (b) *Notwithstanding subdivision (a), an emergency protective*  
28 *order issued pursuant to Chapter 2 (commencing with Section*  
29 *6250) of Part 3 of Division 10 of the Family Code or Section*  
30 *646.91 of the Penal Code shall have precedence in enforcement*  
31 *over any other restraining or protective order.*

32 (c) *Any person violating any order made pursuant to*  
33 ~~subdivisions (a) to (g)~~ *paragraphs (1) to (7), inclusive, of*  
34 *subdivision (a) may be punished for any substantive offense*  
35 *described in Section 136.1, or for a contempt of the court making*  
36 *the order. A finding of contempt shall not be a bar to prosecution*  
37 *for a violation of Section 136.1. However, any person so held in*  
38 *contempt shall be entitled to credit for any punishment imposed*  
39 *therein against any sentence imposed upon conviction of an*  
40 *offense described in Section 136.1. Any conviction or acquittal*

1 for any substantive offense under Section 136.1 shall be a bar to  
 2 a subsequent punishment for contempt arising out of the same  
 3 act.

4 ~~(h)~~

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

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

13 (3) Every person who owns, possesses, purchases or receives,  
 14 or attempts to purchase or receive a firearm while the protective  
 15 order is in effect is punishable pursuant to subdivision (g) of  
 16 Section 12021 of the Penal Code.

17 ~~(i)~~

18 (e) (1) In all cases where the defendant is charged with a  
 19 crime of domestic violence, as defined in Section 13700, the  
 20 court shall consider issuing the above-described orders on its  
 21 own motion. All interested parties shall receive a copy of those  
 22 orders. In order to facilitate this, the court's records of all  
 23 criminal cases involving domestic violence shall be marked to  
 24 clearly alert the court to this issue.

25 (2) In those cases in which a complaint, information, or  
 26 indictment charging a crime of domestic violence, as defined in  
 27 Section 13700, has been issued, a restraining order or protective  
 28 order against the defendant issued by the criminal court in that  
 29 case has precedence in enforcement over any civil court order  
 30 against the defendant.

31 (3) Custody and visitation with respect to the defendant and  
 32 his or her minor children may be ordered by a family or juvenile  
 33 court consistent with the protocol established pursuant to *this*  
 34 subdivision~~(i)~~.

35 ~~(j)~~

36 (c) On or before January 1, 2003, the Judicial Council shall  
 37 promulgate a protocol, for adoption by each local court in  
 38 substantially similar terms, to provide for the timely coordination  
 39 of all orders against the same defendant and in favor of the same  
 40 named victim or victims. The protocol shall include, but shall not

1 be limited to, mechanisms for assuring appropriate  
2 communication and information sharing between criminal,  
3 family, and juvenile courts concerning orders and cases that  
4 involve the same parties, and shall permit a family or juvenile  
5 court order to coexist with a criminal court protective order  
6 subject to the following conditions:

7 (1) Any order that permits contact between the restrained  
8 person and his or her children shall provide for the safe exchange  
9 of the children and shall not contain language either printed or  
10 handwritten that violates a “no contact order” issued by a  
11 criminal court.

12 (2) Safety of all parties shall be the courts’ paramount  
13 concern. The family or juvenile court shall specify the time, day,  
14 place, and manner of transfer of the child, as provided in Section  
15 3100 of the Family Code.

16 ~~(k)~~

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