

AMENDED IN ASSEMBLY MAY 11, 2005

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

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law authorizes the court to issue certain protective orders after notice and a hearing.

This bill would provide that *the provisions of* an emergency protective order issued under specified provisions *and meeting specified requirements* shall have precedence in enforcement over *the provisions of* any other restraining or protective order, *only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained party.*

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) Except as provided in subdivision (b), upon a good
- 4 cause belief that harm to, or intimidation or dissuasion of, a

1 victim or witness has occurred or is reasonably likely to occur,  
2 any court with jurisdiction over a criminal matter may issue  
3 orders including, but not limited to, the following:

4 (1) Any order issued pursuant to Section 6320 of the Family  
5 Code.

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

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

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

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

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

29 For purposes of this paragraph, "immediate family members"  
30 include the spouse, children, or parents of the victim or witness.

31 (7) (A) Any order protecting victims of violent crime from  
32 contact, with the intent to annoy, harass, threaten, or commit acts  
33 of violence, by the defendant. The court or its designee shall  
34 transmit orders made under this subdivision to law enforcement  
35 personnel within one business day of the issuance, modification,  
36 extension, or termination of the order, pursuant to subdivision (a)  
37 of Section 6380 of the Family Code. It is the responsibility of the  
38 court to transmit the modification, extension, or termination  
39 orders made under this subdivision to the same agency that

1 entered the original protective order into the Domestic Violence  
2 Restraining Order System.

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

12 (b) (1) ~~Notwithstanding subdivision (a)~~ *subdivisions (a) and*  
13 *(e)*, an emergency protective order issued pursuant to Chapter 2  
14 (commencing with Section 6250) of Part 3 of Division 10 of the  
15 Family Code or Section 646.91 of the Penal Code shall have  
16 precedence in enforcement over any other restraining or  
17 protective order, *provided the emergency protective order meets*  
18 *the following requirements:*

19 (A) *The emergency protective order is issued to protect an*  
20 *individual who is already a protected person under another*  
21 *restraining or protective order.*

22 (B) *The emergency protective order restrains the individual*  
23 *who is the restrained person in the other restraining or*  
24 *protective order specified in subparagraph (A).*

25 (C) *The provisions of the emergency protective order are more*  
26 *restrictive in relation to the restrained person than are the*  
27 *provisions of the other restraining or protective order specified*  
28 *in subparagraph (A).*

29 (2) *An emergency protective order that meets the requirements*  
30 *of paragraph (1) shall have precedence in enforcement over the*  
31 *provisions of any other restraining or protective order only with*  
32 *respect to those provisions of the emergency protective order that*  
33 *are more restrictive in relation to the restrained person..*

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

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

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

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

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

34 ~~(e)~~

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

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

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

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

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

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