

AMENDED IN ASSEMBLY MARCH 2, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1787

Introduced by Assembly Member Cohn

January 4, 2006

An act to amend Section ~~6273~~ of, and to add Section 6250.3 to, the Family 646.91 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Cohn. ~~Emergency protective orders.~~
Protective orders: stalking: service.

Existing law authorizes the courts to issue emergency orders protecting victims from stalkers. Existing law provides the procedure for the issuance and service of the protective order.

This bill would permit a court to extend the applicability of an ex parte protective order that has expired if grounds arise to support the issuance of a new protective order and the restrained person cannot be located for service of the new protective order.

Because this bill would expand the applicability of certain crimes, it would impose a state-mandated local program.

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.

~~Existing law authorizes a judicial officer to issue an emergency protective order if a law enforcement officer has reasonable grounds to believe any one of specified circumstances, including the danger of~~

~~domestic violence, abuse, or abduction, exist. Existing law requires a law enforcement officer who requests an emergency protective order to carry copies of the order while on duty.~~

~~This bill would prohibit a judicial officer from authorizing the issuance of an emergency protective order pursuant to a standing order. The bill would also clarify that a law enforcement officer must make a separate request of a judicial officer to obtain an emergency protective order for each specific case in which the law enforcement officer asserts reasonable grounds for the issuance of the order~~

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

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

1 SECTION 1. Section 646.91 of the Penal Code is amended to
2 read:

3 646.91. (a) Notwithstanding any other law, a judicial officer
4 may issue an ex parte emergency protective order where a peace
5 officer, as defined in Section 830.1, 830.2, or 830.32, asserts
6 reasonable grounds to believe that a person is in immediate and
7 present danger of stalking based upon the person’s allegation that
8 he or she has been willfully, maliciously, and repeatedly
9 followed or harassed by another person who has made a credible
10 threat with the intent of placing the person who is the target of
11 the threat in reasonable fear for his or her safety, or the safety of
12 his or her immediate family, within the meaning of Section
13 646.9.

14 (b) A peace officer who requests an emergency protective
15 order shall reduce the order to writing and sign it.

16 (c) An emergency protective order shall include all of the
17 following:

- 18 (1) A statement of the grounds asserted for the order.
- 19 (2) The date and time the order expires.
- 20 (3) The address of the superior court for the district or county
21 in which the protected party resides.
- 22 (4) The following statements, which shall be printed in
23 English and Spanish:

24 (A) “To the protected person: This order will last until the date
25 and time noted above. If you wish to seek continuing protection,
26 you will have to apply for an order from the court at the address

1 noted above. You may seek the advice of an attorney as to any
2 matter connected with your application for any future court
3 orders. The attorney should be consulted promptly so that the
4 attorney may assist you in making your application.”

5 (B) “To the restrained person: This order will last until the
6 date and time noted above. *However, if during the effective time*
7 *of the order you violate the terms of the order and are not able to*
8 *be located for service of a new order, this order will last for*
9 *another five court days past the date and time noted above.* The
10 protected party may, ~~however,~~ *also* obtain a more permanent
11 restraining order from the court. You may seek the advice of an
12 attorney as to any matter connected with the application. The
13 attorney should be consulted promptly so that the attorney may
14 assist you in responding to the application. You may not own,
15 possess, purchase or receive, or attempt to purchase or receive a
16 firearm while this order is in effect.”

17 (d) An emergency protective order may be issued under this
18 section only if the judicial officer finds both of the following:

19 (1) That reasonable grounds have been asserted to believe that
20 an immediate and present danger of stalking, as defined in
21 Section 646.9, exists.

22 (2) That an emergency protective order is necessary to prevent
23 the occurrence or reoccurrence of the stalking activity.

24 (e) An emergency protective order may include either of the
25 following specific orders as appropriate:

26 (1) A harassment protective order as described in Section
27 527.6 of the Code of Civil Procedure.

28 (2) A workplace violence protective order as described in
29 Section 527.8 of the Code of Civil Procedure.

30 (f) An emergency protective order shall be issued without
31 prejudice to any person.

32 (g) An emergency protective order expires at the earlier of the
33 following times:

34 (1) The close of judicial business on the fifth court day
35 following the day of its issuance.

36 (2) The seventh calendar day following the day of its issuance.

37 (h) A peace officer who requests an emergency protective
38 order shall do all of the following:

39 (1) Serve the order on the restrained person, if the restrained
40 person can reasonably be located.

1 (2) Give a copy of the order to the protected person, or, if the
2 protected person is a minor child, to a parent or guardian of the
3 protected child if the parent or guardian can reasonably be
4 located, or to a person having temporary custody of the child.

5 (3) File a copy of the order with the court as soon as
6 practicable after issuance.

7 (i) *Notwithstanding subdivisions (g) and (h), if the person to*
8 *be protected has a protective order issued pursuant to*
9 *subdivision (a), during that time grounds arise for the issuance of*
10 *a new protective order pursuant to subdivision (a), and the*
11 *restrained person cannot be located for service of a new*
12 *protective order, then the court may upon motion extend the*
13 *original protective order for an additional five court days.*

14 (j) A peace officer shall use every reasonable means to enforce
15 an emergency protective order.

16 ~~(j)~~

17 (k) A peace officer who acts in good faith to enforce an
18 emergency protective order is not civilly or criminally liable.

19 ~~(k)~~

20 (l) A peace officer who requests an emergency protective
21 order under this section shall carry copies of the order while on
22 duty.

23 ~~(l)~~

24 (m) A peace officer described in subdivision (a) or (b) of
25 Section 830.32 who requests an emergency protective order
26 pursuant to this section shall also notify the sheriff or police chief
27 of the city in whose jurisdiction the peace officer's college or
28 school is located after issuance of the order.

29 ~~(m)~~

30 (n) "Judicial officer," as used in this section, means a judge,
31 commissioner, or referee.

32 ~~(n)~~

33 (o) A person subject to an emergency protective order under
34 this section shall not own, possess, purchase, or receive a firearm
35 while the order is in effect.

36 ~~(o)~~

37 (p) Nothing in this section shall be construed to permit a court
38 to issue an emergency protective order prohibiting speech or
39 other activities that are constitutionally protected or protected by
40 the laws of this state or by the United States or activities

1 occurring during a labor dispute, as defined by Section 527.3 of
2 the Code of Civil Procedure, including, but not limited to,
3 picketing and hand billing.

4 ~~(p)~~

5 (q) The Judicial Council shall develop forms, instructions, and
6 rules for the scheduling of hearings and other procedures
7 established pursuant to this section.

8 ~~(q)~~

9 (r) Any intentional disobedience of any emergency protective
10 order granted under this section is punishable pursuant to Section
11 166. Nothing in this subdivision shall be construed to prevent
12 punishment under Section 646.9, in lieu of punishment under this
13 section, if a violation of Section 646.9 is also pled and proven.

14 *SEC. 2. No reimbursement is required by this act pursuant to*
15 *Section 6 of Article XIII B of the California Constitution because*
16 *the only costs that may be incurred by a local agency or school*
17 *district will be incurred because this act creates a new crime or*
18 *infraction, eliminates a crime or infraction, or changes the*
19 *penalty for a crime or infraction, within the meaning of Section*
20 *17556 of the Government Code, or changes the definition of a*
21 *crime within the meaning of Section 6 of Article XIII B of the*
22 *California Constitution.*

23 ~~SECTION 1. Section 6250.3 is added to the Family Code, to~~
24 ~~read:~~

25 ~~6250.3. A judicial officer may not authorize the issuance of~~
26 ~~an emergency protective order pursuant to a standing order.~~

27 ~~SEC. 2. Section 6273 of the Family Code is amended to read:~~

28 ~~6273. (a) A law enforcement officer who requests an~~
29 ~~emergency protective order shall carry copies of the order while~~
30 ~~on duty.~~

31 ~~(b) A law enforcement officer shall make a separate request~~
32 ~~of a judicial officer to obtain an emergency protective order for~~
33 ~~each specific case in which the law enforcement officer asserts~~
34 ~~reasonable grounds for the issuance of the order, as set forth in~~
35 ~~Section 6250. Each emergency protective order shall be issued~~
36 ~~by a judicial officer consistent with the requirements of this part.~~
37 ~~A law enforcement officer may not serve an emergency~~
38 ~~protective order pursuant to a standing order.~~

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