

AMENDED IN ASSEMBLY MARCH 14, 2006

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 646.91 of the Penal Code and to add Section 6250.3 to the Family Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 1787, as amended, Cohn. 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 provide that an emergency protective order is valid only if it is issued by a judicial officer after making specified findings and pursuant to a specific request by a law enforcement officer.~~

~~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:~~

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

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

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

3 ~~6250.3. An emergency protective order is valid only if it is~~
4 ~~issued by a judicial officer after making the findings required by~~
5 ~~Section 6251 and pursuant to a specific request by a law~~
6 ~~enforcement officer.~~

7 ~~SECTION 1. Section 646.91 of the Penal Code is amended to~~
8 ~~read:~~

9 ~~646.91. (a) Notwithstanding any other law, a judicial officer~~
10 ~~may issue an ex parte emergency protective order where a peace~~
11 ~~officer, as defined in Section 830.1, 830.2, or 830.32, asserts~~
12 ~~reasonable grounds to believe that a person is in immediate and~~
13 ~~present danger of stalking based upon the person’s allegation that~~
14 ~~he or she has been willfully, maliciously, and repeatedly~~
15 ~~followed or harassed by another person who has made a credible~~
16 ~~threat with the intent of placing the person who is the target of~~
17 ~~the threat in reasonable fear for his or her safety, or the safety of~~
18 ~~his or her immediate family, within the meaning of Section~~
19 ~~646.9.~~

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

22 ~~(c) An emergency protective order shall include all of the~~
23 ~~following:~~

- 24 ~~(1) A statement of the grounds asserted for the order.~~
- 25 ~~(2) The date and time the order expires.~~
- 26 ~~(3) The address of the superior court for the district or county~~
27 ~~in which the protected party resides.~~
- 28 ~~(4) The following statements, which shall be printed in~~
29 ~~English and Spanish:~~

30 ~~(A) “To the protected person: This order will last until the date~~
31 ~~and time noted above. If you wish to seek continuing protection,~~
32 ~~you will have to apply for an order from the court at the address~~
33 ~~noted above. You may seek the advice of an attorney as to any~~

1 ~~matter connected with your application for any future court~~
2 ~~orders. The attorney should be consulted promptly so that the~~
3 ~~attorney may assist you in making your application.”~~

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(1) Serve the order on the restrained person, if the restrained~~
39 ~~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 subdivision~~
9 ~~(a), during that time grounds arise for the issuance of a new~~
10 ~~protective order pursuant to subdivision (a), and the restrained~~
11 ~~person cannot be located for service of a new protective order,~~
12 ~~then the court may upon motion extend the original protective~~
13 ~~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 ~~(k) A peace officer who acts in good faith to enforce an~~
17 ~~emergency protective order is not civilly or criminally liable.~~
- 18 ~~(l) A peace officer who requests an emergency protective~~
19 ~~order under this section shall carry copies of the order while on~~
20 ~~duty.~~
- 21 ~~(m) A peace officer described in subdivision (a) or (b) of~~
22 ~~Section 830.32 who requests an emergency protective order~~
23 ~~pursuant to this section shall also notify the sheriff or police chief~~
24 ~~of the city in whose jurisdiction the peace officer's college or~~
25 ~~school is located after issuance of the order.~~
- 26 ~~(n) "Judicial officer," as used in this section, means a judge,~~
27 ~~commissioner, or referee.~~
- 28 ~~(o) A person subject to an emergency protective order under~~
29 ~~this section shall not own, possess, purchase, or receive a firearm~~
30 ~~while the order is in effect.~~
- 31 ~~(p) Nothing in this section shall be construed to permit a court~~
32 ~~to issue an emergency protective order prohibiting speech or~~
33 ~~other activities that are constitutionally protected or protected by~~
34 ~~the laws of this state or by the United States or activities~~
35 ~~occurring during a labor dispute, as defined by Section 527.3 of~~
36 ~~the Code of Civil Procedure, including, but not limited to,~~
37 ~~picketing and hand billing.~~
- 38 ~~(q) The Judicial Council shall develop forms, instructions, and~~
39 ~~rules for the scheduling of hearings and other procedures~~
40 ~~established pursuant to this section.~~

1 ~~(r) Any intentional disobedience of any emergency protective~~
2 ~~order granted under this section is punishable pursuant to Section~~
3 ~~166. Nothing in this subdivision shall be construed to prevent~~
4 ~~punishment under Section 646.9, in lieu of punishment under this~~
5 ~~section, if a violation of Section 646.9 is also pled and proven.~~

6 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the~~
11 ~~penalty for a crime or infraction, within the meaning of Section~~
12 ~~17556 of the Government Code, or changes the definition of a~~
13 ~~crime within the meaning of Section 6 of Article XIII B of the~~
14 ~~California Constitution.~~