

ASSEMBLY BILL

No. 307

Introduced by Assembly Member Campos

February 12, 2013

An act to amend Sections 136.2 and 166 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 307, as introduced, Campos. Protective orders.

Existing law authorizes a court with jurisdiction over a criminal matter to issue a protective order 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, including an order protecting victims of violent crime from all contact, or contact with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. Under existing law, the court is required to consider, at the time of sentencing, issuing a protective order, which may be valid for up to 10 years, in a case in which a criminal defendant has been convicted of a crime of domestic violence. Under existing law, contempt of a court order is a misdemeanor, as specified.

This bill would require the court to also consider issuing a protective order in a case in which the defendant has been convicted of specified sex crimes, including rape, spousal rape, and crimes for which a person is required to register as a sex offender. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

Under existing law, a willful and knowing violation of a protective order or stay-away court order issued relating to a victim or witness in a pending criminal proceeding involving domestic violence, issued as a condition of probation after a conviction in a criminal proceeding

involving domestic violence or elder or dependent adult abuse, or issued under other specified conditions, constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or by both the imprisonment and the fine, except as specified.

This bill would revise those provisions to provide that a willful and knowing violation of a protective order or stay-away court order issued relating to a victim or witness in a criminal proceeding, including a proceeding when the conditions of probation are determined, involving domestic violence or elder or dependent adult abuse, or issued under other specified conditions, constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, a fine not exceeding \$1,000, or by both the imprisonment and the fine, except as specified.

By expanding the scope of an existing crime, this bill 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.
 State-mandated local program: yes.

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 (c), upon a good
- 4 cause belief that harm to, or intimidation or dissuasion of, a victim
- 5 or witness has occurred or is reasonably likely to occur, a court
- 6 with jurisdiction over a criminal matter may issue orders including,
- 7 but not limited to, the following:
- 8 (1) An order issued pursuant to Section 6320 of the Family
- 9 Code.
- 10 (2) An order that a defendant shall not violate any provision of
- 11 Section 136.1.
- 12 (3) An order that a person before the court other than a
- 13 defendant, including, but not limited to, a subpoenaed witness or

1 other person entering the courtroom of the court, shall not violate
2 any provisions of Section 136.1.

3 (4) An order that a person described in this section shall have
4 no communication whatsoever with a specified witness or a victim,
5 except through an attorney under reasonable restrictions that the
6 court may impose.

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

9 (6) (A) An order that a particular law enforcement agency
10 within the jurisdiction of the court provide protection for a victim
11 or a witness, or both, or for immediate family members of a victim
12 or a witness who reside in the same household as the victim or
13 witness or within reasonable proximity of the victim's or witness'
14 household, as determined by the court. The order shall not be made
15 without the consent of the law enforcement agency except for
16 limited and specified periods of time and upon an express finding
17 by the court of a clear and present danger of harm to the victim or
18 witness or immediate family members of the victim or witness.

19 (B) For purposes of this paragraph, "immediate family
20 members" include the spouse, children, or parents of the victim
21 or witness.

22 (7) (A) An order protecting victims of violent crime from all
23 contact by the defendant, or contact, with the intent to annoy,
24 harass, threaten, or commit acts of violence, by the defendant. The
25 court or its designee shall transmit orders made under this
26 paragraph to law enforcement personnel within one business day
27 of the issuance, modification, extension, or termination of the
28 order, pursuant to subdivision (a) of Section 6380 of the Family
29 Code. It is the responsibility of the court to transmit the
30 modification, extension, or termination orders made under this
31 paragraph to the same agency that entered the original protective
32 order into the Domestic Violence Restraining Order System.

33 (B) (i) If a court does not issue an order pursuant to
34 subparagraph (A) in a case in which the defendant is charged with
35 a crime of domestic violence as defined in Section 13700, the court
36 on its own motion shall consider issuing a protective order upon
37 a good cause belief that harm to, or intimidation or dissuasion of,
38 a victim or witness has occurred or is reasonably likely to occur,
39 that provides as follows:

1 (I) The defendant shall not own, possess, purchase, receive, or
2 attempt to purchase or receive, a firearm while the protective order
3 is in effect.

4 (II) The defendant shall relinquish any firearms that he or she
5 owns or possesses pursuant to Section 527.9 of the Code of Civil
6 Procedure.

7 (ii) Every person who owns, possesses, purchases, or receives,
8 or attempts to purchase or receive, a firearm while this protective
9 order is in effect is punishable pursuant to Section 29825.

10 (C) An order issued, modified, extended, or terminated by a
11 court pursuant to this paragraph shall be issued on forms adopted
12 by the Judicial Council of California and that have been approved
13 by the Department of Justice pursuant to subdivision (i) of Section
14 6380 of the Family Code. However, the fact that an order issued
15 by a court pursuant to this section was not issued on forms adopted
16 by the Judicial Council and approved by the Department of Justice
17 shall not, in and of itself, make the order unenforceable.

18 (D) A protective order under this paragraph may require the
19 defendant to be placed on electronic monitoring if the local
20 government, with the concurrence of the county sheriff or the chief
21 probation officer with jurisdiction, adopts a policy to authorize
22 electronic monitoring of defendants and specifies the agency with
23 jurisdiction for this purpose. If the court determines that the
24 defendant has the ability to pay for the monitoring program, the
25 court shall order the defendant to pay for the monitoring. If the
26 court determines that the defendant does not have the ability to
27 pay for the electronic monitoring, the court may order electronic
28 monitoring to be paid for by the local government that adopted
29 the policy to authorize electronic monitoring. The duration of
30 electronic monitoring shall not exceed one year from the date the
31 order is issued. At no time shall the electronic monitoring be in
32 place if the protective order is not in place.

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

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

3 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency
4 protective order issued pursuant to Chapter 2 (commencing with
5 Section 6250) of Part 3 of Division 10 of the Family Code or
6 Section 646.91 of the Penal Code shall have precedence in
7 enforcement over any other restraining or protective order, provided
8 the emergency protective order meets all of the following
9 requirements:

10 (A) The emergency protective order is issued to protect one or
11 more individuals who are already protected persons under another
12 restraining or protective order.

13 (B) The emergency protective order restrains the individual who
14 is the restrained person in the other restraining or protective order
15 specified in subparagraph (A).

16 (C) The provisions of the emergency protective order are more
17 restrictive in relation to the restrained person than are the provisions
18 of the other restraining or protective order specified in
19 subparagraph (A).

20 (2) An emergency protective order that meets the requirements
21 of paragraph (1) shall have precedence in enforcement over the
22 provisions of any other restraining or protective order only with
23 respect to those provisions of the emergency protective order that
24 are more restrictive in relation to the restrained person.

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

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

32 (3) A person who owns, possesses, purchases or receives, or
33 attempts to purchase or receive a firearm while the protective order
34 is in effect is punishable pursuant to Section 29825.

35 (e) (1) In all cases where the defendant is charged with a crime
36 of domestic violence, as defined in Section 13700, the court shall
37 consider issuing the above-described orders on its own motion.
38 All interested parties shall receive a copy of those orders. In order
39 to facilitate this, the court's records of all criminal cases involving

1 domestic violence shall be marked to clearly alert the court to this
2 issue.

3 (2) In those cases in which a complaint, information, or
4 indictment charging a crime of domestic violence, as defined in
5 Section 13700, has been issued, a restraining order or protective
6 order against the defendant issued by the criminal court in that
7 case has precedence in enforcement over a civil court order against
8 the defendant, unless a court issues an emergency protective order
9 pursuant to Chapter 2 (commencing with Section 6250) of Part 3
10 of Division 10 of the Family Code or Section 646.91 of the Penal
11 Code, in which case the emergency protective order shall have
12 precedence in enforcement over any other restraining or protective
13 order, provided the emergency protective order meets the following
14 requirements:

15 (A) The emergency protective order is issued to protect one or
16 more individuals who are already protected persons under another
17 restraining or protective order.

18 (B) The emergency protective order restrains the individual who
19 is the restrained person in the other restraining or protective order
20 specified in subparagraph (A).

21 (C) The provisions of the emergency protective order are more
22 restrictive in relation to the restrained person than are the provisions
23 of the other restraining or protective order specified in
24 subparagraph (A).

25 (3) Custody and visitation with respect to the defendant and his
26 or her minor children may be ordered by a family or juvenile court
27 consistent with the protocol established pursuant to subdivision
28 (f), but if ordered after a criminal protective order has been issued
29 pursuant to this section, the custody and visitation order shall make
30 reference to, and acknowledge the precedence of enforcement of,
31 an appropriate criminal protective order. On or before July 1, 2006,
32 the Judicial Council shall modify the criminal and civil court forms
33 consistent with this subdivision.

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

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

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

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

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

16 (h) In any case in which a complaint, information, or indictment
17 charging a crime of domestic violence, as defined in Section 13700,
18 has been filed, the court may consider, in determining whether
19 good cause exists to issue an order under paragraph (1) of
20 subdivision (a), the underlying nature of the offense charged, and
21 the information provided to the court pursuant to Section 273.75.

22 (i) (1) In all cases in which a criminal defendant has been
23 convicted of a crime of domestic violence as defined in Section
24 13700, *a violation of Section 261, 261.5, or 262, or any crime that*
25 *requires the defendant to register pursuant to subdivision (c) of*
26 *Section 290*, the court, at the time of sentencing, shall consider
27 issuing an order restraining the defendant from any contact with
28 the victim. The order may be valid for up to 10 years, as determined
29 by the court. This protective order may be issued by the court
30 regardless of whether the defendant is sentenced to the state prison
31 or a county jail, or whether imposition of sentence is suspended
32 and the defendant is placed on probation. It is the intent of the
33 Legislature in enacting this subdivision that the duration of any
34 restraining order issued by the court be based upon the seriousness
35 of the facts before the court, the probability of future violations,
36 and the safety of the victim and his or her immediate family.

37 (2) An order under this subdivision may include provisions for
38 electronic monitoring if the local government, upon receiving the
39 concurrence of the county sheriff or the chief probation officer
40 with jurisdiction, adopts a policy authorizing electronic monitoring

1 of defendants and specifies the agency with jurisdiction for this
2 purpose. If the court determines that the defendant has the ability
3 to pay for the monitoring program, the court shall order the
4 defendant to pay for the monitoring. If the court determines that
5 the defendant does not have the ability to pay for the electronic
6 monitoring, the court may order the electronic monitoring to be
7 paid for by the local government that adopted the policy authorizing
8 electronic monitoring. The duration of the electronic monitoring
9 shall not exceed one year from the date the order is issued.

10 (j) For purposes of this section, “local government” means the
11 county that has jurisdiction over the protective order.

12 SEC. 2. Section 166 of the Penal Code is amended to read:

13 166. (a) Except as provided in subdivisions (b), (c), and (d),
14 a person guilty of any of the following contempts of court is guilty
15 of a misdemeanor:

16 (1) Disorderly, contemptuous, or insolent behavior committed
17 during the sitting of a court of justice, in the immediate view and
18 presence of the court, and directly tending to interrupt its
19 proceedings or to impair the respect due to its authority.

20 (2) Behavior specified in paragraph (1) that is committed in the
21 presence of a referee, while actually engaged in a trial or hearing,
22 pursuant to the order of a court, or in the presence of any jury while
23 actually sitting for the trial of a cause, or upon an inquest or other
24 proceeding authorized by law.

25 (3) A breach of the peace, noise, or other disturbance directly
26 tending to interrupt the proceedings of the court.

27 (4) Willful disobedience of the terms as written of any process
28 or court order or out-of-state court order, lawfully issued by a
29 court, including orders pending trial.

30 (5) Resistance willfully offered by any person to the lawful
31 order or process of a court.

32 (6) Willful disobedience by a juror of a court admonishment
33 related to the prohibition on any form of communication or research
34 about the case, including all forms of electronic or wireless
35 communication or research.

36 (7) The contumacious and unlawful refusal of a person to be
37 sworn as a witness or, when so sworn, the like refusal to answer
38 a material question.

39 (8) The publication of a false or grossly inaccurate report of the
40 proceedings of a court.

1 (9) Presenting to a court having power to pass sentence upon a
2 prisoner under conviction, or to a member of the court, an affidavit,
3 testimony, or representation of any kind, verbal or written, in
4 aggravation or mitigation of the punishment to be imposed upon
5 the prisoner, except as provided in this code.

6 (10) Willful disobedience of the terms of an injunction that
7 restrains the activities of a criminal street gang or any of its
8 members, lawfully issued by a court, including an order pending
9 trial.

10 (b) (1) A person who is guilty of contempt of court under
11 paragraph (4) of subdivision (a) by willfully contacting a victim
12 by telephone or mail, or directly, and who has been previously
13 convicted of a violation of Section 646.9 shall be punished by
14 imprisonment in a county jail for not more than one year, by a fine
15 of five thousand dollars (\$5,000), or by both that fine and
16 imprisonment.

17 (2) For the purposes of sentencing under this subdivision, each
18 contact shall constitute a separate violation of this subdivision.

19 (3) The present incarceration of a person who makes contact
20 with a victim in violation of paragraph (1) is not a defense to a
21 violation of this subdivision.

22 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
23 willful and knowing violation of a protective order or stay-away
24 court order issued pursuant to ~~Section 136.2, 136.2 or paragraph~~
25 ~~(2) of subdivision (a) of Section 1203.097 in a pending~~ criminal
26 proceeding involving domestic violence, as defined in Section
27 13700, ~~or issued as a condition of probation after a conviction in~~
28 ~~a criminal proceeding involving domestic violence, as defined in~~
29 ~~Section 13700~~, or elder or dependent adult abuse, as defined in
30 Section 368, or ~~that is~~ an order described in paragraph (3), shall
31 constitute contempt of court, a misdemeanor, punishable by
32 imprisonment in a county jail for not more than one year, by a fine
33 of not more than one thousand dollars (\$1,000), or by both that
34 imprisonment and fine.

35 (2) If a violation of paragraph (1) results in a physical injury,
36 the person shall be imprisoned in a county jail for at least 48 hours,
37 whether a fine or imprisonment is imposed, or the sentence is
38 suspended.

39 (3) Paragraphs (1) and (2) apply to the following court orders:

1 (A) An order issued pursuant to Section 6320 or 6389 of the
 2 Family Code.

3 (B) An order excluding one party from the family dwelling or
 4 from the dwelling of the other.

5 (C) An order enjoining a party from specified behavior that the
 6 court determined was necessary to effectuate the orders described
 7 in paragraph (1).

8 (4) A second or subsequent conviction for a violation of an order
 9 described in paragraph (1) occurring within seven years of a prior
 10 conviction for a violation of any of those orders and involving an
 11 act of violence or “a credible threat” of violence, as provided in
 12 subdivisions (c) and (d) of Section 139, is punishable by
 13 imprisonment in a county jail not to exceed one year, or in the
 14 state prison for 16 months or two or three years.

15 (5) The prosecuting agency of each county shall have the
 16 primary responsibility for the enforcement of the orders described
 17 in paragraph (1).

18 (d) (1) A person who owns, possesses, purchases, or receives
 19 a firearm knowing he or she is prohibited from doing so by the
 20 provisions of a protective order as defined in Section 136.2 of this
 21 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
 22 of the Code of Civil Procedure, shall be punished under subdivision
 23 ~~(g)~~ of Section ~~12021~~ 29825.

24 (2) A person subject to a protective order described in paragraph
 25 (1) shall not be prosecuted under this section for owning,
 26 possessing, purchasing, or receiving a firearm to the extent that
 27 firearm is granted an exemption pursuant to subdivision (h) of
 28 Section 6389 of the Family Code.

29 (e) (1) If probation is granted upon conviction of a violation of
 30 subdivision (c), the court shall impose probation consistent with
 31 Section 1203.097.

32 (2) If probation is granted upon conviction of a violation of
 33 subdivision (c), the conditions of probation may include, in lieu
 34 of a fine, one or both of the following requirements:

35 (A) That the defendant make payments to a battered women’s
 36 shelter, up to a maximum of one thousand dollars (\$1,000).

37 (B) That the defendant provide restitution to reimburse the
 38 victim for reasonable costs of counseling and other reasonable
 39 expenses that the court finds are the direct result of the defendant’s
 40 offense.

1 (3) For an order to pay a fine, make payments to a battered
2 women’s shelter, or pay restitution as a condition of probation
3 under this subdivision or subdivision (c), the court shall make a
4 determination of the defendant’s ability to pay. In no event shall
5 an order to make payments to a battered women’s shelter be made
6 if it would impair the ability of the defendant to pay direct
7 restitution to the victim or court-ordered child support.

8 (4) If the injury to a married person is caused in whole, or in
9 part, by the criminal acts of his or her spouse in violation of
10 subdivision (c), the community property shall not be used to
11 discharge the liability of the offending spouse for restitution to the
12 injured spouse required by Section 1203.04, as operative on or
13 before August 2, 1995, or Section 1202.4, or to a shelter for costs
14 with regard to the injured spouse and dependents required by this
15 subdivision, until all separate property of the offending spouse is
16 exhausted.

17 (5) A person violating an order described in subdivision (c) may
18 be punished for any substantive offenses described under Section
19 136.1 or 646.9. A finding of contempt shall not be a bar to
20 prosecution for a violation of Section 136.1 or 646.9. However, a
21 person held in contempt for a violation of subdivision (c) shall be
22 entitled to credit for any punishment imposed as a result of that
23 violation against any sentence imposed upon conviction of an
24 offense described in Section 136.1 or 646.9. A conviction or
25 acquittal for a substantive offense under Section 136.1 or 646.9
26 shall be a bar to a subsequent punishment for contempt arising out
27 of the same act.

28 SEC. 3. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

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