

AMENDED IN ASSEMBLY APRIL 4, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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 upon the conviction of a defendant for a sexual offense involving a minor*, 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.

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

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

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

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

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

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

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

1 a victim or witness has occurred or is reasonably likely to occur,
2 that provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to facilitate this, the court's records of all criminal cases involving
2 domestic violence shall be marked to clearly alert the court to this
3 issue.

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

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

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

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

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

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 communication

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (A) *An order issued pursuant to Section 136.2.*

36 (B) *An order issued pursuant to paragraph (2) of subdivision*
37 *(a) of Section 1203.097.*

38 (C) *An order issued as a condition of probation after a*
39 *conviction in a criminal proceeding involving elder or dependent*
40 *adult abuse, as defined in Section 368.*

1 (D) An order issued pursuant to Section 1201.3.

2 (E) An order described in paragraph (3).

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

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

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

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

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

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

22 (5) The prosecuting agency of each county shall have the
23 primary responsibility for the enforcement of the orders described
24 in paragraph (1).

25 (d) (1) A person who owns, possesses, purchases, or receives
26 a firearm knowing he or she is prohibited from doing so by the
27 provisions of a protective order as defined in Section 136.2 of this
28 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
29 of the Code of Civil Procedure, shall be punished under Section
30 29825.

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

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

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

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

6 (B) That the defendant provide restitution to reimburse the
7 victim for reasonable costs of counseling and other reasonable
8 expenses that the court finds are the direct result of the defendant’s
9 offense.

10 (3) For an order to pay a fine, make payments to a battered
11 women’s shelter, or pay restitution as a condition of probation
12 under this subdivision or subdivision (c), the court shall make a
13 determination of the defendant’s ability to pay. In no event shall
14 an order to make payments to a battered women’s shelter be made
15 if it would impair the ability of the defendant to pay direct
16 restitution to the victim or court-ordered child support.

17 (4) If the injury to a married person is caused in whole, or in
18 part, by the criminal acts of his or her spouse in violation of
19 subdivision (c), the community property shall not be used to
20 discharge the liability of the offending spouse for restitution to the
21 injured spouse required by Section 1203.04, as operative on or
22 before August 2, 1995, or Section 1202.4, or to a shelter for costs
23 with regard to the injured spouse and dependents required by this
24 subdivision, until all separate property of the offending spouse is
25 exhausted.

26 (5) A person violating an order described in subdivision (c) may
27 be punished for any substantive offenses described under Section
28 136.1 or 646.9. A finding of contempt shall not be a bar to
29 prosecution for a violation of Section 136.1 or 646.9. However, a
30 person held in contempt for a violation of subdivision (c) shall be
31 entitled to credit for any punishment imposed as a result of that
32 violation against any sentence imposed upon conviction of an
33 offense described in Section 136.1 or 646.9. A conviction or
34 acquittal for a substantive offense under Section 136.1 or 646.9
35 shall be a bar to a subsequent punishment for contempt arising out
36 of the same act.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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