

AMENDED IN ASSEMBLY MAY 25, 2012

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CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2467

**Introduced by Assembly Member Hueso
(Coauthor: Assembly Member Garrick)**

February 24, 2012

An act to amend Section 136.2 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2467, as amended, Hueso. Protective orders: ~~GPS~~ *electronic* monitoring.

Existing law authorizes a court with jurisdiction over a criminal matter, 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, to issue specified orders, including an order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant. *Existing law also authorizes the issuance of a restraining order, valid for up to 10 years, in all cases in which a defendant has been convicted of a crime of domestic violence.*

This bill would authorize a court, when issuing a protective or restraining order pursuant to the above provisions, to require ~~GPS~~ *electronic* monitoring of the defendant if *the local government, as defined, adopts a policy to authorize electronic monitoring of defendants for this purpose. The bill would require the defendant to pay for the monitoring if the court finds that the defendant is able to pay the costs*

of that monitoring *and, if the court finds the defendant is unable to pay the costs, would authorize the court to order the costs to be paid by the local government that adopted the policy to authorize electronic monitoring.* ~~The bill would further authorize the court to order GPS monitoring and require the local law enforcement agency with jurisdiction over the case to pay the GPS monitoring costs if the defendant cannot afford those monitoring costs. The bill would limit the duration of the GPS electronic monitoring to one year, but would authorize a victim to apply for, and a court to approve upon showing of the continued need for GPS monitoring, an extension of the order for a time period not to exceed one year.~~

~~By increasing the duties of local agencies that monitor persons placed on active GPS monitoring, 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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. This shall be known and may be cited as Kathy's
- 2 Law.
- 3 SECTION 1.
- 4 SEC. 2. Section 136.2 of the Penal Code is amended to read:
- 5 136.2. (a) Except as provided in subdivision (c), upon a good
- 6 cause belief that harm to, or intimidation or dissuasion of, a victim
- 7 or witness has occurred or is reasonably likely to occur, a court
- 8 with jurisdiction over a criminal matter may issue orders including,
- 9 but not limited to, the following:
- 10 (1) An order issued pursuant to Section 6320 of the Family
- 11 Code.
- 12 (2) An order that a defendant shall not violate any provision of
- 13 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 ~~active-GPS~~ *electronic* monitoring if *the*
22 *local government adopts a policy to authorize electronic*
23 *monitoring of defendants for this purpose. If the court determines*
24 *that the defendant has the ability to pay for the monitoring device,*
25 *the court shall order the defendant to pay for the monitoring.* If
26 the court determines that the defendant does not have the ability
27 to pay for the electronic monitoring, the court may order ~~active~~
28 ~~GPS electronic~~ monitoring ~~if the court orders the local law~~
29 ~~enforcement agency with jurisdiction over the case to pay for the~~
30 ~~costs associated with the GPS monitoring of the defendant to be~~
31 ~~paid for by the local government that adopted the policy to~~
32 ~~authorize electronic monitoring.~~ The duration of ~~GPS electronic~~
33 monitoring shall not exceed one year from the date the order is
34 issued. ~~A victim may apply to the court for an extension of an~~
35 ~~order issued pursuant to this subparagraph and the court may~~
36 ~~approve the extension for an additional period not to exceed one~~
37 ~~year upon a showing of the continued need for the GPS monitoring~~
38 ~~of a defendant. At no time shall the electronic monitoring be in~~
39 ~~place if the protective order is not in place.~~

(b) A person violating an order made pursuant to paragraphs (1) to (7), inclusive, of subdivision (a) may be punished for any substantive offense described in Section 136.1, or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person so held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

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

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

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

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

(2) An emergency protective order that meets the requirements of paragraph (1) 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 person.

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

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

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

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

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

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

26 (B) The emergency protective order restrains the individual who
27 is the restrained person in the other restraining or protective order
28 specified in subparagraph (A).

29 (C) The provisions of the emergency protective order are more
30 restrictive in relation to the restrained person than are the provisions
31 of the other restraining or protective order specified in
32 subparagraph (A).

33 (3) Custody and visitation with respect to the defendant and his
34 or her minor children may be ordered by a family or juvenile court
35 consistent with the protocol established pursuant to subdivision
36 (f), but if ordered after a criminal protective order has been issued
37 pursuant to this section, the custody and visitation order shall make
38 reference to, and acknowledge the precedence of enforcement of,
39 an appropriate criminal protective order. On or before July 1, 2006,

1 the Judicial Council shall modify the criminal and civil court forms
2 consistent with this subdivision.

3 (f) On or before January 1, 2003, the Judicial Council shall
4 promulgate a protocol, for adoption by each local court in
5 substantially similar terms, to provide for the timely coordination
6 of all orders against the same defendant and in favor of the same
7 named victim or victims. The protocol shall include, but shall not
8 be limited to, mechanisms for assuring appropriate communication
9 and information sharing between criminal, family, and juvenile
10 courts concerning orders and cases that involve the same parties,
11 and shall permit a family or juvenile court order to coexist with a
12 criminal court protective order subject to the following conditions:

13 (1) An order that permits contact between the restrained person
14 and his or her children shall provide for the safe exchange of the
15 children and shall not contain language either printed or
16 handwritten that violates a “no contact order” issued by a criminal
17 court.

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

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

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

31 (i) (1) In all cases in which a criminal defendant has been
32 convicted of a crime of domestic violence as defined in Section
33 13700, the court, at the time of sentencing, shall consider issuing
34 an order restraining the defendant from any contact with the victim.
35 The order may be valid for up to 10 years, as determined by the
36 court. This protective order may be issued by the court regardless
37 of whether the defendant is sentenced to the state prison or a county
38 jail, or whether imposition of sentence is suspended and the
39 defendant is placed on probation. It is the intent of the Legislature
40 in enacting this subdivision that the duration of any restraining

1 order issued by the court be based upon the seriousness of the facts
2 before the court, the probability of future violations, and the safety
3 of the victim and his or her immediate family.

4 (2) *An order under this subdivision may include provisions for*
5 *electronic monitoring if the local government adopts a policy*
6 *authorizing electronic monitoring of defendants for this purpose.*
7 *If the court determines that the defendant has the ability to pay*
8 *for the monitoring program, the court shall order the defendant*
9 *to pay for the monitoring. If the court determines that the defendant*
10 *does not have the ability to pay for the electronic monitoring, the*
11 *court may order the electronic monitoring to be paid for by the*
12 *local government that adopted the policy authorizing electronic*
13 *monitoring. The duration of the electronic monitoring shall not*
14 *exceed one year from the date the order is issued.*

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

17 ~~SEC. 2. If the Commission on State Mandates determines that~~
18 ~~this act contains costs mandated by the state, reimbursement to~~
19 ~~local agencies and school districts for those costs shall be made~~
20 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
21 ~~4 of Title 2 of the Government Code.~~