

AMENDED IN SENATE MAY 15, 2013

AMENDED IN ASSEMBLY MARCH 20, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 238**

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**Introduced by Assembly Member Gomez  
(Coauthors: Assembly Members Bonilla, Brown, Fox, Maienschein,  
and Quirk-Silva)**

February 5, 2013

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An act to add Section 6250.7 to, and to repeal Section 6273 of, the Family Code, and to amend Section 646.91 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 238, as amended, Gomez. Protective orders: California Restraining and Protective Order System.

Existing law authorizes a judicial officer in a civil proceeding relating to domestic violence to issue an emergency protective order if there is an immediate and present danger of domestic violence, abuse, or abduction of a child, or abuse of an elder or dependent adult. Existing law also authorizes a court in a criminal proceeding to issue an emergency protective order if there is an immediate and present danger of stalking, as specified. Existing law requires ~~that~~ a law enforcement officer, as defined, for purposes of court proceedings relating to domestic violence, or a peace officer, in criminal proceedings relating to stalking, who requests an emergency protective order, *to* carry copies of the order while on duty.

Existing law also requires the Department of Justice to maintain a computer database system, known as the California Restraining and

Protective Order System, for protective and restraining orders and injunctions and make that information available to court clerks and law enforcement personnel.

This bill would delete the requirement that a law enforcement officer or a peace officer, as described above, who requests an emergency protective order carry copies of the order while on duty. The bill would instead require the ~~professional staff of the law enforcement agency employing the officer who requests an emergency protective order~~ to enter that order into the California Restraining and Protective Order System ~~within 2 hours of the issuance of the order~~. By imposing additional duties on *local* law enforcement ~~employees~~ *agencies*, the 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.  
State-mandated local program: yes.

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

1 SECTION 1. Section 6250.7 is added to the Family Code, to  
2 read:  
3 6250.7. When an emergency protective order is issued, the  
4 ~~professional staff of the law enforcement agency employing the~~  
5 ~~officer who requested the order~~ shall enter the order into the  
6 California Restraining and Protective Order System ~~within two~~  
7 ~~hours of the issuance of the order~~.  
8 SEC. 2. Section 6273 of the Family Code is repealed.  
9 SEC. 3. Section 646.91 of the Penal Code is amended to read:  
10 646.91. (a) Notwithstanding any other law, a judicial officer  
11 may issue an ex parte emergency protective order ~~where~~ *if* a peace  
12 officer, as defined in Section 830.1, 830.2, or 830.32, asserts  
13 reasonable grounds to believe that a person is in immediate and  
14 present danger of stalking based upon the person's allegation that  
15 he or she has been willfully, maliciously, and repeatedly followed  
16 or harassed by another person who has made a credible threat with

1 the intent of placing the person who is the target of the threat in  
2 reasonable fear for his or her safety, or the safety of his or her  
3 immediate family, within the meaning of Section 646.9.

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

6 (c) An emergency protective order shall include all of the  
7 following:

8 (1) A statement of the grounds asserted for the order.

9 (2) The date and time the order expires.

10 (3) The address of the superior court for the district or county  
11 in which the protected party resides.

12 (4) The following statements, which shall be printed in English  
13 and Spanish:

14 (A) “To the protected person: This order will last until the date  
15 and time noted above. If you wish to seek continuing protection,  
16 you will have to apply for an order from the court at the address  
17 noted above. You may seek the advice of an attorney as to any  
18 matter connected with your application for any future court orders.  
19 The attorney should be consulted promptly so that the attorney  
20 may assist you in making your application.”

21 (B) “To the restrained person: This order will last until the date  
22 and time noted above. The protected party may, however, obtain  
23 a more permanent restraining order from the court. You may seek  
24 the advice of an attorney as to any matter connected with the  
25 application. The attorney should be consulted promptly so that the  
26 attorney may assist you in responding to the application. You may  
27 not own, possess, purchase or receive, or attempt to purchase or  
28 receive a firearm while this order is in effect.”

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

31 (1) That reasonable grounds have been asserted to believe that  
32 an immediate and present danger of stalking, as defined in Section  
33 646.9, exists.

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

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

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

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

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

5 (g) An emergency protective order expires at the earlier of the  
6 following times:

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

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

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

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

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

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

20 (i) A peace officer shall use every reasonable means to enforce  
21 an emergency protective order.

22 (j) A peace officer who acts in good faith to enforce an  
23 emergency protective order is not civilly or criminally liable.

24 (k) When an emergency protective order is issued pursuant to  
25 this section, ~~the professional staff of the law enforcement agency~~  
26 ~~employing the officer who requested the order~~ shall enter the order  
27 into the California Restraining and Protective Order System ~~within~~  
28 ~~two hours of the issuance of the order.~~

29 (l) A peace officer described in subdivision (a) or (b) of Section  
30 830.32 who requests an emergency protective order pursuant to  
31 this section shall also notify the sheriff or police chief of the city  
32 in whose jurisdiction the peace officer's college or school is located  
33 after issuance of the order.

34 (m) "Judicial officer," as used in this section, means a judge,  
35 commissioner, or referee.

36 (n) A person subject to an emergency protective order under  
37 this section shall not own, possess, purchase, or receive a firearm  
38 while the order is in effect.

39 (o) Nothing in this section shall be construed to permit a court  
40 to issue an emergency protective order prohibiting speech or other

1 activities that are constitutionally protected or protected by the  
2 laws of this state or by the United States or activities occurring  
3 during a labor dispute, as defined by Section 527.3 of the Code of  
4 Civil Procedure, including, but not limited to, picketing and hand  
5 billing.

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

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

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