
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2308 **Hearing Date:** June 25, 2024
Author: Davies
Version: April 24, 2024
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Domestic violence: protective orders*

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: AB 467 (Gabriel), Ch. 14, Stats. 2023
AB 264 (Low), Ch. 270, Stats. 2017
AB 270 (Gallagher), held in Senate Appropriations in 2017
SB 352 (Block), Ch. 279, Stats. 2015
AB 307 (Campos), Ch. 291, Stats. 2013
AB 723 (Pavley), Ch. 155, Stats. 2011
SB 834 (Florez), Ch. 627, Stats. 2010
AB 289 (Spitzer), Ch. 582, Stats. 2007

Support: California District Attorneys Association; California State Sheriffs' Association

Opposition: ACLU California Action

Assembly Floor Vote: 67 - 0

PURPOSE

The purpose of this bill is to extend the maximum amount of time that a court can issue a post-conviction protective order against a defendant from 10 years to 15 years for felony domestic violence.

Existing law provides that a person who willfully inflicts corporal injury resulting in a traumatic condition upon the offender's spouse, former spouse, cohabitant, former cohabitant, fiancé or fiancée, someone with whom the offender has or previously had an engagement or dating relationship, or the mother or father of the offender's child, is guilty of a felony, punishable by imprisonment in state prison for two, three, or four years, or in a county jail for up to one year, or by fine up to \$6,000. (Pen. Code, § 273.5, subd. (a) & (b).)

Existing law defines "traumatic condition" as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. Provides that "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck. (Pen. Code, § 273.5, subd. (d).)

Existing law requires the sentencing court to consider issuing a criminal protective order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, for a person convicted of domestic violence. (Pen. Code, § 273.5, subd. (j).)

Existing law requires the length of the restraining order to be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and their immediate family. Authorizes a court to issue a protective order regardless of whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation. (Pen. Code, § 273.5, subd. (j).)

Existing law defines “domestic violence” as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. Defines “cohabitant” as two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. (Pen. Code, § 13700, subd. (b).)

Existing law defines “abuse” as intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to them-self, or another. (Pen. Code, § 13700, subd. (a).)

Existing law requires the court to consider issuing a protective or restraining order when the defendant is charged with a crime involving domestic violence, rape, statutory rape, spousal rape, or a crime that requires the defendant to register as a sex offender, while the matter is pending. (Pen. Code, § 136.2, subd. (e)(1).)

Existing law requires the court, at the time of sentencing, to consider issuing an order restraining the defendant from any contact with a victim of the crime when the defendant has been convicted of a crime involving domestic violence, human trafficking, rape, statutory rape, spousal rape, pimping, as specified, pandering, as specified, a gang-related offense, elder abuse, stalking, or a sexual offense involving a minor victim, or a crime that requires the defendant to register as a sex offender. Provides that the order may be valid for up to 10 years, as determined by the court. (Pen. Code, §§ 136.2, subd. (i)(1); 273.5, subd. (j); 368, subd. (l); 646.9, subd. (k); 1201.3, subd. (a).)

Existing law provides that the post-conviction protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. Provides that the order may be modified by the sentencing court in the county in which it was issued throughout the duration of the order. (Pen. Code, § 136.2, subd. (i)(1).)

Existing law provides that a willful and knowing violation of a criminal protective order constitutes contempt of court, a misdemeanor, punishable by imprisonment in a county jail for up to one year or a fine of \$1,000, or both. (Pen. Code, §§ 273.6, subd. (a), 166, subd. (a)(4) & (c)(4).)

This bill extends the maximum amount of time that a court can issue a post-conviction protective order against a defendant from 10 years to 15 years for felony domestic violence.

COMMENTS

1. Need For This Bill

According to the author:

Domestic violence is considered one of the worst crimes that can be committed against someone. Victims are often emotionally, financially and physically abused by their abuser. AB 2308 is a common-sense measure to give longer protections for victims by extending the length of a protective order an additional five years. Currently, it is only allowed up to 10 years. Extending this timeline will give relief to victims that they will be able to continue living their lives and healing from their trauma without fear their abuser will contact them again.

2. Post-Conviction Protective Orders

As a general matter, a court can issue a protective order in any criminal proceeding pursuant to Penal Code Section 136.2, subdivision (a), where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When criminal proceedings have concluded, the court has the authority to issue protective orders as a condition of probation in cases where probation was granted. In some cases in which probation has not been granted, the court also has the authority to issue post-conviction protective orders. The court is authorized to issue no-contact orders for up to 10 years when a defendant has been convicted of willful infliction of corporal injury to a spouse, former spouse, cohabitant, former cohabitant, or the mother or father of the defendant's child. (Pen. Code, § 273.5, subd. (j).) The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic violence-related offense, human trafficking, rape, spousal rape, statutory rape, pimping, pandering, a gang-related offense, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) A post-conviction protective order lasting up to 10 years can also be issued in cases in which there was a conviction for stalking, or abuse of an elder or dependent adult. (Pen. Code, §§ 646.9, subd. (k), 368, subd. (l).) Similarly, in cases involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit ... harassing, intimidating, or threatening the victim or the victim's family members or spouse." (Pen. Code, § 1201.3, subd. (a).)

The consequences of having the court issue a protective order against a person can be severe. For example, the protective order may prohibit the defendant from being within a certain distance of the person named in the order, implicating the defendant's right to travel. Depending on the facts, such an order may implicate an individual's property interests by forcing him or her to vacate his or her own home. A protective order may also affect a person's immigration status given that a violation of a protective order is a deportable offense. Additionally, the restrained person will generally not be able to purchase, receive, own, or possess a firearm and will have to turn in, sell, or transfer any firearms the person has, and will not be able to buy, receive, own, or possess a firearm while the order is in effect. (Pen. Code, § 29825.)

3. Criminal Contempt

Disobedience of a court order may be punished as criminal contempt. The crime of contempt is a general intent crime. It is proven by showing that the defendant intended to commit the prohibited act, without any additional showing that he or she intended “to do some further act or achieve some additional consequence.” (*People v. Greenfield* (1982) 134 Cal.App.3d Supp. 1, 4.) Nevertheless, a violation must also be willful, which in the case of a court order encompasses both intent to disobey the order, and disregard of the duty to obey the order.” (*In re Karpf* (1970) 10 Cal.App.3d 355, 372.)

Criminal contempt under Penal Code Section 166 is a misdemeanor, and so proceedings under the statute are conducted like any other misdemeanor offense. (*In re McKinney* (1968) 70 Cal.2d 8, 10; *In re Kreitman* (1995) 40 Cal.App.4th 750, 755.) Therefore, the criminal contempt power is vested in the prosecution, and the trial court has no power to institute criminal contempt proceedings under the Penal Code. (*In re McKinney*, supra, 70 Cal.2d at p. 13.) A defendant charged with the crime of contempt is “entitled to the full panoply of substantive and due process rights.” (*People v. Kalnoki* (1992) 7 Cal.App.4th Supp. 8, 11.) Therefore, the defendant has the right to a jury trial regardless of the sentence imposed. (*People v. Earley* (2004) 122 Cal.App.4th 542, 550.)

This bill extends the maximum amount of time that a court can issue a post-conviction protective order against a defendant from 10 years to 15 years for felony domestic violence.

4. Argument in Support

According to the Conference of California Bar Associations:

Existing law places an arbitrary limit of 10 years on the maximum duration of a criminal protective order, following a domestic violence conviction pursuant to Penal Code section 273.5. As amended, AB 2308 would allow a criminal court to issue a protective order for up to 15 years. Increasing the maximum duration of a protective order by 5 years provides domestic violence survivors increased peace of mind and protection when a court finds that a longer duration is warranted by the factual circumstances.

...

... AB 2308 does not eliminate but will reduce the need for domestic violence survivors to file a separate action on their own to obtain adequate protection and peace of mind for themselves and their loved ones.

5. Argument in Opposition

ACLU California Action writes:

Existing law allows California courts to issue criminal protective orders for a period of up to 10 years for victims of domestic violence, human trafficking, any crime in furtherance of a criminal street gang, or a registerable sex offense.

This bill seeks to increase the maximum amount of time for a protective order from 10 to 15 years, which serves no measurable benefit given that current law provides courts discretion to impose protective orders for a sufficient amount of time.

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