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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguin, Chair  
2025 - 2026 Regular

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**Bill No:** AB 535                      **Hearing Date:** June 24, 2025  
**Author:** Schiavo  
**Version:** February 11, 2025  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SU

**Subject:** *Threatening a witness: assisting a prosecution*

### HISTORY

**Source:** Los Angeles District Attorney and Los Angeles City Attorney

**Prior Legislation:** AB 578 (Reyes), held in Senate Appropriations, 2018  
SB 940 (Leslie), Ch. 500, Stats. of 1997  
AB 2902, Stats. of 1980

**Support:** Arcadia Police Officers' Association; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California District Attorneys Association; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; Culver City Police Officers' Association; Fullerton Police Officers' Association; Los Angeles City Attorney; Los Angeles County District Attorney's Office; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Officers Association; Palos Verdes Police Officers' Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Ventura County District Attorney's Office

**Opposition:** None known

**Assembly Floor Vote:** 79 - 0

### PURPOSE

*The purpose of this bill is to specify that witness dissuasion during the prosecution stage can be based on either dissuasion during the charging stage or on dissuasion while the witness is assisting in the prosecution.*

*Existing law* provides that any person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of witness dissuasion and shall be punished by imprisonment in a county jail for not more than one year, or in the state prison:

- a) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge;
- b) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof; or,
- c) Arresting or causing or seeking the arrest of any person in connection with that victimization. (Pen. Code, § 136.1, subd. (b).)

*Existing law* punishes the aforementioned acts of witness dissuasion by two, three, or four years in the state prison when the perpetrator knowingly and maliciously commits the act under any of the following circumstances:

- d) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a witness or victim or any third person or the property of any victim, witness, or any third person;
- e) Where the act is in furtherance of a conspiracy;
- f) Where the act is committed by any person who has been convicted of any violation of this section, any predecessor law hereto or any federal statute or statute of any other state which, if the act prosecuted was committed in this state, would be a violation of this section; or,
- g) Where the act is committed by any person for pecuniary gain or for any other consideration acting upon the request of any other person. All parties to such a transaction are guilty of a felony. (Pen. Code, § 136.1, subd. (c).)

*This bill* states that attempting to prevent or dissuade a witness or victim of a crime from *either* causing a complaint, indictment, information, or probation or parole violation to be sought and prosecuted, *or* assisting in a resulting prosecution constitutes witness dissuasion.

*This bill* makes other technical, non-substantive changes.

## COMMENTS

### 1. Need for This Bill

According to the author:

Victims of crime deserve to be free from witness intimidation or being dissuaded from seeking justice. For certain victims, such as children or those subjected to human trafficking, these protections are especially crucial and can be lifesaving. However, in 2024, the California Supreme Court ruled that in order to violate state witness protection laws, an individual must dissuade a witness or victim both before and after charges are filed. While freedom from coercion and intimidation is a cornerstone of our judicial system, this ruling leaves witnesses and victims of crime vulnerable to both unless the Legislature steps in. AB 535 will ensure all

crime victims and witnesses are free to assist law enforcement and safeguard their community, knowing that the State will protect them from intimidation.

## 2. Witness Dissuasion / Obstruction of Justice

Penal Code section 136.1, criminalize the dissuasion and attempted dissuasion of a witness by proscribing several actions.

Subdivision (a) prohibits knowingly and maliciously preventing or dissuades any witness or victim from attending or giving testimony at any trial or proceeding or attempting to do so. (See Pen. Code, § subd. (a)(1) & (2).)

Subdivision (b) proscribes conduct intending to prevent a crime from even being reported by a victim or witness, or seeking an arrest to occur, or causing a charging document to be filed and assisting in prosecution. (See Pen. Code, § subd. (a)(1)-(3).)

Finally, subdivision (c) prohibits the acts described in subdivisions (a) and (b) but provides for increased punishment if those acts are done under specified circumstances, including if they are accompanied by force or use of a threat, or done for pecuniary gain or in the furtherance of a conspiracy.

While specific intent is required for all violations of section 136.1, subdivision (a) and subdivision (c) contain a malice element, but subdivision (b) does not. (*People v. Brackins* (2019) 37 Cal.App.5th 56, 66.) For purposes of the Penal Code provisions dealing with crimes against the public justice, including the witness dissuasion statute, “[m]alice means an intent to vex, annoy, harm, or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.” (Pen. Code, § 136, subd. (1).)

The language which is the focus of this bill is Penal Code section 136.1, subdivision (b)(2), which makes it a crime to attempt to dissuade a victim or witness from “[c]ausing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.”

## 3. *People v. Reynoza*

Last year, in *People v. Reynoza* (2024) 15 Cal.5th 982, the California Supreme Court considered whether Penal Code section 136.1, subdivision (b)(2), which prohibits dissuading or attempting to dissuade a victim or witness from causing a charging document “to be sought and prosecuted, and assisting in the prosecution thereof,” requires conduct occurring before and after criminal charges have been filed. A jury found the defendant guilty of violating this statute based on actions that occurred entirely after the complaint in the underlying criminal case had been filed. (*Id.* at pp. 987-988.)

The question before the court was whether section 136.1, subdivision (b)(2) supports a disjunctive interpretation — in which the statute independently applies where a defendant dissuades a witness from “assisting in the prosecution” of a case after the charging document has already been filed — or whether a conjunctive interpretation precludes a conviction under such circumstances. On the one hand, the word “and,” which joins the subject clauses of section 136.1(b)(2), is ordinarily used as a conjunction (See *In re C.H.* (2011) 53 Cal.4th 94, 101). On the other hand, the word “and” also “is sometimes, in a fair and rational construction of a statute,

to be read as if it were or, and taken disjunctively” (See *People v. Pool* (1865) 27 Cal. 572, 581), which would lead to applying section 136.1(b)(2) to situations where a defendant dissuades a witness from “assisting in the prosecution” of a case only after a charging document has already been filed.

After considering the statutory language, statutory context, legislative history, and the experiences of other jurisdictions when faced with similar statutory language, the Court concluded that section 136.1, subdivision (b)(2) is equally susceptible to both the conjunctive and disjunctive constructions. (*Reynoza*, supra, at pp. 1003-1009.) Accordingly, the rule of lenity required adopting the interpretation more favorable to the defendant. In this instance, that is the conjunctive construction, which does not permit a conviction to be based solely on proof of dissuasion from “assisting in the prosecution” of an already-filed charging document. (*Id.* at p. 1013.) The Court concluded by saying that the “Legislature remains free to clarify section 136.2(b)(1).” (*Ibid.*)

This bill changes the “and” in subdivision (b)(2) to “or” clarifying that post-charging dissuasion alone is sufficient to establish guilt under the statute.

#### 4. Argument in Support

According to the Los Angeles County District Attorney’s Office, a co-sponsor of this bill:

In *People v. Reynoza* (2024) 15 Cal.5th 982, the California Supreme Court held that a violation of Penal Code section 136.1(b)(2) for attempting to dissuade a victim or witness from assisting the prosecution only applied to acts prior to a criminal filing.

Post-conviction witness intimidation is unfortunately common in criminal cases which is why it is imperative that California ensure that individuals who engage in witness intimidation by dissuading, or attempting to dissuade a victim or witness from assisting the prosecution are held accountable for their actions.

The ability to prosecute witness intimidation or attempted witness intimidation is essential to the proper functioning of the criminal justice system. The American Bar Association noted the importance of witness intimidation statutes stating, “It is the one crime in which only unsuccessful attempts are ever reported or discovered. It is also a crime which inherently thwarts the process of criminal justice itself.” (ABA Section of Crim. Justice, Com. on Victims, Reducing Victim/Witness Intimidation: A Package, p. 1.)

California enacted Penal Code Section 136.1 in 1980 to protect victims and witnesses so they would report crimes. This protection was intended to offer protections for victims and witnesses at all stages of the of the criminal justice process, not just at the pre-filing stage.

AB 535 is necessary to restore legal protections for victims and witnesses from “post charging” intimidation, which was lost following the *Reynoza* decision. Because post-filing victim/witness intimidation is common in criminal cases, it makes no sense to limit the scope of California’s witness dissuading statute only to acts committed prior to the filing of a criminal case.

The California Supreme Court recognized the problem that could be caused by the holding in *Reynosa*, when it noted, "...our Legislature remains free to clarify section 136.1(b)(2), as the Senate Committee on the Judiciary suggested it do 'at some point' to smooth out the statute's 'numerous rough edges'." (Sen. Com. On Judiciary, Analysis of Assem. Bill No. 2909, as amended April 9, 1980)

The amendment proposed by AB 535 would conform California law with witness dissuading statutes in numerous other states including, Delaware, Florida, Georgia, Missouri, Wisconsin and the District of Columbia.

**– END –**