
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 467 **Hearing Date:** June 6, 2023
Author: Gabriel
Version: March 15, 2023
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Domestic violence: restraining orders*

HISTORY

Source: Santa Clara County District Attorney

Prior Legislation: SB 352 (Block), Ch. 279, Stats. 2015
AB 307 (Campos), Ch. 291, Stats. 2013
SB 723 (Pavley), Ch. 155, Stats. 2011
AB 289 (Spitzer), Ch. 582, Stats. 2007

Support: California Attorneys for Criminal Justice; Prosecutors Alliance of California

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to clarify that a court that sentenced a defendant and issued a post-conviction protective order may make modifications to the protective order throughout the duration of the order.

Existing law authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)

Existing law provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)

Existing law requires a court, at the time of sentencing, to consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, for convictions for domestic violence, human trafficking, a crime in furtherance of a criminal street gang, and offenses requiring sex offender registration. (Pen. Code, § 136.2, subd. (i).)

Existing law provides that a 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, or subject to mandatory supervision, or whether the defendant is placed on probation. Provides that the duration of a protective order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and the victim's immediate family. (Pen. Code, § 136.2, subd. (i)(1).)

Existing law requires a court to consider issuing an order restraining the defendant from any contact with a percipient witness, upon clear and convincing evidence of witness harassment, in cases in which the defendant has been convicted of domestic violence, specified sex crimes, a crime in furtherance of a criminal street gang, and sex registerable offenses. (Pen. Code, § 136.2, subd. (i)(2).)

Existing law authorizes a post-conviction protective order to include a condition of electronic monitoring for up to one year, as specified. (Pen. Code, § 136.2, subd. (i)(3).)

Existing law prohibits a person who is subject to a protective order from owning, possessing, purchasing, attempting to purchase or receive, a firearm while the protective order is in effect, and requires the court to order a person subject to the protective order to relinquish ownership or possession of any firearms. (Pen. Code, § 136.2, subd. (d).)

Existing law makes it a misdemeanor to willfully and knowingly violating a protective order. (Pen. Code, § 166.)

This bill clarifies that a court that sentenced a defendant and issued a post-conviction protective order may make modifications to the protective order throughout the duration of the order.

COMMENTS

1. Need For This Bill

According to the author:

AB 467 is a common-sense measure that will change current statute to allow courts to modify the terms of a contact order as long as the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim. In doing so, this bill will not only strengthen protections for victims of domestic violence—who cannot change the order themselves, thereby endangering their safety—but also prevent punitive practices and overly-harsh punishments in our criminal legal system for couples who reconcile and wish to have the order changed.

2. Protective Orders

As a general matter, a court can issue a restraining order in any criminal proceeding pursuant to Penal Code section 136.2, subdivision (a)(1), 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. Protective orders issued under this portion of the statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

For certain types of convictions, including domestic violence, the court has the authority to issue a post-conviction protective order for up to ten years. (Pen. Code, § 136.2, subd. (i).)

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 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.) 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.4t 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.)

4. Effect of This Bill

According to the bill’s sponsor, some courts have interpreted Penal Code section 136.2 as not permitting the court to modify a post-conviction protective order once the defendant has completed their sentence or period of probation. This bill would clarify that a court is allowed to modify a post-conviction protective order throughout the duration of the order.

5. Argument in Support

The Prosecutors Alliance of California writes:

A domestic violence restraining order is a court order issued in a domestic violence case that mandates that the accused refrain from harming, threatening, or harassing the victim. These orders include provisions related to contact between the restrained person and the protected person which can either be a “peaceful contact order” (PCO) or a no contact order (NCO). Victims often seek to modify the order from PCO to NCO or vice versa.

Some courts have determined that if the defendant is no longer serving a sentence and is not on probation, they do not have the jurisdiction to modify the order, even if both the victim and defendant request it. This is detrimental to both victims and defendants. Victims who seek to modify a PCO to NCO cannot change the order, which can endanger their safety. Additionally, couples who reconcile and wish to have a PCO cannot change the order, thereby exposing the defendant to additional criminal protective order violations for consensual contact.

AB 467 will change the current statute to allow courts to modify the terms of a peaceful contact order or no contact order as long as the court is convinced beyond a reasonable doubt that the modification is in the best interest of the victim.