
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1735 **Hearing Date:** June 19, 2018
Author: Cunningham
Version: January 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Protective Orders: Human Trafficking: Pimping: Pandering*

HISTORY

Source: Author

Prior Legislation: AB 264 (Low), Ch. 270, Stats. 2017
AB 352 (Block), Ch. 279, Stats. 2015
AB 307 (Campos), Ch. 291, Stats. 2013
SB 723 (Pavley), Ch. 155, Stats. 2011
SB 834 (Florez), Ch. 627, Stats. 2010
SB 289 (Spitzer), Ch. 582, Stats. 2007

Support: California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; End Violence Against Women International; Los Angeles County District Attorney; Riverside Sheriffs' Association; San Diego County District Attorney's Office; University of San Diego School of Law – Children's Advocacy Institute

Opposition: American Civil Liberties Union of California; California Public Defenders Association

Assembly Floor Vote: 76 - 2

PURPOSE

The purpose of this bill is to require the court to consider issuing a protective order in all cases in which a defendant has been convicted of human trafficking, pimping or pandering.

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 to consider issuing a protective order for up to 10 years to protect the victim of the crime when a defendant is convicted of any of the following crimes:

- 1) A crime involving domestic violence, as specified;
- 2) Cases of rape, spousal rape, and statutory rape;
- 3) Gang cases;
- 4) Any offense requiring sex-offender registration;
- 5) Stalking cases; and
- 6) Elder and dependent adult abuse cases. (Pen. Code, §§ 136.2, subd. (i)(1); 646.9, subd. (k); 368, subd. (l).)

This bill would add human trafficking, pimping and pandering to the list of offenses for which a court is required to consider issuing a protective order upon a conviction.

COMMENTS

1. Need for This Bill

Currently, California law only affords the protection of a 10-year criminal protective order for minor victims of pimping and pandering. But victims age 18 and over are in need of the protection as well. Pimping and pandering crimes follow a psychology that is similar to domestic violence. All domestic violence victims are eligible for a 10-year protective order, while adult victims of pimping and pandering are not.

Additionally, human trafficking victims listed in Penal Code section 236.1(a) have been left out of protections of the lengthier stay away orders, as they are not trafficked for sexual purposes and are not specifically listed in PC 136.1(i)(1). These are the victims that are trafficked for forced labor or services. But these human trafficking victims are also vulnerable to the abuse and coercion of their traffickers, and should not be excluded from protection.

2. Protective Orders

As a general matter, the court can issue a protective order in any criminal proceeding pursuant to Penal Code Section 136.2 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 authority to issue protective orders as a condition of probation. For example, when domestic violence criminal proceedings have concluded, the court can issue a "no-contact order" as a condition of probation. (Pen. Code, § 1203.097.)

Finally, 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. The court can also issue no-contact orders lasting up to 10 years in cases involving a domestic-violence-related offense, rape, spousal rape, statutory rape, gang cases, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) The same is true of stalking cases. (Pen. Code, §646.9, subd. (k).) 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).) Lastly, the court has authority to issue no-contact orders lasting up to 10 years in cases involving the abuse of an elder or dependent adult. (Pen. Code, § 368, subd. (l).)

This bill would extend the court's authority to issue post-conviction protective orders lasting up to 10 years in human trafficking, pimping, and pandering cases. As to all three offenses addressed by this bill, it should be noted that human trafficking for commercial sexual purposes, as well as the pimping or pandering of a minor require sex offender registration. (Pen. Code, § 290, subd. (c).) As noted above, the court is already required to consider issuing a post-conviction restraining order for any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).)

Therefore, the practical effect of this bill is to permit such an order when (1) the victim of pimping or pandering is an adult, and (2) in human trafficking cases involving forced labor or services.

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.) 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; 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.)

4. Effects of Restraining Orders

A restraining order prevents a person from being able to go to certain places or to do certain things. For example, the restraining order may prohibit the defendant from being within a certain distance of the person named in the order, thereby 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.

The restraining order may affect a person's immigration status. A violation of a protective order is a deportable offense. Section 237(a)(2)(E)(ii) of the Immigration and Nationality Act (INA) states: "Any alien who at any time after entry is enjoined under a protection order issued by a court on whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable."

The restrained person will also generally not be able to own a gun and will have to turn in, sell, or store any guns he or she has, and will not be able to buy a gun while the restraining order is in effect. (Pen. Code, § 29825.)

5. Argument in Support

According to End Violence Against Women International:

Adult victims of pimps and panderers are among the most vulnerable members of our society. They live on the margins, are often products of the foster care system or abusive childhoods, and lack source of love or support. Street-wise pimps and panderers prey upon these individuals, drawing them into a life of prostitution through promises of affection or money, plying them with drugs, or exploiting other vulnerabilities in their situations. Many adult victims of pimps and panderers were introduced to prostitution as child sex trafficking victims. Yet once they turn 18, they face potential criminal consequences for the very actions for which they were victimized as children. Faced with criminal histories and limited job opportunities, many find it nearly impossible to escape their abusive and controlling pimps.

Victims of labor trafficking are similarly vulnerable. Cunning labor traffickers frequently target foreign nationals who are off the radar screen of those who could help them. Many fear immigration consequences, face language barriers, or lack understanding of their rights under US and California laws. According to a 2012 study conducted by researchers from San Diego State University, 30% of undocumented, Spanish-speaking migrant workers in the San Diego area had experienced labor trafficking. Because labor traffickers control their victims through physical restraint, psychological intimidation, threats to family members, and other forms of coercion, they represent a continuing threat to victims even after they are prosecuted and convicted for their crimes.

6. Argument in Opposition

The American Civil Liberties Union of California opposes this bill and writes:

Penal Code section 136.2 (i) gives the court an additional tool to protect victims in specific kinds of cases, such as domestic violence, rape, or cases involving registrable sex offenses including human trafficking to effect certain sex offenses or pimping or pandering a minor. In these cases, the relationship between the victim and the offender is such that the victim may have particular reason to fear further harm from the offender.

AB 1735 would expand the list of crimes that would allow a protective order to be issued to crimes where the same type of relationship between victim and defendant is not at issue, as where the victim was trafficked for forced labor rather than for sexual purposes. This change will increase the number of protective orders issued, often without the same kind of specific need to protection having been shown. In many cases this could be used as a form of additional punishment, regardless of whether there was any reason to believe that the defendant posed a continuing threat to the victim. For up to ten years, potentially far longer than the period of the sentence or term of probation, the defendant would remain subject to the control of the criminal justice system. The terms of the restraining order in many cases would make it much more difficult for the defendant to reintegrate into the community, by keeping the defendant from returning to his former home or even neighborhood. An offender who is unable to reconnect with friends, neighbors and family is more likely to reoffend, not less. The end result in many cases would likely be conviction for violation of the restraining order, and a prolonged cycle of reincarceration.

Moreover, expanding the list of crimes allowing for issuance of a protective order beyond those currently in law will open the door to expansion to still more crimes – turning what is now a tool to protect specific categories of victims into an additional form of punishment applied regardless of the needs of the victim in a particular case.

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