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THIRD READING

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Bill No: AB 535  
Author: Schiavo (D), et al.  
Introduced: 2/11/25  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 6-0, 6/24/25  
AYES: Arreguín, Seyarto, Caballero, Gonzalez, Pérez, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/29/25  
AYES: Caballero, Seyarto, Cabaldon, Dahle, Grayson, Richardson, Wahab

ASSEMBLY FLOOR: 79-0, 6/2/25 - See last page for vote

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**SUBJECT:** Threatening a witness: assisting a prosecution

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

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**DIGEST:** This bill specifies that the offense of witness dissuasion during the prosecution stage can be based on either dissuasion during the charging stage or while the witness is assisting in the prosecution.

**ANALYSIS:**

Existing Law:

- 1) 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. (Penal Code (Pen. Code), § 136.1, subd. (b).)
- 2) 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:
- a) 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;
  - b) Where the act is in furtherance of a conspiracy;
  - c) 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,
  - d) 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:**

- 1) 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.
- 2) Makes other technical, non-substantive changes.

**Background**

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, subdivision (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, subdivision (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 Supreme Court concluded that section 136.1, subdivision (b)(2) is equally susceptible to both the conjunctive and disjunctive constructions. (*Reynosa, 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.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund). To the extent this bill make it easier to obtain convictions for witness intimidation, it will result in costs to adjudicate criminal charges and incarcerate more people convicted of this offense. Defendants are constitutionally guaranteed certain rights during criminal proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). Expanding the crime will lead to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend

on many unknowns, including the numbers of people charged with an offense and the factors unique to each case. Unknown, potentially significant costs (General Fund) to the Department of Corrections and Rehabilitation (CDCR) to incarcerate people for the crimes in this bill. The Legislative Analyst's Office estimates the average annual cost to incarcerate one person in state prison is \$133,000. The annual cost of operating a mental health crisis bed at CDCR is around \$400,000. Potential cost pressures (General Fund) to the Department of State Hospitals (DSH), in order to adequately house, treat, and care for persons committed to DSH that otherwise would not. Cost pressures to DSH are connected with an increase in state prison sentences. Unknown, potentially significant costs (local funds, General Fund) to the counties to incarcerate people for the crime in this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year.

**SUPPORT:** (Verified 8/29/25)

Los Angeles District Attorney and Los Angeles City Attorney (Source)

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 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:** (Verified 8/29/25)

None received

**ARGUMENTS 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.

ASSEMBLY FLOOR: 79-0, 6/2/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

Prepared by: Sandy Uribe / PUB. S. /  
8/29/25 20:39:03

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