

AMENDED IN ASSEMBLY APRIL 26, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2905**

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**Introduced by Assembly Member Spitzer**

February 20, 2004

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An act to amend Section ~~646.91~~ of the Penal Code, relating to ~~emergency protective orders~~; 6254.21 of the Government Code, and to amend Section 832.9 of, and to add Sections 146.1, and 146.2 to, the Penal Code, relating to public safety officials.

LEGISLATIVE COUNSEL'S DIGEST

AB 2905, as amended, Spitzer. ~~Emergency protective orders~~  
*Public safety officials.*

*Existing law provides that it is a crime punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment for any person to knowingly post the home address or telephone number of any elected or appointed official on the Internet intending to cause great bodily harm or threatening to cause imminent great bodily harm to that individual. Existing law provides that a violation of these provisions that leads to bodily injury of that elected or appointed official or his or her spouse or child is punishable by a fine not exceeding \$1000, imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment, or by imprisonment in the state prison for 16 months, 2 or 3 years, as specified.*

*This bill would provide that posting the home address or telephone number of any elected or appointed official on the Internet with the required intent is punishable by a fine not exceeding \$1,000,*

*imprisonment in a county jail for a period not exceeding 6 months, or by both that fine and imprisonment or by imprisonment in the state prison for 16 months, 2 or 3 years. This bill would also provide that a violation of these provisions by any person that results in bodily injury of the elected or appointed official, or his or her residing spouse or child, is punishable by imprisonment in the state prison for 16 months, 2 or 3 years if the person intended to cause imminent great bodily harm or if he or she had knowledge of the life threatening risks associated with posting the information of the elected or appointed official and did so with conscious disregard for the safety of that person or his or her spouse or child, as specified.*

*Existing law provides that the governmental entity employing a peace officer shall reimburse moving and relocation expenses if it is necessary for him or her to move because he or she has received a credible threat that a life threatening action may be taken against him or her or his or her immediate family as a result of his or her employment.*

*This bill would instead provide that these provisions are applicable to public safety officials, as specified. By imposing a new duty on local agencies, the bill would impose a state-mandated local program.*

*Existing law provides that every person who maliciously, and with specified intent, publishes, disseminates, or otherwise discloses the residence address or telephone number of any public safety official or his or her spouse or children who reside with him or her, without the authorization of the employing agency, is punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. Existing law provides that any person who violates these provisions resulting in bodily injury to the public safety official, or to his or her spouse or children, is punishable by imprisonment in the state prison for 16 months, 2 or 3 years.*

*This bill would provide that no person, business, or association shall sell, or trade for value, the home address or home telephone number of a public safety official if the public safety official has made a written demand to make that information confidential. This bill would provide that a willful violation of this section is punishable by a fine not to exceed \$1,000, imprisonment in a county jail for a period not to exceed 6 months, or by both that fine and imprisonment. This bill would provide that a willful violation of these provisions that results in bodily injury of a public safety official is punishable by imprisonment in the state prison for 16 months, 2 or 3 years.*



*This bill would provide that these provisions shall not apply to the collection or dissemination of information from and to credit reporting agency or to any information mandated to be collected under any other provision of law, as specified. This bill would also provide that in lieu of criminal prosecution in a case in which a violation of these provisions did not result in the bodily injury of a public safety official, a district attorney may instead bring an action under the Unfair Trade Practices Act.*

*This bill would also provide that a public safety official may recover actual and punitive damages, as specified, and any other relief that the court deems proper and appropriate, against any person, business, or association that intentionally sold, or traded for value, his or her home address or home telephone number in violation of these provisions.*

*Because this bill would change the definition of a crime, impose new duties upon local agencies, and create new crimes, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law provides that a judicial officer may issue an ex parte emergency protective order if a peace officer so requests, in writing, asserting reasonable grounds to believe a person is in immediate and present danger of stalking, as specified.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: ~~no~~ yes.



*The people of the State of California do enact as follows:*

1 ~~SECTION 1.—Section 646.91 of the Penal Code is amended to~~  
2 *SECTION 1. Section 6254.21 of the Government Code is*  
3 *amended to read:*

4 6254.21. (a) No state or local agency shall post the home  
5 address or telephone number of any elected or appointed official  
6 on the Internet without first obtaining the written permission of  
7 that individual.

8 (b) No person shall knowingly post the home address or  
9 telephone number of any elected or appointed official, or of the  
10 official’s residing spouse or child on the Internet knowing that  
11 person is an elected or appointed official and intending to cause  
12 imminent great bodily harm that is likely to occur or threatening  
13 to cause imminent great bodily harm to that individual. A violation  
14 of this subdivision is a misdemeanor *or a felony*. ~~A violation of~~  
15 ~~this subdivision that leads to the bodily injury of the official, or his~~  
16 ~~or her residing spouse or child, is a misdemeanor or a felony.~~ A  
17 *violation of this subdivision that leads to the bodily injury of the*  
18 *official, or his or her residing spouse or child, is a misdemeanor*  
19 *or a felony. A violation of this subdivision by any person that*  
20 *results in bodily injury of the elected or appointed official, or his*  
21 *or her residing spouse or child, is a felony if the person intended*  
22 *to cause imminent great bodily harm or if he or she had knowledge*  
23 *of the life threatening risks associated with posting the home*  
24 *address or telephone information of the elected or appointed*  
25 *official and did so with conscious disregard for the safety of that*  
26 *elected or appointed official or his or her residing spouse or child.*

27 (c) For purposes of this section “elected or appointed official”  
28 includes, but is not limited to, all of the following:

- 29 (1) State constitutional officers.
- 30 (2) Members of the Legislature.
- 31 (3) Judges and court commissioners.
- 32 (4) District attorneys.
- 33 (5) Public defenders.
- 34 (6) Members of a city council.
- 35 (7) Members of a board of supervisors.
- 36 (8) Appointees of the Governor.
- 37 (9) Appointees of the Legislature.
- 38 (10) Mayors.



- 1 (11) City attorneys.
- 2 (12) Police chiefs and sheriffs.
- 3 (13) A public safety official as defined in Section 6254.24.
- 4 (d) Nothing in this section is intended to preclude punishment
- 5 instead under Sections 69, 76, or 422 of the Penal Code, or any
- 6 other provision of law.
- 7 *SEC. 2. Section 832.9 of the Penal Code is amended to read:*
- 8 832.9. (a) The governmental entity employing the ~~peace~~
- 9 ~~officer~~ *public safety official* shall reimburse the moving and
- 10 relocation expenses of a ~~peace officer, as defined in Section 830~~
- 11 *public safety official, as defined in Section 6254.24 of the*
- 12 *Government Code*, or any member of his or her immediate family
- 13 residing with the officer in the same household or on the same
- 14 property when it is necessary to move because the officer has
- 15 received a credible threat that a life threatening action may be
- 16 taken against the ~~officer~~ *public safety official* or his or her
- 17 immediate family as a result of the ~~peace officer's~~ *public safety*
- 18 *official's* employment.
- 19 (b) The person relocated shall receive actual and necessary
- 20 moving and relocation expenses incurred both before and after the
- 21 change of residence, including reimbursement for the costs of
- 22 moving household effects either by a commercial household goods
- 23 carrier or by the employee.
- 24 (1) Actual and necessary moving costs shall be those costs that
- 25 are set forth in the Department of Personnel Administration rules
- 26 governing promotional relocations while in the state service. The
- 27 department shall not be required to administer this section.
- 28 (2) The public entity shall not be liable for any loss in value to
- 29 a residence or for the decrease in value due to a forced sale.
- 30 (3) ~~Officers~~ *Public safety officials* shall receive approval of the
- 31 appointing authority prior to incurring any cost covered by this
- 32 section.
- 33 (4) ~~Officers~~ *Public safety officials* shall not be considered to be
- 34 on duty while moving unless approved by the appointing authority.
- 35 (5) For a relocation to be covered by this section, the appointing
- 36 authority shall be notified as soon as a credible threat has been
- 37 received.
- 38 (6) Temporary relocation housing shall not exceed 60 days.



1 (7) The public entity ceases to be liable for relocation costs  
2 after 120 days of the original notification of a viable threat if the  
3 ~~officer~~ *official* has failed to relocate.

4 (c) As used in this section, “credible threat” means a verbal or  
5 written statement or a threat implied by a pattern of conduct or a  
6 combination of verbal or written statements and conduct made  
7 with the intent and the apparent ability to carry out the threat so as  
8 to cause the person who is the target of the threat to reasonably fear  
9 for his or her safety or the safety of his or her immediate family.

10 (d) As used in this section, “immediate family” means the  
11 spouse, parents, siblings, and children residing with the ~~officer~~  
12 *official*.

13 *SEC. 3. Section 146.1 is added to the Penal Code, to read:*

14 *146.1. (a) No person, business, or association shall sell, or*  
15 *trade for value, the home address or home telephone number of a*  
16 *public safety official if the public safety official has made a written*  
17 *demand of that person, business, or association to make that*  
18 *information confidential. A person, business, or association may,*  
19 *unless prohibited by any other provision of law, otherwise sell or*  
20 *trade for value the work address or work telephone of a public*  
21 *safety official in lieu of the home address or telephone number of*  
22 *the public safety official.*

23 *(b) A willful violation of this section is punishable by a fine not*  
24 *to exceed one thousand dollars (\$1,000), imprisonment in a county*  
25 *jail for a period not to exceed six months, or by both that fine and*  
26 *imprisonment. A willful violation of this section that results in*  
27 *bodily injury of a public safety official is punishable by*  
28 *imprisonment in the state prison for 16 months, two or three years.*  
29 *This section shall not prevent prosecution under any other*  
30 *provision of law carrying the same or greater penalty.*

31 *(c) Subdivision (a) does not apply to the collection or*  
32 *dissemination of information from and to a consumer reporting*  
33 *agency as permitted under the Consumer Credit Reporting*  
34 *Agencies Act (Title 1.6 (commencing with Section 1785.1) of Part*  
35 *4 of Division 3 of the Civil Code and the federal Fair Credit*  
36 *Reporting Act (15 U.S.C. Section 1681 et seq.) or to any*  
37 *information mandated to be collected by or disseminated to any*  
38 *person, business, or association under any other provision of law,*  
39 *including the Uniting and Strengthening America by Providing*



1 *Appropriate Tools Required to Intercept and Obstruct Terrorism*  
2 *Act of 2001 (Public Law 107-56; USA Patriot Act).*

3 (d) *In lieu of criminal prosecution in a case in which a violation*  
4 *of subdivision (a) did not result in the bodily injury of a public*  
5 *safety official, a district attorney may instead bring an action*  
6 *under the Unfair Trade Practices Act pursuant to Section 1700 of*  
7 *the Business and Professions Code.*

8 (e) *For purposes of this section, “public safety official” is*  
9 *defined in Section 6254.24 of the Government Code.*

10 SEC. 4. *Section 146.2 is added to the Penal Code, to read:*

11 146.2. (a) *A public safety official may recover actual*  
12 *damages, including court costs, loss of wages, attorney’s fees, and*  
13 *pain and suffering, punitive damages not to exceed ten thousand*  
14 *dollars (\$10,000), and any other relief that the court deems proper*  
15 *and appropriate against any person, business, or association that*  
16 *intentionally sold or traded for value his or her home address or*  
17 *home telephone number in violation of Section 146.1 after he or*  
18 *she made a written demand of that person, business, or association*  
19 *to make that information confidential.*

20 (b) *For purposes of this section, “public safety official” is*  
21 *defined in Section 6254.24 of the Government Code.*

22 SEC. 5. *No reimbursement is required by this act pursuant to*  
23 *Section 6 of Article XIII B of the California Constitution for*  
24 *certain costs that may be incurred by a local agency or school*  
25 *district because in that regard this act creates a new crime or*  
26 *infraction, eliminates a crime or infraction, or changes the penalty*  
27 *for a crime or infraction, within the meaning of Section 17556 of*  
28 *the Government Code, or changes the definition of a crime within*  
29 *the meaning of Section 6 of Article XIII B of the California*  
30 *Constitution.*

31 *However, notwithstanding Section 17610 of the Government*  
32 *Code, if the Commission on State Mandates determines that this*  
33 *act contains other costs mandated by the state, reimbursement to*  
34 *local agencies and school districts for those costs shall be made*  
35 *pursuant to Part 7 (commencing with Section 17500) of Division*  
36 *4 of Title 2 of the Government Code. If the statewide cost of the*  
37 *claim for reimbursement does not exceed one million dollars*  
38 *(\$1,000,000), reimbursement shall be made from the State*  
39 *Mandates Claims Fund.*

40 ~~read:~~



1     ~~646.91.—(a) Notwithstanding any other law, a judicial officer~~  
2 ~~may issue an ex parte emergency protective order if a peace officer,~~  
3 ~~as defined in Section 830.1, 830.2, or 830.32, asserts reasonable~~  
4 ~~grounds to believe that a person is in immediate and present danger~~  
5 ~~of stalking based upon the person’s allegation that he or she has~~  
6 ~~been willfully, maliciously, and repeatedly followed or harassed~~  
7 ~~by another person who has made a credible threat with the intent~~  
8 ~~of placing the person who is the target of the threat in reasonable~~  
9 ~~fear for his or her safety, or the safety of his or her immediate~~  
10 ~~family, within the meaning of Section 646.9.~~

11     ~~(b) A peace officer who requests an emergency protective order~~  
12 ~~shall reduce the order to writing and sign it.~~

13     ~~(c) An emergency protective order shall include all of the~~  
14 ~~following:~~

15     ~~(1) A statement of the grounds asserted for the order.~~

16     ~~(2) The date and time the order expires.~~

17     ~~(3) The address of the superior court for the district or county~~  
18 ~~in which the protected party resides.~~

19     ~~(4) The following statements, which shall be printed in English~~  
20 ~~and Spanish:~~

21     ~~(A) “To the protected person: This order will last until the date~~  
22 ~~and time noted above. If you wish to seek continuing protection;~~  
23 ~~you will have to apply for an order from the court at the address~~  
24 ~~noted above. You may seek the advice of an attorney as to any~~  
25 ~~matter connected with your application for any future court orders.~~  
26 ~~The attorney should be consulted promptly so that the attorney~~  
27 ~~may assist you in making your application.”~~

28     ~~(B) “To the restrained person: This order will last until the date~~  
29 ~~and time noted above. The protected party may, however, obtain~~  
30 ~~a more permanent restraining order from the court. You may seek~~  
31 ~~the advice of an attorney as to any matter connected with the~~  
32 ~~application. The attorney should be consulted promptly so that the~~  
33 ~~attorney may assist you in responding to the application. You may~~  
34 ~~not own, possess, purchase or receive, or attempt to purchase or~~  
35 ~~receive a firearm while this order is in effect.”~~

36     ~~(d) An emergency protective order may be issued under this~~  
37 ~~section only if the judicial officer finds both of the following:~~

38     ~~(1) That reasonable grounds have been asserted to believe that~~  
39 ~~an immediate and present danger of stalking, as defined in Section~~  
40 ~~646.9, exists.~~



- 1 ~~(2) That an emergency protective order is necessary to prevent~~
- 2 ~~the occurrence or reoccurrence of the stalking activity.~~
- 3 ~~(c) An emergency protective order may include either of the~~
- 4 ~~following specific orders as appropriate:~~
- 5 ~~(1) A harassment protective order as described in Section 527.6~~
- 6 ~~of the Code of Civil Procedure.~~
- 7 ~~(2) A workplace violence protective order as described in~~
- 8 ~~Section 527.8 of the Code of Civil Procedure.~~
- 9 ~~(f) An emergency protective order shall be issued without~~
- 10 ~~prejudice to any person.~~
- 11 ~~(g) An emergency protective order expires at the earlier of the~~
- 12 ~~following times:~~
- 13 ~~(1) The close of judicial business on the fifth court day~~
- 14 ~~following the day of its issuance.~~
- 15 ~~(2) The seventh calendar day following the day of its issuance.~~
- 16 ~~(h) A peace officer who requests an emergency protective order~~
- 17 ~~shall do all of the following:~~
- 18 ~~(1) Serve the order on the restrained person, if the restrained~~
- 19 ~~person can reasonably be located.~~
- 20 ~~(2) Give a copy of the order to the protected person, or, if the~~
- 21 ~~protected person is a minor child, to a parent or guardian of the~~
- 22 ~~protected child if the parent or guardian can reasonably be located,~~
- 23 ~~or to a person having temporary custody of the child.~~
- 24 ~~(3) File a copy of the order with the court as soon as practicable~~
- 25 ~~after issuance.~~
- 26 ~~(i) A peace officer shall use every reasonable means to enforce~~
- 27 ~~an emergency protective order.~~
- 28 ~~(j) A peace officer who acts in good faith to enforce an~~
- 29 ~~emergency protective order is not civilly or criminally liable.~~
- 30 ~~(k) A peace officer who requests an emergency protective order~~
- 31 ~~under this section shall carry copies of the order while on duty.~~
- 32 ~~(l) A peace officer described in subdivision (a) or (b) of Section~~
- 33 ~~830.32 who requests an emergency protective order pursuant to~~
- 34 ~~this section shall also notify the sheriff or police chief of the city~~
- 35 ~~in whose jurisdiction the peace officer's college or school is~~
- 36 ~~located after issuance of the order.~~
- 37 ~~(m) "Judicial officer," as used in this section, means a judge,~~
- 38 ~~commissioner, or referee.~~



- 1 ~~(n) A person subject to an emergency protective order under~~  
2 ~~this section shall not own, possess, purchase, or receive a firearm~~  
3 ~~while the order is in effect.~~
- 4 ~~(o) Nothing in this section shall be construed to permit a court~~  
5 ~~to issue an emergency protective order prohibiting speech or other~~  
6 ~~activities that are constitutionally protected or protected by the~~  
7 ~~laws of this state or by the United States or activities occurring~~  
8 ~~during a labor dispute, as defined by Section 527.3 of the Code of~~  
9 ~~Civil Procedure, including, but not limited to, picketing and hand~~  
10 ~~billing.~~
- 11 ~~(p) The Judicial Council shall develop forms, instructions, and~~  
12 ~~rules for the scheduling of hearings and other procedures~~  
13 ~~established pursuant to this section.~~
- 14 ~~(q) Any intentional disobedience of any emergency protective~~  
15 ~~order granted under this section is punishable pursuant to Section~~  
16 ~~166. Nothing in this subdivision shall be construed to prevent~~  
17 ~~punishment under Section 646.9, in lieu of punishment under this~~  
18 ~~section, if a violation of Section 646.9 is also pled and proven.~~

