

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 289

Introduced by Assembly Member Spitzer

February 9, 2007

An act to amend Sections ~~136.2~~ 273.5 and 646.9 of the Penal Code, relating to protective orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 289, as amended, Spitzer. Protective orders.

~~Existing law provides that 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, a court with jurisdiction over a criminal matter may issue protective orders as specified. A violation of the protective order may be prosecuted as a crime and contempt of court. These orders are limited in time to the pendency of the criminal action in which they are issued, or to the length of probation conditions imposed~~ *any person who willfully inflicts corporal injury resulting in a traumatic condition upon a person who with whom he or she has a specified familiar relationship shall be punished by imprisonment in the state prison for 2, 3, or 4 years, or in a county jail for not more than one year, or by a fine of up to \$6,000 or by both that fine and imprisonment.*

~~This bill would allow the court to issue a protective order for up to 10 years whether the defendant is sentenced to state prison, the county jail or if imposition of sentence is suspended and the defendant is placed on probation~~ *provide that upon conviction for violating these provisions, the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, whether the defendant*

is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation, which may be valid for up to 10 years, as determined by the court.

Existing law also provides that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable as a misdemeanor or a felony. Existing law further provides for various enhanced penalties for stalking under specified circumstances.

Existing law provides that upon conviction for stalking, the sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court, based on specified factors. A violation of this provision is a misdemeanor punishable by 6 months in a county jail.

This bill would provide that this protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

By creating new crimes this bill would impose state-mandated local programs.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 273.5 of the Penal Code is amended to
- 2 read:
- 3 273.5. (a) Any person who willfully inflicts upon a person
- 4 who is his or her spouse, former spouse, cohabitant, former
- 5 cohabitant, or the mother or father of his or her child, corporal
- 6 injury resulting in a traumatic condition, is guilty of a felony, and
- 7 upon conviction thereof shall be punished by imprisonment in the
- 8 state prison for two, three, or four years, or in a county jail for not

1 more than one year, or by a fine of up to six thousand dollars
2 (\$6,000) or by both that fine and imprisonment.

3 (b) Holding oneself out to be the husband or wife of the person
4 with whom one is cohabiting is not necessary to constitute
5 cohabitation as the term is used in this section.

6 (c) As used in this section, “traumatic condition” means a
7 condition of the body, such as a wound or external or internal
8 injury, whether of a minor or serious nature, caused by a physical
9 force.

10 (d) For the purpose of this section, a person shall be considered
11 the father or mother of another person’s child if the alleged male
12 parent is presumed the natural father under Sections 7611 and 7612
13 of the Family Code.

14 (e) (1) Any person convicted of violating this section for acts
15 occurring within seven years of a previous conviction under
16 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
17 244, 244.5, or 245, shall be punished by imprisonment in a county
18 jail for not more than one year, or by imprisonment in the state
19 prison for two, four, or five years, or by both imprisonment and a
20 fine of up to ten thousand dollars (\$10,000).

21 (2) Any person convicted of a violation of this section for acts
22 occurring within seven years of a previous conviction under
23 subdivision (e) of Section 243 shall be punished by imprisonment
24 in the state prison for two, three, or four years, or in a county jail
25 for not more than one year, or by a fine of up to ten thousand
26 dollars (\$10,000), or by both that imprisonment and fine.

27 (f) If probation is granted to any person convicted under
28 subdivision (a), the court shall impose probation consistent with
29 the provisions of Section 1203.097.

30 (g) If probation is granted, or the execution or imposition of a
31 sentence is suspended, for any defendant convicted under
32 subdivision (a) who has been convicted of any prior offense
33 specified in subdivision (e), the court shall impose one of the
34 following conditions of probation:

35 (1) If the defendant has suffered one prior conviction within the
36 previous seven years for a violation of any offense specified in
37 subdivision (e), it shall be a condition thereof, in addition to the
38 provisions contained in Section 1203.097, that he or she be
39 imprisoned in a county jail for not less than 15 days.

1 (2) If the defendant has suffered two or more prior convictions
2 within the previous seven years for a violation of any offense
3 specified in subdivision (e), it shall be a condition of probation,
4 in addition to the provisions contained in Section 1203.097, that
5 he or she be imprisoned in a county jail for not less than 60 days.

6 (3) The court, upon a showing of good cause, may find that the
7 mandatory imprisonment required by this subdivision shall not be
8 imposed and shall state on the record its reasons for finding good
9 cause.

10 (h) If probation is granted upon conviction of a violation of
11 subdivision (a), the conditions of probation may include, consistent
12 with the terms of probation imposed pursuant to Section 1203.097,
13 in lieu of a fine, one or both of the following requirements:

14 (1) That the defendant make payments to a battered women's
15 shelter, up to a maximum of five thousand dollars (\$5,000),
16 pursuant to Section 1203.097.

17 (2) That the defendant reimburse the victim for reasonable costs
18 of counseling and other reasonable expenses that the court finds
19 are the direct result of the defendant's offense.

20 For any order to pay a fine, make payments to a battered
21 women's shelter, or pay restitution as a condition of probation
22 under this subdivision, the court shall make a determination of the
23 defendant's ability to pay. In no event shall any order to make
24 payments to a battered women's shelter be made if it would impair
25 the ability of the defendant to pay direct restitution to the victim
26 or court-ordered child support. Where the injury to a married person
27 is caused in whole or in part by the criminal acts of his or her
28 spouse in violation of this section, the community property may
29 not be used to discharge the liability of the offending spouse for
30 restitution to the injured spouse, required by Section 1203.04, as
31 operative on or before August 2, 1995, or Section 1202.4, or to a
32 shelter for costs with regard to the injured spouse and dependents,
33 required by this section, until all separate property of the offending
34 spouse is exhausted.

35 (i) *Upon conviction under subdivision (a), the sentencing court*
36 *shall also consider issuing an order restraining the defendant from*
37 *any contact with the victim, which may be valid for up to 10 years,*
38 *as determined by the court. It is the intent of the Legislature that*
39 *the length of any restraining order be based upon the seriousness*
40 *of the facts before the court, the probability of future violations,*

1 *and the safety of the victim and his or her immediate family. This*
2 *protective order may be issued by the court whether the defendant*
3 *is sentenced to state prison, county jail, or if imposition of sentence*
4 *is suspended and the defendant is placed on probation.*

5 SECTION 1. ~~Section 136.2 of the Penal Code is amended to~~
6 ~~read:~~

7 136.2.—(a) ~~Except as provided in subdivision (c), upon a good~~
8 ~~cause belief that harm to, or intimidation or dissuasion of, a victim~~
9 ~~or witness has occurred or is reasonably likely to occur, any court~~
10 ~~with jurisdiction over a criminal matter may issue orders including,~~
11 ~~but not limited to, the following:~~

12 ~~(1) Any order issued pursuant to Section 6320 of the Family~~
13 ~~Code.~~

14 ~~(2) An order that a defendant shall not violate any provision of~~
15 ~~Section 136.1.~~

16 ~~(3) An order that a person before the court other than a~~
17 ~~defendant, including, but not limited to, a subpoenaed witness or~~
18 ~~other person entering the courtroom of the court, shall not violate~~
19 ~~any provisions of Section 136.1.~~

20 ~~(4) An order that any person described in this section shall have~~
21 ~~no communication whatsoever with any specified witness or any~~
22 ~~victim, except through an attorney under any reasonable restrictions~~
23 ~~that the court may impose.~~

24 ~~(5) An order calling for a hearing to determine if an order as~~
25 ~~described in paragraphs (1) to (4), inclusive, should be issued.~~

26 ~~(6) An order that a particular law enforcement agency within~~
27 ~~the jurisdiction of the court provide protection for a victim or a~~
28 ~~witness, or both, or for immediate family members of a victim or~~
29 ~~a witness who reside in the same household as the victim or witness~~
30 ~~or within reasonable proximity of the victim's or witness'~~
31 ~~household, as determined by the court. The order shall not be made~~
32 ~~without the consent of the law enforcement agency except for~~
33 ~~limited and specified periods of time and upon an express finding~~
34 ~~by the court of a clear and present danger of harm to the victim or~~
35 ~~witness or immediate family members of the victim or witness.~~

36 ~~For purposes of this paragraph, "immediate family members"~~
37 ~~include the spouse, children, or parents of the victim or witness.~~

38 ~~(7) (A) Any order protecting victims of violent crime from all~~
39 ~~contact by the defendant, or contact, with the intent to annoy,~~
40 ~~harass, threaten, or commit acts of violence, by the defendant. The~~

1 court or its designee shall transmit orders made under this
2 paragraph to law enforcement personnel within one business day
3 of the issuance, modification, extension, or termination of the
4 order, pursuant to subdivision (a) of Section 6380 of the Family
5 Code. It is the responsibility of the court to transmit the
6 modification, extension, or termination orders made under this
7 paragraph to the same agency that entered the original protective
8 order into the Domestic Violence Restraining Order System.

9 (B) (i) If a court does not issue an order pursuant to
10 subparagraph (A) in a case in which the defendant is charged with
11 a crime of domestic violence as defined in Section 13700, the court
12 on its own motion shall consider issuing a protective order upon
13 a good cause belief that harm to, or intimidation or dissuasion of,
14 a victim or witness has occurred or is reasonably likely to occur,
15 that provides as follows:

16 (I) The defendant shall not own, possess, purchase, receive, or
17 attempt to purchase or receive, a firearm while the protective order
18 is in effect.

19 (II) The defendant shall relinquish any firearms that he or she
20 owns or possesses pursuant to Section 527.9 of the Code of Civil
21 Procedure.

22 (ii) Every person who owns, possesses, purchases, or receives,
23 or attempts to purchase or receive, a firearm while this protective
24 order is in effect is punishable pursuant to subdivision (g) of
25 Section 12021.

26 (C) Any order issued, modified, extended, or terminated by a
27 court pursuant to this paragraph shall be issued on forms adopted
28 by the Judicial Council of California and that have been approved
29 by the Department of Justice pursuant to subdivision (i) of Section
30 6380 of the Family Code. However, the fact that an order issued
31 by a court pursuant to this section was not issued on forms adopted
32 by the Judicial Council and approved by the Department of Justice
33 shall not, in and of itself, make the order unenforceable.

34 (b) Any person violating any order made pursuant to paragraphs
35 (1) to (7), inclusive, of subdivision (a) may be punished for any
36 substantive offense described in Section 136.1, or for a contempt
37 of the court making the order. A finding of contempt shall not be
38 a bar to prosecution for a violation of Section 136.1. However,
39 any person so held in contempt shall be entitled to credit for any
40 punishment imposed therein against any sentence imposed upon

1 conviction of an offense described in Section 136.1. Any conviction
2 or acquittal for any substantive offense under Section 136.1 shall
3 be a bar to a subsequent punishment for contempt arising out of
4 the same act.

5 ~~(e) (1) Notwithstanding subdivisions (a) and (e), an emergency~~
6 ~~protective order issued pursuant to Chapter 2 (commencing with~~
7 ~~Section 6250) of Part 3 of Division 10 of the Family Code or~~
8 ~~Section 646.91 of the Penal Code shall have precedence in~~
9 ~~enforcement over any other restraining or protective order, provided~~
10 ~~the emergency protective order meets all of the following~~
11 ~~requirements:~~

12 ~~(A) The emergency protective order is issued to protect one or~~
13 ~~more individuals who are already protected persons under another~~
14 ~~restraining or protective order.~~

15 ~~(B) The emergency protective order restrains the individual who~~
16 ~~is the restrained person in the other restraining or protective order~~
17 ~~specified in subparagraph (A).~~

18 ~~(C) The provisions of the emergency protective order are more~~
19 ~~restrictive in relation to the restrained person than are the provisions~~
20 ~~of the other restraining or protective order specified in~~
21 ~~subparagraph (A).~~

22 ~~(2) An emergency protective order that meets the requirements~~
23 ~~of paragraph (1) shall have precedence in enforcement over the~~
24 ~~provisions of any other restraining or protective order only with~~
25 ~~respect to those provisions of the emergency protective order that~~
26 ~~are more restrictive in relation to the restrained person.~~

27 ~~(d) (1) A person subject to a protective order issued under this~~
28 ~~section shall not own, possess, purchase, receive, or attempt to~~
29 ~~purchase or receive a firearm while the protective order is in effect.~~

30 ~~(2) The court shall order a person subject to a protective order~~
31 ~~issued under this section to relinquish any firearms he or she owns~~
32 ~~or possesses pursuant to Section 527.9 of the Code of Civil~~
33 ~~Procedure.~~

34 ~~(3) Every person who owns, possesses, purchases or receives,~~
35 ~~or attempts to purchase or receive a firearm while the protective~~
36 ~~order is in effect is punishable pursuant to subdivision (g) of~~
37 ~~Section 12021 of the Penal Code.~~

38 ~~(e) (1) In all cases where the defendant is charged with a crime~~
39 ~~of domestic violence, as defined in Section 13700, the court shall~~
40 ~~consider issuing the above-described orders on its own motion.~~

1 All interested parties shall receive a copy of those orders. In order
2 to facilitate this, the court's records of all criminal cases involving
3 domestic violence shall be marked to clearly alert the court to this
4 issue.

5 ~~(2) In those cases in which a complaint, information, or~~
6 ~~indictment charging a crime of domestic violence, as defined in~~
7 ~~Section 13700, has been issued, a restraining order or protective~~
8 ~~order against the defendant issued by the criminal court in that~~
9 ~~case has precedence in enforcement over any civil court order~~
10 ~~against the defendant, unless a court issues an emergency protective~~
11 ~~order pursuant to Chapter 2 (commencing with Section 6250) of~~
12 ~~Part 3 of Division 10 of the Family Code or Section 646.91 of the~~
13 ~~Penal Code, in which case the emergency protective order shall~~
14 ~~have precedence in enforcement over any other restraining or~~
15 ~~protective order, provided the emergency protective order meets~~
16 ~~the following requirements:~~

17 ~~(A) The emergency protective order is issued to protect one or~~
18 ~~more individuals who are already protected persons under another~~
19 ~~restraining or protective order.~~

20 ~~(B) The emergency protective order restrains the individual who~~
21 ~~is the restrained person in the other restraining or protective order~~
22 ~~specified in subparagraph (A).~~

23 ~~(C) The provisions of the emergency protective order are more~~
24 ~~restrictive in relation to the restrained person than are the provisions~~
25 ~~of the other restraining or protective order specified in~~
26 ~~subparagraph (A).~~

27 ~~(3) Custody and visitation with respect to the defendant and his~~
28 ~~or her minor children may be ordered by a family or juvenile court~~
29 ~~consistent with the protocol established pursuant to subdivision~~
30 ~~(f), but if ordered after a criminal protective order has been issued~~
31 ~~pursuant to this section, the custody and visitation order shall make~~
32 ~~reference to, and acknowledge the precedence of enforcement of,~~
33 ~~any appropriate criminal protective order. On or before July 1,~~
34 ~~2006, the Judicial Council shall modify the criminal and civil court~~
35 ~~forms consistent with this subdivision.~~

36 ~~(f) On or before January 1, 2003, the Judicial Council shall~~
37 ~~promulgate a protocol, for adoption by each local court in~~
38 ~~substantially similar terms, to provide for the timely coordination~~
39 ~~of all orders against the same defendant and in favor of the same~~
40 ~~named victim or victims. The protocol shall include, but shall not~~

1 be limited to, mechanisms for assuring appropriate communication
2 and information sharing between criminal, family, and juvenile
3 courts concerning orders and cases that involve the same parties,
4 and shall permit a family or juvenile court order to coexist with a
5 criminal court protective order subject to the following conditions:

6 (1) ~~Any order that permits contact between the restrained person
7 and his or her children shall provide for the safe exchange of the
8 children and shall not contain language either printed or
9 handwritten that violates a “no contact order” issued by a criminal
10 court.~~

11 (2) ~~Safety of all parties shall be the courts’ paramount concern.
12 The family or juvenile court shall specify the time, day, place, and
13 manner of transfer of the child, as provided in Section 3100 of the
14 Family Code.~~

15 (g) ~~This protective order may be issued by the court for up to
16 10 years whether the defendant is sentenced to state prison, county
17 jail, or if imposition of sentence is suspended and the defendant
18 is placed on probation.~~

19 (h) ~~On or before January 1, 2003, the Judicial Council shall
20 modify the criminal and civil court protective order forms
21 consistent with this section.~~

22 SEC. 2. Section 646.9 of the Penal Code is amended to read:

23 646.9. (a) Any person who willfully, maliciously, and
24 repeatedly follows or willfully and maliciously harasses another
25 person and who makes a credible threat with the intent to place
26 that person in reasonable fear for his or her safety, or the safety of
27 his or her immediate family is guilty of the crime of stalking,
28 punishable by imprisonment in a county jail for not more than one
29 year, or by a fine of not more than one thousand dollars (\$1,000),
30 or by both that fine and imprisonment, or by imprisonment in the
31 state prison.

32 (b) Any person who violates subdivision (a) when there is a
33 temporary restraining order, injunction, or any other court order
34 in effect prohibiting the behavior described in subdivision (a)
35 against the same party, shall be punished by imprisonment in the
36 state prison for two, three, or four years.

37 (c) (1) Every person who, after having been convicted of a
38 felony under Section 273.5, 273.6, or 422, commits a violation of
39 subdivision (a) shall be punished by imprisonment in a county jail
40 for not more than one year, or by a fine of not more than one

1 thousand dollars (\$1,000), or by both that fine and imprisonment,
2 or by imprisonment in the state prison for two, three, or five years.

3 (2) Every person who, after having been convicted of a felony
4 under subdivision (a), commits a violation of this section shall be
5 punished by imprisonment in the state prison for two, three, or
6 five years.

7 (d) In addition to the penalties provided in this section, the
8 sentencing court may order a person convicted of a felony under
9 this section to register as a sex offender pursuant to subparagraph
10 (E) of paragraph (2) of subdivision (a) of Section 290.

11 (e) For the purposes of this section, “harasses” means engages
12 in a knowing and willful course of conduct directed at a specific
13 person that seriously alarms, annoys, torments, or terrorizes the
14 person, and that serves no legitimate purpose.

15 (f) For the purposes of this section, “course of conduct” means
16 two or more acts occurring over a period of time, however short,
17 evidencing a continuity of purpose. Constitutionally protected
18 activity is not included within the meaning of “course of conduct.”

19 (g) For the purposes of this section, “credible threat” means a
20 verbal or written threat, including that performed through the use
21 of an electronic communication device, or a threat implied by a
22 pattern of conduct or a combination of verbal, written, or
23 electronically communicated statements and conduct, made with
24 the intent to place the person that is the target of the threat in
25 reasonable fear for his or her safety or the safety of his or her
26 family, and made with the apparent ability to carry out the threat
27 so as to cause the person who is the target of the threat to
28 reasonably fear for his or her safety or the safety of his or her
29 family. It is not necessary to prove that the defendant had the intent
30 to actually carry out the threat. The present incarceration of a
31 person making the threat shall not be a bar to prosecution under
32 this section. Constitutionally protected activity is not included
33 within the meaning of “credible threat.”

34 (h) For purposes of this section, the term “electronic
35 communication device” includes, but is not limited to, telephones,
36 cellular phones, computers, video recorders, fax machines, or
37 pagers. “Electronic communication” has the same meaning as the
38 term defined in Subsection 12 of Section 2510 of Title 18 of the
39 United States Code.

1 (i) This section shall not apply to conduct that occurs during
2 labor picketing.

3 (j) If probation is granted, or the execution or imposition of a
4 sentence is suspended, for any person convicted under this section,
5 it shall be a condition of probation that the person participate in
6 counseling, as designated by the court. However, the court, upon
7 a showing of good cause, may find that the counseling requirement
8 shall not be imposed.

9 (k) (1) The sentencing court also shall consider issuing an order
10 restraining the defendant from any contact with the victim, that
11 may be valid for up to 10 years, as determined by the court. It is
12 the intent of the Legislature that the length of any restraining order
13 be based upon the seriousness of the facts before the court, the
14 probability of future violations, and the safety of the victim and
15 his or her immediate family.

16 (2) This protective order may be issued by the court whether
17 the defendant is sentenced to state prison, county jail, or if
18 imposition of sentence is suspended and the defendant is placed
19 on probation.

20 (l) For purposes of this section, “immediate family” means any
21 spouse, parent, child, any person related by consanguinity or
22 affinity within the second degree, or any other person who regularly
23 resides in the household, or who, within the prior six months,
24 regularly resided in the household.

25 (m) The court shall consider whether the defendant would
26 benefit from treatment pursuant to Section 2684. If it is determined
27 to be appropriate, the court shall recommend that the Department
28 of Corrections make a certification as provided in Section 2684.
29 Upon the certification, the defendant shall be evaluated and
30 transferred to the appropriate hospital for treatment pursuant to
31 Section 2684.

32 SEC. 3. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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