

AMENDED IN ASSEMBLY APRIL 30, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 919

Introduced by Assembly Member Houston

February 22, 2007

An act to ~~amend Section 646.9 of~~ *add Section 653.2 to* the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 919, as amended, Houston. ~~Stalking.~~ *Electronic communication devices: threats to safety.*

Under existing law, any person who willfully, maliciously, and repeatedly follows or harasses another person and makes a credible threat, intended to place that person in fear for his or her safety or the safety of his or her immediate family, is guilty of the crime of stalking.

This bill would ~~also~~ make a person who, with the intent to place another person in reasonable fear for his or her safety, or the safety of the other person's immediate family, by means of an electronic communication device, and without consent of the other person, and for the purpose of causing that other person unwanted contact, injury, or harassment by a third party, distributes specified identifying information, guilty of ~~the crime of stalking a misdemeanor~~. By ~~expanding the scope of a~~ *creating a new* crime, the 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.

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 653.2 is added to the Penal Code, to read:
2 653.2. (a) Every person who, with intent to place another
3 person in reasonable fear for his or her safety, or the safety of the
4 other person’s immediate family, by means of an electronic
5 communication device, and without consent of the other person,
6 and for the purpose of causing that other person unwanted physical
7 contact, injury, or harassment, by a third party, electronically
8 distributes, publishes, e-mails, hyperlinks, or makes available for
9 downloading, personal identifying information, including, but not
10 limited to, a digital image of another person, or an electronic
11 message of a harassing nature about another person, is guilty of
12 a misdemeanor punishable by up to one year in the county jail, by
13 a fine of not more than one thousand dollars (\$1,000), or by both
14 that fine and imprisonment.

15 (b) For purposes of this section, the term “electronic
16 communication device” includes, but is not limited to, telephones,
17 cellular phones, computers, Internet Web pages or sites, Internet
18 phones, hybrid cellular/Internet/wireless devices, personal digital
19 assistants (PDA), video recorders, fax machines, or pagers.
20 “Electronic communication” has the same meaning as the term
21 is defined in Section 2510(12) of Title 18 of the United States Code.

22 SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because 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 ~~SECTION 1. Section 646.9 of the Penal Code is amended to~~
32 read:

1 ~~646.9.— (a) (1) Any person who willfully, maliciously, and~~
2 ~~repeatedly follows or willfully and maliciously harasses another~~
3 ~~person and who makes a credible threat with the intent to place~~
4 ~~that person in reasonable fear for his or her safety, or the safety of~~
5 ~~his or her immediate family is guilty of the crime of stalking,~~
6 ~~punishable by imprisonment in a county jail for not more than one~~
7 ~~year, or by a fine of not more than one thousand dollars (\$1,000);~~
8 ~~or by both that fine and imprisonment, or by imprisonment in the~~
9 ~~state prison.~~

10 ~~(2) Every person who, with intent to place another person in~~
11 ~~reasonable fear for his or her safety, or the safety of the other~~
12 ~~person's immediate family, by means of an electronic~~
13 ~~communication device, and without consent of the other person,~~
14 ~~and for the purpose of causing that other person unwanted physical~~
15 ~~contact, injury, or harassment by a third party, electronically~~
16 ~~distributes, publishes, e-mails, hyperlinks or makes available for~~
17 ~~downloading, personal identifying information, including, but not~~
18 ~~limited to, a digital image of another person, or an electronic~~
19 ~~message of a harassing nature about another person, is guilty of~~
20 ~~the crime of stalking, punishable by imprisonment in a county jail~~
21 ~~for not more than one year, or by a fine of not more than one~~
22 ~~thousand dollars (\$1,000), or by both that fine and imprisonment,~~
23 ~~or by imprisonment in the state prison.~~

24 ~~(b) Any person who violates subdivision (a) when there is a~~
25 ~~temporary restraining order, injunction, or any other court order~~
26 ~~in effect prohibiting the behavior described in subdivision (a)~~
27 ~~against the same party, shall be punished by imprisonment in the~~
28 ~~state prison for two, three, or four years.~~

29 ~~(c) (1) Every person who, after having been convicted of a~~
30 ~~felony under Section 273.5, 273.6, or 422, commits a violation of~~
31 ~~subdivision (a) shall be punished by imprisonment in a county jail~~
32 ~~for not more than one year, or by a fine of not more than one~~
33 ~~thousand dollars (\$1,000), or by both that fine and imprisonment,~~
34 ~~or by imprisonment in the state prison for two, three, or five years.~~

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

39 ~~(d) In addition to the penalties provided in this section, the~~
40 ~~sentencing court may order a person convicted of a felony under~~

1 this section to register as a sex offender pursuant to subparagraph
2 (E) of paragraph (2) of subdivision (a) of Section 290.

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

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

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

26 (h) For purposes of this section, the term “electronic
27 communication device” includes, but is not limited to, telephones,
28 cellular phones, computers, Internet Web pages or sites, Internet
29 phones, hybrid cellular/Internet/wireless devices, Personal Digital
30 Assistants (PDA) video recorders, fax machines, or pagers.
31 “Electronic communication” has the same meaning as the term
32 defined in Subsection 12 of Section 2510 of Title 18 of the United
33 States Code.

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

36 (j) If probation is granted, or the execution or imposition of a
37 sentence is suspended, for any person convicted under this section,
38 it shall be a condition of probation that the person participate in
39 counseling, as designated by the court. However, the court, upon

1 a showing of good cause, may find that the counseling requirement
2 shall not be imposed.

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

10 ~~(l) For purposes of this section, "immediate family" means any
11 spouse, parent, child, any person related by consanguinity or
12 affinity within the second degree, or any other person who regularly
13 resides in the household, or who, within the prior six months,
14 regularly resided in the household.~~

15 ~~(m) The court shall consider whether the defendant would
16 benefit from treatment pursuant to Section 2684. If treatment is
17 determined to be appropriate, the court shall recommend that the
18 Department of Corrections and Rehabilitation make a certification,
19 as provided in Section 2684. Upon the certification, the defendant
20 shall be evaluated and transferred to the appropriate hospital for
21 treatment pursuant to Section 2684.~~

22 ~~SEC. 2. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because 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.~~

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