

**ASSEMBLY BILL**

**No. 1360**

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**Introduced by Assembly Member John A. Perez**

February 27, 2009

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An act to amend Section 273.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1360, as introduced, John A. Perez. Domestic violence: corporal injury.

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, is guilty of a felony, punishable as specified.

This bill would make those provisions apply to the infliction of that type of injury on the fiance or fiancée of that person or on someone with whom the person has, or previously had, a dating or engagement relationship. By expanding the scope of a 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 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 *upon a victim described*  
 7 *in subdivision (b)*, is guilty of a felony, and upon conviction thereof  
 8 shall be punished by imprisonment in the state prison for two,  
 9 three, or four years, or in a county jail for not more than one year,  
 10 or by a fine of up to six thousand dollars (\$6,000) or by both that  
 11 fine and imprisonment.  
 12 (b) *Subdivision (a) shall apply if the victim is or was one or*  
 13 *more of the following:*  
 14 (1) *The offender's spouse or former spouse.*  
 15 (2) *The offender's cohabitant or former cohabitant.*  
 16 (3) *The offender's fiancé or fiancée, or someone with whom the*  
 17 *offender has, or previously had, a dating or engagement*  
 18 *relationship.*  
 19 (4) *The mother or father of the offender's child.*  
 20 ~~(b)~~  
 21 (c) Holding oneself out to be the husband or wife of the person  
 22 with whom one is cohabiting is not necessary to constitute  
 23 cohabitation as the term is used in this section.  
 24 ~~(e)~~  
 25 (d) As used in this section, "traumatic condition" means a  
 26 condition of the body, such as a wound or external or internal  
 27 injury, whether of a minor or serious nature, caused by a physical  
 28 force.  
 29 ~~(d)~~  
 30 (e) For the purpose of this section, a person shall be considered  
 31 the father or mother of another person's child if the alleged male  
 32 parent is presumed the natural father under Sections 7611 and 7612  
 33 of the Family Code.  
 34 ~~(e)~~  
 35 (f) (1) Any person convicted of violating this section for acts  
 36 occurring within seven years of a previous conviction under  
 37 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,  
 38 244, 244.5, or 245, shall be punished by imprisonment in a county

1 jail for not more than one year, or by imprisonment in the state  
2 prison for two, four, or five years, or by both imprisonment and a  
3 fine of up to ten thousand dollars (\$10,000).

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

10 ~~(f)~~

11 (g) If probation is granted to any person convicted under  
12 subdivision (a), the court shall impose probation consistent with  
13 the provisions of Section 1203.097.

14 ~~(g)~~

15 (h) If probation is granted, or the execution or imposition of a  
16 sentence is suspended, for any defendant convicted under  
17 subdivision (a) who has been convicted of any prior offense  
18 specified in subdivision ~~(e)~~(f), the court shall impose one of the  
19 following conditions of probation:

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

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

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

34 ~~(h)~~

35 (i) If probation is granted upon conviction of a violation of  
36 subdivision (a), the conditions of probation may include, consistent  
37 with the terms of probation imposed pursuant to Section 1203.097,  
38 in lieu of a fine, one or both of the following requirements:

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

4 (2) That the defendant reimburse the victim for reasonable costs  
5 of counseling and other reasonable expenses that the court finds  
6 are the direct result of the defendant’s offense.

7 For any order to pay a fine, make payments to a battered  
8 women’s shelter, or pay restitution as a condition of probation  
9 under this subdivision, the court shall make a determination of the  
10 defendant’s ability to pay. In no event shall any order to make  
11 payments to a battered women’s shelter be made if it would impair  
12 the ability of the defendant to pay direct restitution to the victim  
13 or court-ordered child support. Where the injury to a married person  
14 is caused in whole or in part by the criminal acts of his or her  
15 spouse in violation of this section, the community property may  
16 not be used to discharge the liability of the offending spouse for  
17 restitution to the injured spouse, required by Section 1203.04, as  
18 operative on or before August 2, 1995, or Section 1202.4, or to a  
19 shelter for costs with regard to the injured spouse and dependents,  
20 required by this section, until all separate property of the offending  
21 spouse is exhausted.

22 (i)

23 (j) Upon conviction under subdivision (a), the sentencing court  
24 shall also consider issuing an order restraining the defendant from  
25 any contact with the victim, which may be valid for up to 10 years,  
26 as determined by the court. It is the intent of the Legislature that  
27 the length of any restraining order be based upon the seriousness  
28 of the facts before the court, the probability of future violations,  
29 and the safety of the victim and his or her immediate family. This  
30 protective order may be issued by the court whether the defendant  
31 is sentenced to state prison, county jail, or if imposition of sentence  
32 is suspended and the defendant is placed on probation.

33 SEC. 2. No reimbursement is required by this act pursuant to  
34 Section 6 of Article XIII B of the California Constitution because  
35 the only costs that may be incurred by a local agency or school  
36 district will be incurred because this act creates a new crime or  
37 infraction, eliminates a crime or infraction, or changes the penalty  
38 for a crime or infraction, within the meaning of Section 17556 of  
39 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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