

**ASSEMBLY BILL**

**No. 2479**

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**Introduced by Assembly Member Bass**

February 19, 2010

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An act to amend Sections 1708.7 and 1708.8 of the Civil Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2479, as introduced, Bass. Stalking: surveillance.

Existing law provides that a person is liable for the tort of stalking when the defendant engaged in a pattern of conduct intended to follow, alarm, or harass, resulting in the plaintiff reasonably fearing for his or her safety or the safety of an immediate family member. Under existing law, liability will be imposed if the defendant has made a credible threat, as defined, with the intent to cause the plaintiff reasonable fear, and has continued in his or her pattern of conduct after the plaintiff demands that he or she cease.

This bill would additionally impose liability when the defendant engaged in a pattern of conduct intended to place the victim under surveillance, as defined, and would provide a definition of "follows" for purposes of these provisions. The bill would specify that a credible threat, as defined, may be made with a reckless disregard for the safety of the plaintiff or that of an immediate family member, and would provide an exception to the requirement that the plaintiff demand that the defendant cease his or her pattern of conduct when communication of that demand would have been impractical or unsafe. The bill would also revise the definition of "harass" to include conduct that limits the plaintiff's freedom of movement.

Under existing law, a defendant who commits an assault against a plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff is liable for up to 3 times the amount of any general and special damages that are proximately caused by this act, as well as punitive damages and a civil fine of not less than \$5,000 and not more than \$50,000.

This bill would expand these provisions to impose liability when a defendant falsely imprisons the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff.

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

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

1 SECTION 1. Section 1708.7 of the Civil Code is amended to  
2 read:

3 1708.7. (a) A person is liable for the tort of stalking when the  
4 plaintiff proves all of the following elements of the tort:

5 (1) The defendant engaged in a pattern of conduct the intent of  
6 which was to follow, alarm, *place under surveillance*, or harass  
7 the plaintiff. In order to establish this element, the plaintiff shall  
8 be required to support his or her allegations with independent  
9 corroborating evidence.

10 (2) As a result of that pattern of conduct, the plaintiff reasonably  
11 feared for his or her safety, or the safety of an immediate family  
12 member. For purposes of this paragraph, “immediate family” means  
13 a spouse, parent, child, any person related by consanguinity or  
14 affinity within the second degree, or any person who regularly  
15 resides, or, within the six months preceding any portion of the  
16 pattern of conduct, regularly resided, in the plaintiff’s household.

17 (3) One of the following:

18 (A) The defendant, as a part of the pattern of conduct specified  
19 in paragraph (1), made a credible threat with *either* the intent to  
20 place the plaintiff in reasonable fear for his or her safety, or the  
21 safety of an immediate family member ~~and~~, *or with reckless*  
22 *disregard for the safety of the plaintiff or that of an immediate*  
23 *family member. In addition, the plaintiff must have, on at least one*  
24 *occasion, the plaintiff clearly and definitively demanded that the*  
25 *defendant cease and abate his or her pattern of conduct and the*

1 defendant persisted in his or her pattern of conduct, *unless exigent*  
2 *circumstances made the communication of a demand impractical*  
3 *or unsafe.*

4 (B) The defendant violated a restraining order, including, but  
5 not limited to, any order issued pursuant to Section 527.6 of the  
6 Code of Civil Procedure, prohibiting any act described in  
7 subdivision (a).

8 (b) For the purposes of this section:

9 (1) “Pattern of conduct” means conduct composed of a series  
10 of acts over a period of time, however short, evidencing a  
11 continuity of purpose. Constitutionally protected activity is not  
12 included within the meaning of “pattern of conduct.”

13 (2) “Credible threat” means a verbal or written threat, including  
14 that communicated by means of an electronic communication  
15 device, or a threat implied by a pattern of conduct, *including, but*  
16 *not limited to, acts in which a defendant directly, indirectly, or*  
17 *through third parties, by any action, method, device, or means,*  
18 *follows, harasses, monitors, surveils, or threatens the plaintiff, or*  
19 *interferes with or damages the plaintiff’s property, or a*  
20 combination of verbal, written, or electronically communicated  
21 statements and conduct, made with the intent and apparent ability  
22 to carry out the threat so as to cause the person who is the target  
23 of the threat to reasonably fear for his or her safety or the safety  
24 of his or her immediate family.

25 (3) “Electronic communication device” includes, but is not  
26 limited to, telephones, cellular telephones, computers, video  
27 recorders, fax machines, or pagers. “Electronic communication”  
28 has the same meaning as the term defined in Subsection 12 of  
29 Section 2510 of Title 18 of the United States Code.

30 (4) “Follows” means to move in relative proximity to a person  
31 as that person moves from place to place, or to remain in relative  
32 proximity to a person who is stationary or whose movements are  
33 confined to a small area. “Follows” does not mean instances  
34 where these acts occur within the residence of the defendant.

35 ~~(4)~~

36 (5) “Harass” means a knowing and willful course of conduct  
37 directed at a specific person which *serves no legitimate purpose,*  
38 *and which either seriously alarms, annoys, torments, or terrorizes*  
39 *the person, and which serves no legitimate purpose or limits the*  
40 *person’s freedom of movement.* The course of conduct must be

1 such as would cause a reasonable person to suffer substantial  
2 emotional distress, and must actually cause substantial emotional  
3 distress to the person.

4 (6) *“Place under surveillance” means remaining present outside*  
5 *the plaintiff’s school, place of employment, vehicle, residence,*  
6 *other than the residence of the defendant, or other place occupied*  
7 *by the plaintiff, with the intent to engage in a pattern of conduct*  
8 *that places the plaintiff in reasonable fear for his or her safety or*  
9 *that of an immediate family member.*

10 (c) A person who commits the tort of stalking upon another is  
11 liable to that person for damages, including, but not limited to,  
12 general damages, special damages, and punitive damages pursuant  
13 to Section 3294.

14 (d) In an action pursuant to this section, the court may grant  
15 equitable relief, including, but not limited to, an injunction.

16 (e) The rights and remedies provided in this section are  
17 cumulative and in addition to any other rights and remedies  
18 provided by law.

19 (f) This section shall not be construed to impair any  
20 constitutionally protected activity, including, but not limited to,  
21 speech, protest, and assembly.

22 SEC. 2. Section 1708.8 of the Civil Code is amended to read:

23 1708.8. (a) A person is liable for physical invasion of privacy  
24 when the defendant knowingly enters onto the land of another  
25 person without permission or otherwise committed a trespass in  
26 order to physically invade the privacy of the plaintiff with the  
27 intent to capture any type of visual image, sound recording, or  
28 other physical impression of the plaintiff engaging in a personal  
29 or familial activity and the physical invasion occurs in a manner  
30 that is offensive to a reasonable person.

31 (b) A person is liable for constructive invasion of privacy when  
32 the defendant attempts to capture, in a manner that is offensive to  
33 a reasonable person, any type of visual image, sound recording,  
34 or other physical impression of the plaintiff engaging in a personal  
35 or familial activity under circumstances in which the plaintiff had  
36 a reasonable expectation of privacy, through the use of a visual or  
37 auditory enhancing device, regardless of whether there is a physical  
38 trespass, if this image, sound recording, or other physical  
39 impression could not have been achieved without a trespass unless  
40 the visual or auditory enhancing device was used.

1 (c) An assault *or false imprisonment* committed with the intent  
2 to capture any type of visual image, sound recording, or other  
3 physical impression of the plaintiff is subject to subdivisions (d),  
4 (e), and (h).

5 (d) A person who commits any act described in subdivision (a),  
6 (b), or (c) is liable for up to three times the amount of any general  
7 and special damages that are proximately caused by the violation  
8 of this section. This person may also be liable for punitive damages,  
9 subject to proof according to Section 3294. If the plaintiff proves  
10 that the invasion of privacy was committed for a commercial  
11 purpose, the defendant shall also be subject to disgorgement to the  
12 plaintiff of any proceeds or other consideration obtained as a result  
13 of the violation of this section. A person who comes within the  
14 description of this subdivision is also subject to a civil fine of not  
15 less than five thousand dollars (\$5,000) and not more than fifty  
16 thousand dollars (\$50,000).

17 (e) A person who directs, solicits, actually induces, or actually  
18 causes another person, regardless of whether there is an  
19 employer-employee relationship, to violate any provision of  
20 subdivision (a), (b), or (c) is liable for any general, special, and  
21 consequential damages resulting from each said violation. In  
22 addition, the person that directs, solicits, actually induces, or  
23 actually causes another person, regardless of whether there is an  
24 employer-employee relationship, to violate this section shall be  
25 liable for punitive damages to the extent that an employer would  
26 be subject to punitive damages pursuant to subdivision (b) of  
27 Section 3294. A person who comes within the description of this  
28 subdivision is also subject to a civil fine of not less than five  
29 thousand dollars (\$5,000) and not more than fifty thousand dollars  
30 (\$50,000).

31 (f) (1) The transmission, publication, broadcast, sale, offer for  
32 sale, or other use of any visual image, sound recording, or other  
33 physical impression that was taken or captured in violation of  
34 subdivision (a), (b), or (c) shall not constitute a violation of this  
35 section unless the person, in the first transaction following the  
36 taking or capture of the visual image, sound recording, or other  
37 physical impression, publicly transmitted, published, broadcast,  
38 sold or offered for sale, the visual image, sound recording, or other  
39 physical impression with actual knowledge that it was taken or  
40 captured in violation of subdivision (a), (b), or (c), and provide

1 compensation, consideration, or remuneration, monetary or  
2 otherwise, for the rights to the unlawfully obtained visual image,  
3 sound recording, or other physical impression.

4 (2) For the purposes of paragraph (1), “actual knowledge” means  
5 actual awareness, understanding, and recognition, obtained prior  
6 to the time at which the person purchased or acquired the visual  
7 image, sound recording, or other physical impression, that the  
8 visual image, sound recording, or other physical impression was  
9 taken or captured in violation of subdivision (a), (b), or (c). The  
10 plaintiff shall establish actual knowledge by clear and convincing  
11 evidence.

12 (3) Any person that publicly transmits, publishes, broadcasts,  
13 sells or offers for sale, in any form, medium, format or work, a  
14 visual image, sound recording, or other physical impression that  
15 was previously publicly transmitted, published, broadcast, sold or  
16 offered for sale, by another person, is exempt from liability under  
17 this section.

18 (4) If a person’s first public transmission, publication, broadcast,  
19 or sale or offer for sale, of a visual image, sound recording, or  
20 other physical impression that was taken or captured in violation  
21 of subdivision (a), (b), or (c), does not constitute a violation of this  
22 section, that person’s subsequent public transmission, publication,  
23 broadcast, sale or offer for sale, in any form, medium, format or  
24 work, of the visual image, sound recording, or other physical  
25 impression, does not constitute a violation of this section.

26 (5) This section applies only to a visual image, sound recording,  
27 or other physical impression that is captured or taken in California  
28 in violation of subdivision (a), (b), or (c) after January 1, 2010,  
29 and shall not apply to any visual image, sound recording, or other  
30 physical impression taken or captured outside of California.

31 (6) Nothing in this subdivision shall be construed to impair or  
32 limit a special motion to strike pursuant to Section 425.16, 425.17,  
33 or 425.18 of the Code of Civil Procedure.

34 (7) This section shall not be construed to limit all other rights  
35 or remedies of the plaintiff in law or equity, including, but not  
36 limited to, the publication of private facts.

37 (g) This section shall not be construed to impair or limit any  
38 otherwise lawful activities of law enforcement personnel or  
39 employees of governmental agencies or other entities, either public  
40 or private who, in the course and scope of their employment, and

1 supported by an articulable suspicion, attempt to capture any type  
2 of visual image, sound recording, or other physical impression of  
3 a person during an investigation, surveillance, or monitoring of  
4 any conduct to obtain evidence of suspected illegal activity or  
5 other misconduct, the suspected violation of any administrative  
6 rule or regulation, a suspected fraudulent conduct, or any activity  
7 involving a violation of law or business practices or conduct of  
8 public officials adversely affecting the public welfare, health or  
9 safety.

10 (h) In any action pursuant to this section, the court may grant  
11 equitable relief, including, but not limited to, an injunction and  
12 restraining order against further violations of subdivision (a), (b),  
13 or (c).

14 (i) The rights and remedies provided in this section are  
15 cumulative and in addition to any other rights and remedies  
16 provided by law.

17 (j) It is not a defense to a violation of this section that no image,  
18 recording, or physical impression was captured or sold.

19 (k) For the purposes of this section, “for a commercial purpose”  
20 means any act done with the expectation of a sale, financial gain,  
21 or other consideration. A visual image, sound recording, or other  
22 physical impression shall not be found to have been, or intended  
23 to have been captured for a commercial purpose unless it is  
24 intended to be, or was in fact, sold, published, or transmitted.

25 (l) For the purposes of this section, “personal and familial  
26 activity” includes, but is not limited to, intimate details of the  
27 plaintiff’s personal life, interactions with the plaintiff’s family or  
28 significant others, or other aspects of the plaintiff’s private affairs  
29 or concerns. “Personal and familial activity” does not include  
30 illegal or otherwise criminal activity as delineated in subdivision  
31 (g). However, “personal and familial activity” shall include the  
32 activities of victims of crime in circumstances under which  
33 subdivision (a), (b), or (c) would apply.

34 (m) (1) A proceeding to recover the civil fines specified in  
35 subdivision (d) or (e) may be brought in any court of competent  
36 jurisdiction by a county counsel or city attorney.

37 (2) Fines collected pursuant to this subdivision shall be allocated,  
38 as follows:

39 (A) One-half shall be allocated to the prosecuting agency.

1 (B) One-half shall be deposited in the Arts and Entertainment  
2 Fund, which is hereby created in the State Treasury.

3 (3) Funds in the Arts and Entertainment Fund created pursuant  
4 to paragraph (2) may be expended by the California Arts Council,  
5 upon appropriation by the Legislature, to issue grants pursuant to  
6 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter  
7 9 (commencing with Section 8750) of Division 1 of Title 2 of the  
8 Government Code).

9 (4) The rights and remedies provided in this subdivision are  
10 cumulative and in addition to any other rights and remedies  
11 provided by law.

12 (n) The provisions of this section are severable. If any provision  
13 of this section or its application is held invalid, that invalidity shall  
14 not affect other provisions or applications that can be given effect  
15 without the invalid provision or application.