

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2479

Introduced by Assembly Member Bass

February 19, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law provides that a person is liable for the tort of stalking when ~~the defendant~~ *he or she* 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~~ *that pattern of conduct caused the plaintiff to reasonably suffer substantial emotional distress*. 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. The bill would specify that these provisions shall not be construed to impair or limit the development or production of an audiovisual work, news program, book, other similar work, or to impair the ability of law enforcement personnel or employees of other agencies, public or private, who, in the course and scope of their employment, engage in conduct to obtain evidence of suspected illegal activity or misconduct.~~

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~~ *either of the*
11 *following occurred:*
12 (A) *The* plaintiff reasonably feared for his or her safety, or the
13 safety of an immediate family member. For purposes of this
14 ~~paragraph subparagraph~~, “immediate family” means a spouse,
15 parent, child, any person related by consanguinity or affinity within
16 the second degree, or any person who regularly resides, or, within

1 the six months preceding any portion of the pattern of conduct,
2 regularly resided, in the plaintiff’s household.

3 (B) *The plaintiff suffered substantial emotional distress, and*
4 *the pattern of conduct would cause a reasonable person to suffer*
5 *substantial emotional distress.*

6 (3) One of the following:

7 (A) The defendant, as a part of the pattern of conduct specified
8 in paragraph (1), made a credible threat with either the intent to
9 place the plaintiff in reasonable fear for his or her safety, or the
10 safety of an immediate family member, or with reckless disregard
11 for the safety of the plaintiff or that of an immediate family
12 member. In addition, the plaintiff must have, on at least one
13 occasion, clearly and definitively demanded that the defendant
14 cease and abate his or her pattern of conduct and the defendant
15 persisted in his or her pattern of conduct, ~~unless exigent~~
16 ~~circumstances made the communication of a demand impractical~~
17 ~~or unsafe.~~

18 (B) The defendant violated a restraining order, including, but
19 not limited to, any order issued pursuant to Section 527.6 of the
20 Code of Civil Procedure, prohibiting any act described in
21 subdivision (a).

22 (b) For the purposes of this section:

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

27 (2) “Credible threat” means a verbal or written threat, including
28 that communicated by means of an electronic communication
29 device, or a threat implied by a pattern of conduct, ~~including, but~~
30 ~~not limited to, acts in which a defendant directly, indirectly, or~~
31 ~~through third parties, by any action, method, device, or means,~~
32 ~~follows, harasses, monitors, surveils, or threatens the plaintiff, or~~
33 ~~interferes with or damages the plaintiff’s property, or a~~ *or a*
34 combination of verbal, written, or electronically communicated
35 statements and conduct, made with the intent and apparent ability
36 to carry out the threat so as to cause the person who is the target
37 of the threat to reasonably fear for his or her safety or the safety
38 of his or her immediate family.

39 (3) “Electronic communication device” includes, but is not
40 limited to, telephones, cellular telephones, computers, video

1 recorders, fax machines, or pagers. “Electronic communication”
2 has the same meaning as the term defined in Subsection 12 of
3 Section 2510 of Title 18 of the United States Code.

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

9 (5)

10 (4) “Harass” means a knowing and willful course of conduct
11 directed at a specific person which serves no legitimate purpose;
12 and which either seriously alarms, annoys, torments, or terrorizes
13 the person, or limits the person’s freedom of movement. The course
14 of conduct must be such as would cause a reasonable person to
15 suffer substantial emotional distress, and must actually cause
16 substantial emotional distress to the person.

17 (6)

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

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

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

30 (e) The rights and remedies provided in this section are
31 cumulative and in addition to any other rights and remedies
32 provided by law.

33 (f) This section shall not be construed to impair ~~any~~ or limit the
34 *development or production of any audiovisual work, motion*
35 *picture, television program, news program, radio program, audio*
36 *work, play, book, magazine, or similar work, in any medium now*
37 *known or devised in the future, or any other* constitutionally
38 protected activity, including, but not limited to, speech, protest,
39 and assembly.

1 (g) *This section shall not be construed to impair or limit any*
2 *otherwise lawful activity of law enforcement personnel or*
3 *employees of governmental agencies or other entities, either public*
4 *or private, who, in the course and scope of their employment,*
5 *engage or attempt to engage in any conduct or activity to obtain*
6 *evidence of suspected illegal activity or other misconduct,*
7 *suspected violation of any administrative rule or regulation,*
8 *suspected fraudulent conduct, or any suspected activity involving*
9 *a violation of law or business practice or conduct of a public*
10 *official that adversely affects public welfare, health, or safety.*

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

12 1708.8. (a) A person is liable for physical invasion of privacy
13 when the defendant knowingly enters onto the land of another
14 person without permission or otherwise committed a trespass in
15 order to physically invade the privacy of the plaintiff with the
16 intent to capture any type of visual image, sound recording, or
17 other physical impression of the plaintiff engaging in a personal
18 or familial activity and the physical invasion occurs in a manner
19 that is offensive to a reasonable person.

20 (b) A person is liable for constructive invasion of privacy when
21 the defendant attempts to capture, in a manner that is offensive to
22 a reasonable person, any type of visual image, sound recording,
23 or other physical impression of the plaintiff engaging in a personal
24 or familial activity under circumstances in which the plaintiff had
25 a reasonable expectation of privacy, through the use of a visual or
26 auditory enhancing device, regardless of whether there is a physical
27 trespass, if this image, sound recording, or other physical
28 impression could not have been achieved without a trespass unless
29 the visual or auditory enhancing device was used.

30 (c) An assault or false imprisonment committed with the intent
31 to capture any type of visual image, sound recording, or other
32 physical impression of the plaintiff is subject to subdivisions (d),
33 (e), and (h).

34 (d) A person who commits any act described in subdivision (a),
35 (b), or (c) is liable for up to three times the amount of any general
36 and special damages that are proximately caused by the violation
37 of this section. This person may also be liable for punitive damages,
38 subject to proof according to Section 3294. If the plaintiff proves
39 that the invasion of privacy was committed for a commercial
40 purpose, the defendant shall also be subject to disgorgement to the

1 plaintiff of any proceeds or other consideration obtained as a result
2 of the violation of this section. A person who comes within the
3 description of this subdivision is also subject to a civil fine of not
4 less than five thousand dollars (\$5,000) and not more than fifty
5 thousand dollars (\$50,000).

6 (e) A person who directs, solicits, actually induces, or actually
7 causes another person, regardless of whether there is an
8 employer-employee relationship, to violate any provision of
9 subdivision (a), (b), or (c) is liable for any general, special, and
10 consequential damages resulting from each said violation. In
11 addition, the person that directs, solicits, actually induces, or
12 actually causes another person, regardless of whether there is an
13 employer-employee relationship, to violate this section shall be
14 liable for punitive damages to the extent that an employer would
15 be subject to punitive damages pursuant to subdivision (b) of
16 Section 3294. A person who comes within the description of this
17 subdivision is also subject to a civil fine of not less than five
18 thousand dollars (\$5,000) and not more than fifty thousand dollars
19 (\$50,000).

20 (f) (1) The transmission, publication, broadcast, sale, offer for
21 sale, or other use of any visual image, sound recording, or other
22 physical impression that was taken or captured in violation of
23 subdivision (a), (b), or (c) shall not constitute a violation of this
24 section unless the person, in the first transaction following the
25 taking or capture of the visual image, sound recording, or other
26 physical impression, publicly transmitted, published, broadcast,
27 sold or offered for sale, the visual image, sound recording, or other
28 physical impression with actual knowledge that it was taken or
29 captured in violation of subdivision (a), (b), or (c), and provide
30 compensation, consideration, or remuneration, monetary or
31 otherwise, for the rights to the unlawfully obtained visual image,
32 sound recording, or other physical impression.

33 (2) For the purposes of paragraph (1), “actual knowledge” means
34 actual awareness, understanding, and recognition, obtained prior
35 to the time at which the person purchased or acquired the visual
36 image, sound recording, or other physical impression, that the
37 visual image, sound recording, or other physical impression was
38 taken or captured in violation of subdivision (a), (b), or (c). The
39 plaintiff shall establish actual knowledge by clear and convincing
40 evidence.

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

7 (4) If a person's first public transmission, publication, broadcast,
8 or sale or offer for sale, of a visual image, sound recording, or
9 other physical impression that was taken or captured in violation
10 of subdivision (a), (b), or (c), does not constitute a violation of this
11 section, that person's subsequent public transmission, publication,
12 broadcast, sale or offer for sale, in any form, medium, format or
13 work, of the visual image, sound recording, or other physical
14 impression, does not constitute a violation of this section.

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

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

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

26 (g) This section shall not be construed to impair or limit any
27 otherwise lawful activities of law enforcement personnel or
28 employees of governmental agencies or other entities, either public
29 or private who, in the course and scope of their employment, and
30 supported by an articulable suspicion, attempt to capture any type
31 of visual image, sound recording, or other physical impression of
32 a person during an investigation, surveillance, or monitoring of
33 any conduct to obtain evidence of suspected illegal activity or
34 other misconduct, the suspected violation of any administrative
35 rule or regulation, a suspected fraudulent conduct, or any activity
36 involving a violation of law or business practices or conduct of
37 public officials adversely affecting the public welfare, health or
38 safety.

39 (h) In any action pursuant to this section, the court may grant
40 equitable relief, including, but not limited to, an injunction and

1 restraining order against further violations of subdivision (a), (b),
2 or (c).

3 (i) The rights and remedies provided in this section are
4 cumulative and in addition to any other rights and remedies
5 provided by law.

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

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

14 (l) For the purposes of this section, “personal and familial
15 activity” includes, but is not limited to, intimate details of the
16 plaintiff’s personal life, interactions with the plaintiff’s family or
17 significant others, or other aspects of the plaintiff’s private affairs
18 or concerns. “Personal and familial activity” does not include
19 illegal or otherwise criminal activity as delineated in subdivision
20 (g). However, “personal and familial activity” shall include the
21 activities of victims of crime in circumstances under which
22 subdivision (a), (b), or (c) would apply.

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

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

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

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

31 (3) Funds in the Arts and Entertainment Fund created pursuant
32 to paragraph (2) may be expended by the California Arts Council,
33 upon appropriation by the Legislature, to issue grants pursuant to
34 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
35 9 (commencing with Section 8750) of Division 1 of Title 2 of the
36 Government Code).

37 (4) The rights and remedies provided in this subdivision are
38 cumulative and in addition to any other rights and remedies
39 provided by law.

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

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