

AMENDED IN ASSEMBLY MAY 11, 2010

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 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 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. 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~~ “*place under surveillance*” *does not include lawful activity on the part 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, either of the following~~
- 11 ~~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 ~~subparagraph, “immediate family” means a spouse, parent, child,~~
- 15 ~~any person related by consanguinity or affinity within the second~~
- 16 ~~degree, or any person who regularly resides, or, within the six~~
- 17 ~~months preceding any portion of the pattern of conduct, regularly~~
- 18 ~~resided, in the plaintiff’s household.~~

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

4 ~~(3) One of the following:~~

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

14 ~~(B) The defendant violated a restraining order, including, but~~
15 ~~not limited to, any order issued pursuant to Section 527.6 of the~~
16 ~~Code of Civil Procedure, prohibiting any act described in~~
17 ~~subdivision (a):~~

18 ~~(b) For the purposes of this section:~~

19 ~~(1) "Pattern of conduct" means conduct composed of a series~~
20 ~~of acts over a period of time, however short, evidencing a~~
21 ~~continuity of purpose. Constitutionally protected activity is not~~
22 ~~included within the meaning of "pattern of conduct."~~

23 ~~(2) "Credible threat" means a verbal or written threat, including~~
24 ~~that communicated by means of an electronic communication~~
25 ~~device, or a threat implied by a pattern of conduct, or a combination~~
26 ~~of verbal, written, or electronically communicated statements and~~
27 ~~conduct, made with the intent and apparent ability to carry out the~~
28 ~~threat so as to cause the person who is the target of the threat to~~
29 ~~reasonably fear for his or her safety or the safety of his or her~~
30 ~~immediate family.~~

31 ~~(3) "Electronic communication device" includes, but is not~~
32 ~~limited to, telephones, cellular telephones, computers, video~~
33 ~~recorders, fax machines, or pagers. "Electronic communication"~~
34 ~~has the same meaning as the term defined in Subsection 12 of~~
35 ~~Section 2510 of Title 18 of the United States Code.~~

36 ~~(4) "Harass" means a knowing and willful course of conduct~~
37 ~~directed at a specific person which serves no legitimate purpose~~
38 ~~and seriously alarms, annoys, torments, or terrorizes the person.~~
39 ~~The course of conduct must be such as would cause a reasonable~~

1 person to suffer substantial emotional distress, and must actually
2 cause substantial emotional distress to the person.

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

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

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

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

18 (f) This section shall not be construed to impair or limit the
19 development or production of any audiovisual work, motion
20 picture, television program, news program, radio program, audio
21 work, play, book, magazine, or similar work, in any medium now
22 known or devised in the future, or any other constitutionally
23 protected activity, including, but not limited to, speech, protest,
24 and assembly.

25 (g) This section shall not be construed to impair or limit any
26 otherwise lawful activity of law enforcement personnel or
27 employees of governmental agencies or other entities, either public
28 or private, who, in the course and scope of their employment,
29 engage or attempt to engage in any conduct or activity to obtain
30 evidence of suspected illegal activity or other misconduct,
31 suspected violation of any administrative rule or regulation,
32 suspected fraudulent conduct, or any suspected activity involving
33 a violation of law or business practice or conduct of a public
34 official that adversely affects public welfare, health, or safety.

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

37 1708.7. (a) A person is liable for the tort of stalking when the
38 plaintiff proves all of the following elements of the tort:

39 (1) The defendant engaged in a pattern of conduct the intent of
40 which was to follow, alarm, *place under surveillance*, or harass

1 the plaintiff. In order to establish this element, the plaintiff shall
2 be required to support his or her allegations with independent
3 corroborating evidence.

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

11 (3) One of the following:

12 (A) The defendant, as a part of the pattern of conduct specified
13 in paragraph (1), made a credible threat with the intent to place
14 the plaintiff in reasonable fear for his or her safety, or the safety
15 of an immediate family member and, on at least one occasion, the
16 plaintiff clearly and definitively demanded that the defendant cease
17 and abate his or her pattern of conduct and the defendant persisted
18 in his or her pattern of conduct.

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

23 (b) For the purposes of this section:

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

28 (2) “Credible threat” means a verbal or written threat, including
29 that communicated by means of an electronic communication
30 device, or a threat implied by a pattern of conduct or a combination
31 of verbal, written, or electronically communicated statements and
32 conduct, made with the intent and apparent ability to carry out the
33 threat so as to cause the person who is the target of the threat to
34 reasonably fear for his or her safety or the safety of his or her
35 immediate family.

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

1 (4) “Harass” means a knowing and willful course of conduct
2 directed at a specific person which seriously alarms, annoys,
3 torments, or terrorizes the person, and which serves no legitimate
4 purpose. The course of conduct must be such as would cause a
5 reasonable person to suffer substantial emotional distress, and must
6 actually cause substantial emotional distress to the person.

7 (5) *“Place under surveillance” means remaining present outside*
8 *the plaintiff’s school, place of employment, vehicle, residence,*
9 *other than the residence of the defendant, or other place occupied*
10 *by the plaintiff. For purposes of the liability created by subdivision*
11 *(a), “place under surveillance” does not include any lawful activity*
12 *of law enforcement personnel or employees of agencies, either*
13 *public or private, who, in the course and scope of their*
14 *employment, engage or attempt to engage in any conduct or activity*
15 *to obtain evidence of suspected illegal activity or other misconduct,*
16 *suspected violation of any administrative rule or regulation,*
17 *suspected fraudulent conduct, or any suspected activity involving*
18 *a violation of law or business practice or conduct of a public*
19 *official that adversely affects public welfare, health, or safety.*

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

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

26 (e) The rights and remedies provided in this section are
27 cumulative and in addition to any other rights and remedies
28 provided by law.

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

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

33 1708.8. (a) A person is liable for physical invasion of privacy
34 when the defendant knowingly enters onto the land of another
35 person without permission or otherwise committed a trespass in
36 order to physically invade the privacy of the plaintiff with the
37 intent to capture any type of visual image, sound recording, or
38 other physical impression of the plaintiff engaging in a personal
39 or familial activity and the physical invasion occurs in a manner
40 that is offensive to a reasonable person.

1 (b) A person is liable for constructive invasion of privacy when
2 the defendant attempts to capture, in a manner that is offensive to
3 a reasonable person, any type of visual image, sound recording,
4 or other physical impression of the plaintiff engaging in a personal
5 or familial activity under circumstances in which the plaintiff had
6 a reasonable expectation of privacy, through the use of a visual or
7 auditory enhancing device, regardless of whether there is a physical
8 trespass, if this image, sound recording, or other physical
9 impression could not have been achieved without a trespass unless
10 the visual or auditory enhancing device was used.

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

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

27 (e) A person who directs, solicits, actually induces, or actually
28 causes another person, regardless of whether there is an
29 employer-employee relationship, to violate any provision of
30 subdivision (a), (b), or (c) is liable for any general, special, and
31 consequential damages resulting from each said violation. In
32 addition, the person that directs, solicits, actually induces, or
33 actually causes another person, regardless of whether there is an
34 employer-employee relationship, to violate this section shall be
35 liable for punitive damages to the extent that an employer would
36 be subject to punitive damages pursuant to subdivision (b) of
37 Section 3294. A person who comes within the description of this
38 subdivision is also subject to a civil fine of not less than five
39 thousand dollars (\$5,000) and not more than fifty thousand dollars
40 (\$50,000).

1 (f) (1) The transmission, publication, broadcast, sale, offer for
2 sale, or other use of any visual image, sound recording, or other
3 physical impression that was taken or captured in violation of
4 subdivision (a), (b), or (c) shall not constitute a violation of this
5 section unless the person, in the first transaction following the
6 taking or capture of the visual image, sound recording, or other
7 physical impression, publicly transmitted, published, broadcast,
8 sold or offered for sale, the visual image, sound recording, or other
9 physical impression with actual knowledge that it was taken or
10 captured in violation of subdivision (a), (b), or (c), and provide
11 compensation, consideration, or remuneration, monetary or
12 otherwise, for the rights to the unlawfully obtained visual image,
13 sound recording, or other physical impression.

14 (2) For the purposes of paragraph (1), “actual knowledge” means
15 actual awareness, understanding, and recognition, obtained prior
16 to the time at which the person purchased or acquired the visual
17 image, sound recording, or other physical impression, that the
18 visual image, sound recording, or other physical impression was
19 taken or captured in violation of subdivision (a), (b), or (c). The
20 plaintiff shall establish actual knowledge by clear and convincing
21 evidence.

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

28 (4) If a person’s first public transmission, publication, broadcast,
29 or sale or offer for sale, of a visual image, sound recording, or
30 other physical impression that was taken or captured in violation
31 of subdivision (a), (b), or (c), does not constitute a violation of this
32 section, that person’s subsequent public transmission, publication,
33 broadcast, sale or offer for sale, in any form, medium, format or
34 work, of the visual image, sound recording, or other physical
35 impression, does not constitute a violation of this section.

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

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

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

7 (g) This section shall not be construed to impair or limit any
8 otherwise lawful activities of law enforcement personnel or
9 employees of governmental agencies or other entities, either public
10 or private who, in the course and scope of their employment, and
11 supported by an articulable suspicion, attempt to capture any type
12 of visual image, sound recording, or other physical impression of
13 a person during an investigation, surveillance, or monitoring of
14 any conduct to obtain evidence of suspected illegal activity or
15 other misconduct, the suspected violation of any administrative
16 rule or regulation, a suspected fraudulent conduct, or any activity
17 involving a violation of law or business practices or conduct of
18 public officials adversely affecting the public welfare, health or
19 safety.

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

24 (i) The rights and remedies provided in this section are
25 cumulative and in addition to any other rights and remedies
26 provided by law.

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

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

35 (l) For the purposes of this section, “personal and familial
36 activity” includes, but is not limited to, intimate details of the
37 plaintiff’s personal life, interactions with the plaintiff’s family or
38 significant others, or other aspects of the plaintiff’s private affairs
39 or concerns. “Personal and familial activity” does not include
40 illegal or otherwise criminal activity as delineated in subdivision

1 (g). However, “personal and familial activity” shall include the
2 activities of victims of crime in circumstances under which
3 subdivision (a), (b), or (c) would apply.
4 (m) (1) A proceeding to recover the civil fines specified in
5 subdivision (d) or (e) may be brought in any court of competent
6 jurisdiction by a county counsel or city attorney.
7 (2) Fines collected pursuant to this subdivision shall be allocated,
8 as follows:
9 (A) One-half shall be allocated to the prosecuting agency.
10 (B) One-half shall be deposited in the Arts and Entertainment
11 Fund, which is hereby created in the State Treasury.
12 (3) Funds in the Arts and Entertainment Fund created pursuant
13 to paragraph (2) may be expended by the California Arts Council,
14 upon appropriation by the Legislature, to issue grants pursuant to
15 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter
16 9 (commencing with Section 8750) of Division 1 of Title 2 of the
17 Government Code).
18 (4) The rights and remedies provided in this subdivision are
19 cumulative and in addition to any other rights and remedies
20 provided by law.
21 (n) The provisions of this section are severable. If any provision
22 of this section or its application is held invalid, that invalidity shall
23 not affect other provisions or applications that can be given effect
24 without the invalid provision or application.