

AMENDED IN ASSEMBLY JUNE 1, 2010

AMENDED IN ASSEMBLY MAY 11, 2010

AMENDED IN ASSEMBLY APRIL 28, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**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~~ *Section* 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. The bill would specify that "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, 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 the intent to place~~  
20 ~~the plaintiff in reasonable fear for his or her safety, or the safety~~  
21 ~~of an immediate family member and, on at least one occasion, the~~  
22 ~~plaintiff clearly and definitively demanded that the defendant cease~~  
23 ~~and abate his or her pattern of conduct and the defendant persisted~~  
24 ~~in his or her pattern of conduct.~~

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

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

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

10 ~~(2) “Credible threat” means a verbal or written threat, including~~  
11 ~~that communicated by means of an electronic communication~~  
12 ~~device, or a threat implied by a pattern of conduct or a combination~~  
13 ~~of verbal, written, or electronically communicated statements and~~  
14 ~~conduct, made with the intent and apparent ability to carry out the~~  
15 ~~threat so as to cause the person who is the target of the threat to~~  
16 ~~reasonably fear for his or her safety or the safety of his or her~~  
17 ~~immediate family.~~

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

23 ~~(4) “Harass” means a knowing and willful course of conduct~~  
24 ~~directed at a specific person which seriously alarms, annoys,~~  
25 ~~torments, or terrorizes the person, and which serves no legitimate~~  
26 ~~purpose. The course of conduct must be such as would cause a~~  
27 ~~reasonable person to suffer substantial emotional distress, and must~~  
28 ~~actually cause substantial emotional distress to the person.~~

29 ~~(5) “Place under surveillance” means remaining present outside~~  
30 ~~the plaintiff’s school, place of employment, vehicle, residence,~~  
31 ~~other than the residence of the defendant, or other place occupied~~  
32 ~~by the plaintiff. For purposes of the liability created by subdivision~~  
33 ~~(a), “place under surveillance” does not include any lawful activity~~  
34 ~~of law enforcement personnel or employees of agencies, either~~  
35 ~~public or private, who, in the course and scope of their~~  
36 ~~employment, engage or attempt to engage in any conduct or activity~~  
37 ~~to obtain evidence of suspected illegal activity or other misconduct,~~  
38 ~~suspected violation of any administrative rule or regulation,~~  
39 ~~suspected fraudulent conduct, or any suspected activity involving~~

1 a violation of law or business practice or conduct of a public  
2 official that adversely affects public welfare, health, or safety.

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

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

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

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

15 **SEC. 2.**

16 *SECTION 1.* Section 1708.8 of the Civil Code is amended to  
17 read:

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

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

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

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

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

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

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

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

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

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

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

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

34 (g) This section shall not be construed to impair or limit any  
35 otherwise lawful activities of law enforcement personnel or  
36 employees of governmental agencies or other entities, either public  
37 or private who, in the course and scope of their employment, and  
38 supported by an articulable suspicion, attempt to capture any type  
39 of visual image, sound recording, or other physical impression of  
40 a person during an investigation, surveillance, or monitoring of

1 any conduct to obtain evidence of suspected illegal activity or  
2 other misconduct, the suspected violation of any administrative  
3 rule or regulation, a suspected fraudulent conduct, or any activity  
4 involving a violation of law or business practices or conduct of  
5 public officials adversely affecting the public welfare, health or  
6 safety.

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

11 (i) The rights and remedies provided in this section are  
12 cumulative and in addition to any other rights and remedies  
13 provided by law.

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

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

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

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

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

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

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

39 (3) Funds in the Arts and Entertainment Fund created pursuant  
40 to paragraph (2) may be expended by the California Arts Council,

1 upon appropriation by the Legislature, to issue grants pursuant to  
2 the Dixon-Zenovich-Maddy California Arts Act of 1975 (Chapter  
3 9 (commencing with Section 8750) of Division 1 of Title 2 of the  
4 Government Code).

5 (4) The rights and remedies provided in this subdivision are  
6 cumulative and in addition to any other rights and remedies  
7 provided by law.

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

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