

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE MAY 20, 2009

SENATE BILL

No. 188

Introduced by Senator Runner

February 18, 2009

An act to add Section 527.85 to the Code of Civil Procedure, *and to amend Section 273.6 of the Penal Code*, relating to temporary restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

SB 188, as amended, Runner. Temporary restraining orders: schools.

Existing law authorizes any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the workplace, to seek a temporary restraining order and an injunction on behalf of the employee and, at the discretion of the court, other employees, as specified. *Any intentional and knowing violation of the temporary restraining order is a misdemeanor, punishable as specified.*

This bill would similarly authorize any chief administrative officer of a school or a postsecondary educational institution, or an officer or employee designated by the chief administrative officer to maintain order on the school campus or facility, a student of which has suffered unlawful violence or a credible threat of violence from any individual, which can reasonably be construed to be carried out or to have been carried out at the school campus or facility, to seek a temporary restraining order and an injunction, on behalf of the student and, at the discretion of the court, any number of other students at the campus or facility, as specified. *The bill would provide that any intentional and*

knowing violation of the temporary restraining order is a misdemeanor, punishable as specified. By creating new duties for local law enforcement officials and expanding the scope of an existing 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 527.85 is added to the Code of Civil
- 2 Procedure, to read:
- 3 527.85. (a) Any chief administrative officer of a school or a
- 4 postsecondary educational institution, or an officer or employee
- 5 designated by the chief administrative officer to maintain order
- 6 on the school campus or facility, a student of which has suffered
- 7 unlawful violence or a credible threat of violence from any
- 8 individual, which can reasonably be construed to be carried out or
- 9 to have been carried out at the school campus or facility, may seek
- 10 a temporary restraining order and an injunction, on behalf of the
- 11 student and, at the discretion of the court, any number of other
- 12 students at the campus or facility.
- 13 (b) For the purposes of this section, the following definitions
- 14 shall apply:

1 (1) “Chief administrative officer” means the principal, president,
2 or highest ranking official of the school or the postsecondary
3 educational institution.

4 (2) “Course of conduct” means a pattern of conduct composed
5 of a series of acts over a period of time, however short, evidencing
6 a continuity of purpose, including any of the following:

7 (A) Following or stalking a student to or from school.

8 (B) Entering the school campus or facility.

9 (C) Following a student during school hours.

10 (D) Making telephone calls to a student.

11 (E) Sending correspondence to a student by any means,
12 including, but not limited to, the use of the public or private mails,
13 interoffice mail, fax, or computer e-mail.

14 (3) “Credible threat of violence” means a knowing and willful
15 statement or course of conduct that would place a reasonable person
16 in fear for his or her safety, or the safety of his or her immediate
17 family, and that serves no legitimate purpose.

18 (4) “Postsecondary educational institution” means a public or
19 private institution of vocational, professional, or postsecondary
20 education, the governing board of a community college district,
21 the Regents of the University of California, or the Trustees of the
22 California State University.

23 (5) “School” means any public or private elementary school,
24 junior high school, four-year high school, senior high school, adult
25 school or any branch thereof, opportunity school, continuation
26 high school, regional occupational center, evening high school, or
27 technical school, or any other place if a teacher and one or more
28 pupils are required to be at that place in connection with assigned
29 school activities.

30 (6) “Unlawful violence” means any assault or battery, or stalking
31 as prohibited in Section 646.9 of the Penal Code, but shall not
32 include lawful acts of self-defense or defense of others.

33 (c) This section does not permit a court to issue a temporary
34 restraining order or injunction prohibiting speech or other activities
35 that are constitutionally protected, or otherwise protected by
36 Section 527.3 or any other provision of law.

37 (d) Upon filing a petition for an injunction under this section,
38 the plaintiff may obtain a temporary restraining order in accordance
39 with subdivision (a) of Section 527, if the plaintiff also files an
40 affidavit that, to the satisfaction of the court, shows reasonable

1 proof that a student has suffered unlawful violence or a credible
2 threat of violence by the defendant, and that great or irreparable
3 harm would result to the student. In the discretion of the court, and
4 on a showing of good cause, a temporary restraining order or
5 injunction issued under this section may include other named
6 family or household members who reside with the student, or other
7 students at the campus or facility. A temporary restraining order
8 granted under this section shall remain in effect, at the court's
9 discretion, for a period not to exceed 15 days, unless otherwise
10 modified or terminated by the court.

11 (e) Within 15 days of the filing of the petition, a hearing shall
12 be held on the petition for the injunction. The defendant may file
13 a response that explains, excuses, justifies, or denies the alleged
14 unlawful violence or credible threats of violence or may file a
15 cross-complaint under this section. At the hearing, the judge shall
16 receive any testimony that is relevant and may make an
17 independent inquiry. Moreover, if the defendant is a current student
18 of the entity requesting the injunction, the judge shall receive
19 evidence concerning the decision of the school or postsecondary
20 educational institution decision to retain, terminate, or otherwise
21 discipline the defendant. If the judge finds by clear and convincing
22 evidence that the defendant engaged in unlawful violence or made
23 a credible threat of violence, an injunction shall be issued
24 prohibiting further unlawful violence or threats of violence. An
25 injunction issued pursuant to this section shall have a duration of
26 not more than three years. At any time within three months before
27 the expiration of the injunction, the plaintiff may apply for a
28 renewal of the injunction by filing a new petition for an injunction
29 under this section.

30 (f) This section does not preclude either party from
31 representation by private counsel or from appearing on his or her
32 own behalf.

33 (g) Upon filing of a petition for an injunction under this section,
34 the defendant shall be personally served with a copy of the petition,
35 temporary restraining order, if any, and notice of hearing of the
36 petition. Service shall be made at least five days before the hearing.
37 The court may, for good cause, on motion of the plaintiff or on its
38 own motion, shorten the time for service on the defendant.

39 (h) (1) The court shall order the plaintiff or the attorney for the
40 plaintiff to deliver a copy of each temporary restraining order or

1 injunction, or modification or termination thereof, granted under
2 this section, by the close of the business day on which the order
3 was granted, to the law enforcement agencies within the court's
4 discretion as are requested by the plaintiff. Each appropriate law
5 enforcement agency shall make available information as to the
6 existence and current status of these orders to law enforcement
7 officers responding to the scene of reported unlawful violence or
8 a credible threat of violence.

9 (2) At the request of the plaintiff, an order issued under this
10 section shall be served on the defendant, regardless of whether the
11 defendant has been taken into custody, by any law enforcement
12 officer who is present at the scene of reported unlawful violence
13 or a credible threat of violence involving the parties to the
14 proceedings. The plaintiff shall provide the officer with an endorsed
15 copy of the order and proof of service that the officer shall
16 complete and send to the issuing court.

17 (3) Upon receiving information at the scene of an incident of
18 unlawful violence or a credible threat of violence that a protective
19 order has been issued under this section, or that a person who has
20 been taken into custody is the subject of an order, if the plaintiff
21 or the protected person cannot produce an endorsed copy of the
22 order, a law enforcement officer shall immediately attempt to
23 verify the existence of the order.

24 (4) If the law enforcement officer determines that a protective
25 order has been issued, but not served, the officer shall immediately
26 notify the defendant of the terms of the order and obtain the
27 defendant's address. The law enforcement officer shall at that time
28 also enforce the order, but may not arrest or take the defendant
29 into custody for acts in violation of the order that were committed
30 prior to the verbal notice of the terms and conditions of the order.
31 The law enforcement officer's verbal notice of the terms of the
32 order shall constitute service of the order and constitutes sufficient
33 notice for the purposes of this section, and Section 273.6 and
34 subdivision (g) of Section 12021 of the Penal Code. The plaintiff
35 shall mail an endorsed copy of the order to the defendant's mailing
36 address provided to the law enforcement officer within one
37 business day of the reported incident of unlawful violence or a
38 credible threat of violence at which a verbal notice of the terms of
39 the order was provided by a law enforcement officer.

1 (i) (1) A person subject to a protective order issued under this
2 section shall not own, possess, purchase, receive, or attempt to
3 purchase or receive a firearm while the protective order is in effect.

4 (2) The court shall order a person subject to a protective order
5 issued under this section to relinquish any firearms he or she owns
6 or possesses pursuant to Section 527.9.

7 (3) Every person who owns, possesses, purchases, or receives,
8 or attempts to purchase or receive a firearm while the protective
9 order is in effect is punishable pursuant to subdivision (g) of
10 Section 12021 of the Penal Code.

11 (j) Any intentional disobedience of any temporary restraining
12 order or injunction granted under this section is punishable pursuant
13 to Section 273.6 of the Penal Code.

14 (k) Nothing in this section may be construed as expanding,
15 diminishing, altering, or modifying the duty, if any, of a school or
16 postsecondary educational institution to provide a safe environment
17 for students and other persons.

18 (l) The Judicial Council shall develop forms, instructions, and
19 rules for scheduling of hearings and other procedures established
20 pursuant to this section. The forms for the petition and response
21 shall be simple and concise, and their use by parties in actions
22 brought pursuant to this section shall be mandatory.

23 (m) A temporary restraining order or injunction relating to
24 harassment or domestic violence issued by a court pursuant to this
25 section shall be issued on forms adopted by the Judicial Council
26 and that have been approved by the Department of Justice pursuant
27 to subdivision (i) of Section 6380 of the Family Code. However,
28 the fact that an order issued by a court pursuant to this section was
29 not issued on forms adopted by the Judicial Council and approved
30 by the Department of Justice shall not, in and of itself, make the
31 order unenforceable.

32 (n) Information on any temporary restraining order or injunction
33 relating to harassment or domestic violence issued by a court
34 pursuant to this section shall be transmitted to the Department of
35 Justice in accordance with subdivision (b) of Section 6380 of the
36 Family Code.

37 (o) There is no filing fee for a petition that alleges that a person
38 has inflicted or threatened violence against a student of the
39 petitioner, or stalked the student, or acted or spoken in any other
40 manner that has placed the student in reasonable fear of violence,

1 and that seeks a protective or restraining order or injunction
2 restraining stalking or future violence or threats of violence, in
3 any action brought pursuant to this section. No fee shall be paid
4 for a subpoena filed in connection with a petition alleging these
5 acts. No fee shall be paid for filing a response to a petition alleging
6 these acts.

7 (p) (1) Subject to paragraph (4) of subdivision (b) of Section
8 6103.2 of the Government Code, there shall be no fee for the
9 service of process of a temporary restraining order or injunction
10 to be issued pursuant to this section if either of the following
11 conditions apply:

12 (A) The temporary restraining order or injunction issued
13 pursuant to this section is based upon stalking, as prohibited by
14 Section 646.9 of the Penal Code.

15 (B) The temporary restraining order or injunction issued
16 pursuant to this section is based upon a credible threat of violence.

17 (2) The Judicial Council shall prepare and develop application
18 forms for applicants who wish to avail themselves of the services
19 described in this subdivision.

20 *SEC. 2. Section 273.6 of the Penal Code is amended to read:*

21 273.6. (a) Any intentional and knowing violation of a
22 protective order, as defined in Section 6218 of the Family Code,
23 or of an order issued pursuant to Section 527.6 or, 527.8, or 527.85
24 of the Code of Civil Procedure, or Section 15657.03 of the Welfare
25 and Institutions Code, is a misdemeanor punishable by a fine of
26 not more than one thousand dollars (\$1,000), or by imprisonment
27 in a county jail for not more than one year, or by both that fine and
28 imprisonment.

29 (b) In the event of a violation of subdivision (a) ~~which that~~
30 results in physical injury, the person shall be punished by a fine
31 of not more than two thousand dollars (\$2,000), or by imprisonment
32 in a county jail for not less than 30 days nor more than one year,
33 or by both that fine and imprisonment. However, if the person is
34 imprisoned in a county jail for at least 48 hours, the court may, in
35 the interest of justice and for reasons stated on the record, reduce
36 or eliminate the 30-day minimum imprisonment required by this
37 subdivision. In determining whether to reduce or eliminate the
38 minimum imprisonment pursuant to this subdivision, the court
39 shall consider the seriousness of the facts before the court, whether
40 there are additional allegations of a violation of the order during

1 the pendency of the case before the court, the probability of future
2 violations, the safety of the victim, and whether the defendant has
3 successfully completed or is making progress with counseling.

4 (c) Subdivisions (a) and (b) shall apply to the following court
5 orders:

6 (1) Any order issued pursuant to Section 6320 or 6389 of the
7 Family Code.

8 (2) An order excluding one party from the family dwelling or
9 from the dwelling of the other.

10 (3) An order enjoining a party from specified behavior ~~which~~
11 *that* the court determined was necessary to effectuate the order
12 described in subdivision (a).

13 (4) Any order issued by another state that is recognized under
14 Part 5 (commencing with Section 6400) of Division 10 of the
15 Family Code.

16 (d) A subsequent conviction for a violation of an order described
17 in subdivision (a), occurring within seven years of a prior
18 conviction for a violation of an order described in subdivision (a)
19 and involving an act of violence or “a credible threat” of violence,
20 as defined in subdivision (c) of Section 139, is punishable by
21 imprisonment in a county jail not to exceed one year, or in the
22 state prison.

23 (e) In the event of a subsequent conviction for a violation of an
24 order described in subdivision (a) for an act occurring within one
25 year of a prior conviction for a violation of an order described in
26 subdivision (a) that results in physical injury to a victim, the person
27 shall be punished by a fine of not more than two thousand dollars
28 (\$2,000), or by imprisonment in a county jail for not less than six
29 months nor more than one year, by both that fine and
30 imprisonment, or by imprisonment in the state prison. However,
31 if the person is imprisoned in a county jail for at least 30 days, the
32 court may, in the interest of justice and for reasons stated in the
33 record, reduce or eliminate the six-month minimum imprisonment
34 required by this subdivision. In determining whether to reduce or
35 eliminate the minimum imprisonment pursuant to this subdivision,
36 the court shall consider the seriousness of the facts before the court,
37 whether there are additional allegations of a violation of the order
38 during the pendency of the case before the court, the probability
39 of future violations, the safety of the victim, and whether the

1 defendant has successfully completed or is making progress with
2 counseling.

3 (f) The prosecuting agency of each county shall have the primary
4 responsibility for the enforcement of orders described in
5 subdivisions (a), (b), (d), and (e).

6 (g) (1) Every person who owns, possesses, purchases, or
7 receives a firearm knowing he or she is prohibited from doing so
8 by the provisions of a protective order as defined in Section 136.2
9 of this code, Section 6218 of the Family Code, or Section 527.6
10 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of
11 the Welfare and Institutions Code, shall be punished under ~~the~~
12 ~~provisions of~~ subdivision (g) of Section 12021.

13 (2) Every person subject to a protective order described in
14 paragraph (1) shall not be prosecuted under this section for owning,
15 possessing, purchasing, or receiving a firearm to the extent that
16 firearm is granted an exemption pursuant to subdivision (f) of
17 Section 527.9 of the Code of Civil Procedure, or subdivision (h)
18 of Section 6389 of the Family Code.

19 (h) If probation is granted upon conviction of a violation of
20 subdivision (a), (b), (c), (d), or (e), the court shall impose probation
21 consistent with ~~the provisions of~~ Section 1203.097, and the
22 conditions of probation may include, in lieu of a fine, one or both
23 of the following requirements:

24 (1) That the defendant make payments to a battered women's
25 shelter or to a shelter for abused elder persons or dependent adults,
26 up to a maximum of five thousand dollars (\$5,000), pursuant to
27 Section 1203.097.

28 (2) That the defendant reimburse the victim for reasonable costs
29 of counseling and other reasonable expenses that the court finds
30 are the direct result of the defendant's offense.

31 (i) For any order to pay a fine, make payments to a battered
32 women's shelter, or pay restitution as a condition of probation
33 under subdivision (e), the court shall make a determination of the
34 defendant's ability to pay. In no event shall any order to make
35 payments to a battered women's shelter be made if it would impair
36 the ability of the defendant to pay direct restitution to the victim
37 or court-ordered child support. Where the injury to a married person
38 is caused in whole or in part by the criminal acts of his or her
39 spouse in violation of this section, the community property may
40 not be used to discharge the liability of the offending spouse for

1 restitution to the injured spouse, required by Section 1203.04, as
2 operative on or before August 2, 1995, or Section 1202.4, or to a
3 shelter for costs with regard to the injured spouse and dependents,
4 required by this section, until all separate property of the offending
5 spouse is exhausted.

6 ~~SEC. 2.— If the Commission on State Mandates determines that~~
7 ~~this act contains costs mandated by the state, reimbursement to~~
8 ~~local agencies and school districts for those costs shall be made~~
9 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
10 ~~4 of Title 2 of the Government Code.~~

11 *SEC. 3. No reimbursement is required by this act pursuant to*
12 *Section 6 of Article XIII B of the California Constitution for certain*
13 *costs that may be incurred by a local agency or school district*
14 *because, in that regard, this act creates a new crime or infraction,*
15 *eliminates a crime or infraction, or changes the penalty for a crime*
16 *or infraction, within the meaning of Section 17556 of the*
17 *Government Code, or changes the definition of a crime within the*
18 *meaning of Section 6 of Article XIII B of the California*
19 *Constitution.*

20 *However, if the Commission on State Mandates determines that*
21 *this act contains other costs mandated by the state, reimbursement*
22 *to local agencies and school districts for those costs shall be made*
23 *pursuant to Part 7 (commencing with Section 17500) of Division*
24 *4 of Title 2 of the Government Code.*