

AMENDED IN ASSEMBLY APRIL 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2467**

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**Introduced by Assembly Member Hueso  
(Coauthor: Assembly Member Garrick)**

February 24, 2012

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An act to ~~add Section 6342.5 to the Family Code, and to amend Sections Section 136.2, 273.5, 646.9, and 1269e~~ of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2467, as amended, Hueso. ~~Domestic violence and stalking: Protective orders: GPS monitoring.~~

*Existing law authorizes a court with jurisdiction over a criminal matter, upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, to issue specified orders, including an order protecting victims of violent crime from all contact by the defendant, or contact, with the intent to annoy, harass, threaten, or commit acts of violence, by the defendant.*

*This bill would authorize a court, when issuing a protective order pursuant to the above provisions, to require GPS monitoring of the defendant if the defendant is able to pay the costs of that monitoring. The bill would further authorize the court to order GPS monitoring and require the local law enforcement agency with jurisdiction over the case to pay the GPS monitoring costs if the defendant cannot afford those monitoring costs. The bill would limit the duration of the GPS monitoring to one year, but would authorize a victim to apply for, and a court to approve upon showing of the continued need for GPS*

*monitoring, an extension of the order for a time period not to exceed one year.*

~~Existing law makes it a crime for a person to willfully inflict upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition. Existing law also makes it a crime for a person to willfully, maliciously, and repeatedly follow or willfully and maliciously harass another person and to make a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family. Under existing law, a court is required, at the time of sentencing a person who is convicted of a crime of domestic violence, to consider an order restraining the defendant from any contact with the victim for up to 10 years. Existing law also authorizes, after notice and hearing, a court to make an order restraining a person from contact with a spouse or children as a result of domestic violence.~~

~~This bill would authorize a court, as part of a domestic violence restraining order, to order a defendant placed on active GPS monitoring. The bill would also authorize a court to place a defendant who is convicted of domestic violence or stalking, as defined above, where probation is granted or the execution or imposition of a sentence is suspended, to be placed on active GPS monitoring, as specified.~~

~~Existing law authorizes the setting of bail or the release on his or her own recognizance of a person who has been arrested for, or charged with, an offense other than a capital offense. Under existing law, bail may be adjusted to a higher amount to ensure the protection of a victim, or family member of a victim, of domestic violence.~~

~~This bill would authorize a court, as a condition of bail or release on his or her own recognizance, to order a defendant who is charged with a crime of domestic violence or stalking placed on active GPS monitoring.~~

~~By increasing the duties of local agencies who that monitor persons placed on active GPS monitoring, this 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.

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 6342.5 is added to the Family Code, to~~  
2     ~~read:~~

3     ~~6342.5. (a) After notice and a hearing, the court may issue an~~  
4     ~~order requiring the restrained party to be placed on active GPS~~  
5     ~~monitoring.~~

6     ~~(b) It is the intent of the Legislature that, when making this~~  
7     ~~decision, the court consider the seriousness of the facts before the~~  
8     ~~court, the probability of future violations, and the safety of the~~  
9     ~~victim and his or her immediate family before placing a party on~~  
10    ~~active GPS monitoring.~~

11    ~~(c) For purposes of this section, “immediate family” means a~~  
12    ~~spouse, parent, child, or a person related by consanguinity or~~  
13    ~~affinity within the second degree or another person who regularly~~  
14    ~~resides in the household or who, within the prior six months,~~  
15    ~~regularly resided in the household.~~

16    ~~SEC. 2.~~

17    ~~SECTION 1.~~ Section 136.2 of the Penal Code is amended to  
18    ~~read:~~

19    ~~136.2. (a) Except as provided in subdivision (c), upon a good~~  
20    ~~cause belief that harm to, or intimidation or dissuasion of, a victim~~  
21    ~~or witness has occurred or is reasonably likely to occur, a court~~  
22    ~~with jurisdiction over a criminal matter may issue orders including,~~  
23    ~~but not limited to, the following:~~

24    ~~(1) An order issued pursuant to Section 6320 of the Family~~  
25    ~~Code.~~

26    ~~(2) An order that a defendant shall not violate any provision of~~  
27    ~~Section 136.1.~~

28    ~~(3) An order that a person before the court other than a~~  
29    ~~defendant, including, but not limited to, a subpoenaed witness or~~  
30    ~~other person entering the courtroom of the court, shall not violate~~  
31    ~~any provisions of Section 136.1.~~

32    ~~(4) An order that a person described in this section shall have~~  
33    ~~no communication whatsoever with a specified witness or a victim,~~

1 except through an attorney under reasonable restrictions that the  
2 court may impose.

3 (5) An order calling for a hearing to determine if an order as  
4 described in paragraphs (1) to (4), inclusive, should be issued.

5 (6) (A) An order that a particular law enforcement agency  
6 within the jurisdiction of the court provide protection for a victim  
7 or a witness, or both, or for immediate family members of a victim  
8 or a witness who reside in the same household as the victim or  
9 witness or within reasonable proximity of the victim’s or witness’  
10 household, as determined by the court. The order shall not be made  
11 without the consent of the law enforcement agency except for  
12 limited and specified periods of time and upon an express finding  
13 by the court of a clear and present danger of harm to the victim or  
14 witness or immediate family members of the victim or witness.

15 (B) For purposes of this paragraph, “immediate family  
16 members” include the spouse, children, or parents of the victim  
17 or witness.

18 (7) (A) An order protecting victims of violent crime from all  
19 contact by the defendant, or contact, with the intent to annoy,  
20 harass, threaten, or commit acts of violence, by the defendant. The  
21 court or its designee shall transmit orders made under this  
22 paragraph to law enforcement personnel within one business day  
23 of the issuance, modification, extension, or termination of the  
24 order, pursuant to subdivision (a) of Section 6380 of the Family  
25 Code. It is the responsibility of the court to transmit the  
26 modification, extension, or termination orders made under this  
27 paragraph to the same agency that entered the original protective  
28 order into the Domestic Violence Restraining Order System.

29 (B) (i) If a court does not issue an order pursuant to  
30 subparagraph (A) in a case in which the defendant is charged with  
31 a crime of domestic violence as defined in Section 13700, the court  
32 on its own motion shall consider issuing a protective order upon  
33 a good cause belief that harm to, or intimidation or dissuasion of,  
34 a victim or witness has occurred or is reasonably likely to occur,  
35 that provides as follows:

36 (I) The defendant shall not own, possess, purchase, receive, or  
37 attempt to purchase or receive, a firearm while the protective order  
38 is in effect.

1 (II) The defendant shall relinquish any firearms that he or she  
2 owns or possesses pursuant to Section 527.9 of the Code of Civil  
3 Procedure.

4 (ii) Every person who owns, possesses, purchases, or receives,  
5 or attempts to purchase or receive, a firearm while this protective  
6 order is in effect is punishable pursuant to Section 29825.

7 (C) An order issued, modified, extended, or terminated by a  
8 court pursuant to this paragraph shall be issued on forms adopted  
9 by the Judicial Council of California and that have been approved  
10 by the Department of Justice pursuant to subdivision (i) of Section  
11 6380 of the Family Code. However, the fact that an order issued  
12 by a court pursuant to this section was not issued on forms adopted  
13 by the Judicial Council and approved by the Department of Justice  
14 shall not, in and of itself, make the order unenforceable.

15 (D) A protective order under this paragraph may require the  
16 defendant to be placed on active GPS monitoring *if the court*  
17 *determines that the defendant has the ability to pay for the*  
18 *monitoring device. If the court determines that the defendant does*  
19 *not have the ability to pay for the electronic monitoring, the court*  
20 *may order active GPS monitoring if the court orders the local law*  
21 *enforcement agency with jurisdiction over the case to pay for the*  
22 *costs associated with the GPS monitoring of the defendant. The*  
23 *duration of GPS monitoring shall not exceed one year from the*  
24 *date the order is issued. A victim may apply to the court for an*  
25 *extension of an order issued pursuant to this subparagraph and*  
26 *the court may approve the extension for an additional period not*  
27 *to exceed one year upon a showing of the continued need for the*  
28 *GPS monitoring of a defendant.*

29 (b) A person violating an order made pursuant to paragraphs  
30 (1) to (7), inclusive, of subdivision (a) may be punished for any  
31 substantive offense described in Section 136.1, or for a contempt  
32 of the court making the order. A finding of contempt shall not be  
33 a bar to prosecution for a violation of Section 136.1. However, a  
34 person so held in contempt shall be entitled to credit for punishment  
35 imposed therein against a sentence imposed upon conviction of  
36 an offense described in Section 136.1. A conviction or acquittal  
37 for a substantive offense under Section 136.1 shall be a bar to a  
38 subsequent punishment for contempt arising out of the same act.

39 (c) (1) Notwithstanding subdivisions (a) and (e), an emergency  
40 protective order issued pursuant to Chapter 2 (commencing with

1 Section 6250) of Part 3 of Division 10 of the Family Code or  
2 Section 646.91 of the Penal Code shall have precedence in  
3 enforcement over any other restraining or protective order, provided  
4 the emergency protective order meets all of the following  
5 requirements:

6 (A) The emergency protective order is issued to protect one or  
7 more individuals who are already protected persons under another  
8 restraining or protective order.

9 (B) The emergency protective order restrains the individual who  
10 is the restrained person in the other restraining or protective order  
11 specified in subparagraph (A).

12 (C) The provisions of the emergency protective order are more  
13 restrictive in relation to the restrained person than are the provisions  
14 of the other restraining or protective order specified in  
15 subparagraph (A).

16 (2) An emergency protective order that meets the requirements  
17 of paragraph (1) shall have precedence in enforcement over the  
18 provisions of any other restraining or protective order only with  
19 respect to those provisions of the emergency protective order that  
20 are more restrictive in relation to the restrained person.

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

24 (2) The court shall order a person subject to a protective order  
25 issued under this section to relinquish any firearms he or she owns  
26 or possesses pursuant to Section 527.9 of the Code of Civil  
27 Procedure.

28 (3) A person who owns, possesses, purchases or receives, or  
29 attempts to purchase or receive a firearm while the protective order  
30 is in effect is punishable pursuant to Section 29825.

31 (e) (1) In all cases where the defendant is charged with a crime  
32 of domestic violence, as defined in Section 13700, the court shall  
33 consider issuing the above-described orders on its own motion.  
34 All interested parties shall receive a copy of those orders. In order  
35 to facilitate this, the court's records of all criminal cases involving  
36 domestic violence shall be marked to clearly alert the court to this  
37 issue.

38 (2) In those cases in which a complaint, information, or  
39 indictment charging a crime of domestic violence, as defined in  
40 Section 13700, has been issued, a restraining order or protective

1 order against the defendant issued by the criminal court in that  
2 case has precedence in enforcement over a civil court order against  
3 the defendant, unless a court issues an emergency protective order  
4 pursuant to Chapter 2 (commencing with Section 6250) of Part 3  
5 of Division 10 of the Family Code or Section 646.91 of the Penal  
6 Code, in which case the emergency protective order shall have  
7 precedence in enforcement over any other restraining or protective  
8 order, provided the emergency protective order meets the following  
9 requirements:

10 (A) The emergency protective order is issued to protect one or  
11 more individuals who are already protected persons under another  
12 restraining or protective order.

13 (B) The emergency protective order restrains the individual who  
14 is the restrained person in the other restraining or protective order  
15 specified in subparagraph (A).

16 (C) The provisions of the emergency protective order are more  
17 restrictive in relation to the restrained person than are the provisions  
18 of the other restraining or protective order specified in  
19 subparagraph (A).

20 (3) Custody and visitation with respect to the defendant and his  
21 or her minor children may be ordered by a family or juvenile court  
22 consistent with the protocol established pursuant to subdivision  
23 (f), but if ordered after a criminal protective order has been issued  
24 pursuant to this section, the custody and visitation order shall make  
25 reference to, and acknowledge the precedence of enforcement of,  
26 an appropriate criminal protective order. On or before July 1, 2006,  
27 the Judicial Council shall modify the criminal and civil court forms  
28 consistent with this subdivision.

29 (f) On or before January 1, 2003, the Judicial Council shall  
30 promulgate a protocol, for adoption by each local court in  
31 substantially similar terms, to provide for the timely coordination  
32 of all orders against the same defendant and in favor of the same  
33 named victim or victims. The protocol shall include, but shall not  
34 be limited to, mechanisms for assuring appropriate communication  
35 and information sharing between criminal, family, and juvenile  
36 courts concerning orders and cases that involve the same parties,  
37 and shall permit a family or juvenile court order to coexist with a  
38 criminal court protective order subject to the following conditions:

39 (1) An order that permits contact between the restrained person  
40 and his or her children shall provide for the safe exchange of the

1 children and shall not contain language either printed or  
2 handwritten that violates a “no contact order” issued by a criminal  
3 court.

4 (2) Safety of all parties shall be the courts’ paramount concern.  
5 The family or juvenile court shall specify the time, day, place, and  
6 manner of transfer of the child, as provided in Section 3100 of the  
7 Family Code.

8 (g) On or before January 1, 2003, the Judicial Council shall  
9 modify the criminal and civil court protective order forms  
10 consistent with this section.

11 (h) In any case in which a complaint, information, or indictment  
12 charging a crime of domestic violence, as defined in Section 13700,  
13 has been filed, the court may consider, in determining whether  
14 good cause exists to issue an order under paragraph (1) of  
15 subdivision (a), the underlying nature of the offense charged, and  
16 the information provided to the court pursuant to Section 273.75.

17 (i) In all cases in which a criminal defendant has been convicted  
18 of a crime of domestic violence as defined in Section 13700, the  
19 court, at the time of sentencing, shall consider issuing an order  
20 restraining the defendant from any contact with the victim. The  
21 order may be valid for up to 10 years, as determined by the court.  
22 This protective order may be issued by the court regardless of  
23 whether the defendant is sentenced to the state prison or a county  
24 jail, or whether imposition of sentence is suspended and the  
25 defendant is placed on probation. ~~The order may include provisions  
26 for GPS monitoring of the defendant.~~ It is the intent of the  
27 Legislature in enacting this subdivision that the duration of any  
28 restraining order issued by the court be based upon the seriousness  
29 of the facts before the court, the probability of future violations,  
30 and the safety of the victim and his or her immediate family.

31 ~~SEC. 3.—Section 273.5 of the Penal Code is amended to read:~~  
32 ~~273.5.—(a) A person who willfully inflicts upon a person who~~  
33 ~~is his or her spouse, former spouse, cohabitant, former cohabitant,~~  
34 ~~or the mother or father of his or her child, corporal injury resulting~~  
35 ~~in a traumatic condition is guilty of a felony and, upon conviction~~  
36 ~~thereof, shall be punished by imprisonment in the state prison for~~  
37 ~~two, three, or four years, or in a county jail for not more than one~~  
38 ~~year, or by a fine of up to six thousand dollars (\$6,000), or by both~~  
39 ~~that fine and imprisonment.~~

1 ~~(b) Holding oneself out to be the husband or wife of the person~~  
2 ~~with whom one is cohabiting is not necessary to constitute~~  
3 ~~cohabitation as the term is used in this section.~~

4 ~~(c) As used in this section, “traumatic condition” means a~~  
5 ~~condition of the body, such as a wound, or external or internal~~  
6 ~~injury, including, but not limited to, injury as a result of~~  
7 ~~strangulation or suffocation, whether of a minor or serious nature,~~  
8 ~~caused by a physical force. For purposes of this section,~~  
9 ~~“strangulation” and “suffocation” include impeding the normal~~  
10 ~~breathing or circulation of the blood of a person by applying~~  
11 ~~pressure on the throat or neck.~~

12 ~~(d) For the purpose of this section, a person shall be considered~~  
13 ~~the father or mother of another person’s child if the alleged male~~  
14 ~~parent is presumed the natural father under Sections 7611 and 7612~~  
15 ~~of the Family Code.~~

16 ~~(e) (1) A person convicted of violating this section for acts~~  
17 ~~occurring within seven years of a previous conviction under~~  
18 ~~subdivision (a), or subdivision (d) of Section 243, or Section 243.4,~~  
19 ~~244, 244.5, or 245, shall be punished by imprisonment in a county~~  
20 ~~jail for not more than one year, or by imprisonment in the state~~  
21 ~~prison for two, four, or five years, or by both imprisonment and a~~  
22 ~~fine of up to ten thousand dollars (\$10,000).~~

23 ~~(2) A person convicted of a violation of this section for acts~~  
24 ~~occurring within seven years of a previous conviction under~~  
25 ~~subdivision (e) of Section 243 shall be punished by imprisonment~~  
26 ~~in the state prison for two, three, or four years, or in a county jail~~  
27 ~~for not more than one year, or by a fine of up to ten thousand~~  
28 ~~dollars (\$10,000), or by both that imprisonment and fine.~~

29 ~~(f) If probation is granted to any person convicted under~~  
30 ~~subdivision (a), the court shall impose probation consistent with~~  
31 ~~the provisions of Section 1203.097.~~

32 ~~(g) If probation is granted, or the execution or imposition of a~~  
33 ~~sentence is suspended, for any defendant convicted under~~  
34 ~~subdivision (a) who has been convicted of any prior offense~~  
35 ~~specified in subdivision (e), the court shall impose one of the~~  
36 ~~following conditions of probation:~~

37 ~~(1) If the defendant has suffered one prior conviction within the~~  
38 ~~previous seven years for a violation of an offense specified in~~  
39 ~~subdivision (e), it shall be a condition thereof, in addition to the~~

1 provisions contained in Section 1203.097, that he or she be  
2 imprisoned in a county jail for not less than 15 days.

3 (2) If the defendant has suffered two or more prior convictions  
4 within the previous seven years for a violation of an offense  
5 specified in subdivision (e), it shall be a condition of probation,  
6 in addition to the provisions contained in Section 1203.097, that  
7 he or she be imprisoned in a county jail for not less than 60 days.

8 (3) The court, upon a showing of good cause, may find that the  
9 mandatory imprisonment required by this subdivision shall not be  
10 imposed and shall state on the record its reasons for finding good  
11 cause.

12 (h) (1) If probation is granted upon conviction of a violation  
13 of subdivision (a), the conditions of probation may include,  
14 consistent with the terms of probation imposed pursuant to Section  
15 1203.097, in lieu of a fine, one or both of the following  
16 requirements:

17 (A) That the defendant make payments to a battered women's  
18 shelter, up to a maximum of five thousand dollars (\$5,000),  
19 pursuant to Section 1203.097.

20 (B) That the defendant reimburse the victim for reasonable costs  
21 of counseling and other reasonable expenses that the court finds  
22 are the direct result of the defendant's offense.

23 (2) For an order to pay a fine, make payments to a battered  
24 women's shelter, or pay restitution as a condition of probation  
25 under this subdivision, the court shall make a determination of the  
26 defendant's ability to pay. In no event shall an order to make  
27 payments to a battered women's shelter be made if it would impair  
28 the ability of the defendant to pay direct restitution to the victim  
29 or court-ordered child support. Where the injury to a married person  
30 is caused in whole or in part by the criminal acts of his or her  
31 spouse in violation of this section, the community property may  
32 not be used to discharge the liability of the offending spouse for  
33 restitution to the injured spouse, required by Section 1203.04, as  
34 operative on or before August 2, 1995, or Section 1202.4, or to a  
35 shelter for costs with regard to the injured spouse and dependents,  
36 required by this section, until all separate property of the offending  
37 spouse is exhausted.

38 (i) Upon conviction under subdivision (a), the sentencing court  
39 shall also consider issuing an order restraining the defendant from  
40 contact with the victim, which may be valid for up to 10 years, as

1 determined by the court. It is the intent of the Legislature that the  
2 length of a restraining order be based upon the seriousness of the  
3 facts before the court, the probability of future violations, and the  
4 safety of the victim and his or her immediate family. This  
5 protective order may be issued by the court whether the defendant  
6 is sentenced to state prison, county jail, or if imposition of sentence  
7 is suspended and the defendant is placed on probation.

8 (j) (1) If probation is granted or the execution or imposition of  
9 a sentence is suspended for a defendant convicted under  
10 subdivision (a), the sentencing court may order the defendant to  
11 be placed on active GPS monitoring. It is the intent of the  
12 Legislature that, when making this decision, the court consider the  
13 seriousness of the facts before the court, the probability of future  
14 violations, and the safety of the victim and his or her immediate  
15 family before placing a defendant on active GPS monitoring.

16 (2) For purposes of this section, “immediate family” means a  
17 spouse, parent, child, or a person related by consanguinity or  
18 affinity within the second degree or another person who regularly  
19 resides in the household or who, within the prior six months,  
20 regularly resided in the household.

21 SEC. 4. Section 646.9 of the Penal Code is amended to read:

22 646.9. (a) A person who willfully, maliciously, and repeatedly  
23 follows or willfully and maliciously harasses another person and  
24 who makes a credible threat with the intent to place that person in  
25 reasonable fear for his or her safety, or the safety of his or her  
26 immediate family is guilty of the crime of stalking, punishable by  
27 imprisonment in a county jail for not more than one year, or by a  
28 fine of not more than one thousand dollars (\$1,000), or by both  
29 that fine and imprisonment, or by imprisonment in the state prison.

30 (b) A person who violates subdivision (a) when there is a  
31 temporary restraining order, injunction, or any other court order  
32 in effect prohibiting the behavior described in subdivision (a)  
33 against the same party, shall be punished by imprisonment in the  
34 state prison for two, three, or four years.

35 (c) (1) Every person who, after having been convicted of a  
36 felony under Section 273.5, 273.6, or 422, commits a violation of  
37 subdivision (a) shall be punished by imprisonment in a county jail  
38 for not more than one year, or by a fine of not more than one  
39 thousand dollars (\$1,000), or by both that fine and imprisonment,  
40 or by imprisonment in the state prison for two, three, or five years.

1     ~~(2) Every person who, after having been convicted of a felony~~  
2 ~~under subdivision (a), commits a violation of this section shall be~~  
3 ~~punished by imprisonment in the state prison for two, three, or~~  
4 ~~five years.~~

5     ~~(d) In addition to the penalties provided in this section, the~~  
6 ~~sentencing court may order a person convicted of a felony under~~  
7 ~~this section to register as a sex offender pursuant to Section~~  
8 ~~290.006.~~

9     ~~(e) For the purposes of this section, the following definitions~~  
10 ~~apply:~~

11     ~~(1) “Course of conduct” means two or more acts occurring over~~  
12 ~~a period of time, however short, evidencing a continuity of purpose.~~  
13 ~~Constitutionally protected activity is not included within the~~  
14 ~~meaning of “course of conduct.”~~

15     ~~(2) “Credible threat” means a verbal or written threat, including~~  
16 ~~that performed through the use of an electronic communication~~  
17 ~~device, or a threat implied by a pattern of conduct or a combination~~  
18 ~~of verbal, written, or electronically communicated statements and~~  
19 ~~conduct, made with the intent to place the person who is the target~~  
20 ~~of the threat in reasonable fear for his or her safety or the safety~~  
21 ~~of his or her family, and made with the apparent ability to carry~~  
22 ~~out the threat so as to cause the person who is the target of the~~  
23 ~~threat to reasonably fear for his or her safety or the safety of his~~  
24 ~~or her family. It is not necessary to prove that the defendant had~~  
25 ~~the intent to actually carry out the threat. The present incarceration~~  
26 ~~of a person making the threat shall not be a bar to prosecution~~  
27 ~~under this section. Constitutionally protected activity is not~~  
28 ~~included within the meaning of “credible threat.”~~

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

34     ~~(4) “Harass” means to engage in a knowing and willful course~~  
35 ~~of conduct directed at a specific person that seriously alarms,~~  
36 ~~annoys, torments, or terrorizes the person, and that serves no~~  
37 ~~legitimate purpose.~~

38     ~~(5) “Immediate family” means a spouse, parent, child, a person~~  
39 ~~related by consanguinity or affinity within the second degree, or~~

1 any other person who regularly resides in the household, or who,  
2 within the prior six months, regularly resided in the household.

3 ~~(f) This section shall not apply to conduct that occurs during~~  
4 ~~labor picketing.~~

5 ~~(g) If probation is granted, or the execution or imposition of a~~  
6 ~~sentence is suspended, for a person convicted under this section,~~  
7 ~~it shall be a condition of probation that the person participate in~~  
8 ~~counseling, as designated by the court. However, the court, upon~~  
9 ~~a showing of good cause, may find that the counseling requirement~~  
10 ~~shall not be imposed.~~

11 ~~(h) (1) The sentencing court also shall consider issuing an order~~  
12 ~~restraining the defendant from any contact with the victim, that~~  
13 ~~may be valid for up to 10 years, as determined by the court. It is~~  
14 ~~the intent of the Legislature that the length of any restraining order~~  
15 ~~be based upon the seriousness of the facts before the court, the~~  
16 ~~probability of future violations, and the safety of the victim and~~  
17 ~~his or her immediate family.~~

18 ~~(2) This protective order may be issued by the court whether~~  
19 ~~the defendant is sentenced to state prison, county jail, or if~~  
20 ~~imposition of sentence is suspended and the defendant is placed~~  
21 ~~on probation.~~

22 ~~(i) If probation is granted or the execution or imposition of a~~  
23 ~~sentence is suspended for a defendant convicted under subdivision~~  
24 ~~(a), the sentencing court may order the defendant placed on active~~  
25 ~~GPS monitoring. It is the intent of the Legislature that the court,~~  
26 ~~in making this decision, consider the seriousness of the facts before~~  
27 ~~the court, the probability of future violations, and the safety of the~~  
28 ~~victim and his or her immediate family before placing the defendant~~  
29 ~~on active GPS monitoring.~~

30 ~~(j) The court shall consider whether the defendant would benefit~~  
31 ~~from treatment pursuant to Section 2684. If it is determined to be~~  
32 ~~appropriate, the court shall recommend that the Department of~~  
33 ~~Corrections and Rehabilitation make a certification as provided in~~  
34 ~~Section 2684. Upon the certification, the defendant shall be~~  
35 ~~evaluated and transferred to the appropriate hospital for treatment~~  
36 ~~pursuant to Section 2684.~~

37 ~~SEC. 5. Section 1269e of the Penal Code is amended to read:~~

38 ~~1269e. (a) If a defendant is arrested without a warrant for a~~  
39 ~~bailable felony offense or for the misdemeanor offense of violating~~  
40 ~~a domestic violence restraining order, and a peace officer has~~

1 reasonable cause to believe that the amount of bail set forth in the  
 2 schedule of bail for that offense is insufficient to ensure the  
 3 defendant's appearance or to ensure the protection of a victim, or  
 4 family member of a victim, of domestic violence, the peace officer  
 5 shall prepare a declaration under penalty of perjury setting forth  
 6 the facts and circumstances in support of his or her belief and file  
 7 it with a magistrate, as defined in Section 808, or his or her  
 8 commissioner, in the county in which the offense is alleged to have  
 9 been committed or having personal jurisdiction over the defendant,  
 10 requesting an order setting a higher bail.

11 (b) Except where the defendant is charged with an offense listed  
 12 in subdivision (a) of Section 1270.1, the defendant, either  
 13 personally or through his or her attorney, friend, or family member,  
 14 also may make application to the magistrate for release on bail  
 15 lower than that provided in the schedule of bail or on his or her  
 16 own recognizance.

17 (c) The magistrate or commissioner to whom the application is  
 18 made is authorized to set bail in an amount that he or she deems  
 19 sufficient to ensure the defendant's appearance or to ensure the  
 20 protection of a victim, or family member of a victim, of domestic  
 21 violence, and to set bail on the terms and conditions that he or she,  
 22 in his or her discretion, deems appropriate, or he or she may  
 23 authorize the defendant's release on his or her own recognizance.

24 (d) The magistrate or commissioner may, as a condition of bail  
 25 or release on his or her own recognizance, order a defendant who  
 26 is charged with a crime of domestic violence or stalking placed  
 27 on active GPS monitoring. It is the intent of the Legislature that  
 28 the court, in making this decision, consider the seriousness of the  
 29 facts before the court, the probability of future violations, and the  
 30 safety of the victim and his or her immediate family before placing  
 31 the defendant on active GPS monitoring.

32 (e) If, after the application is made, no order changing the  
 33 amount of bail is issued within eight hours after booking, the  
 34 defendant shall be entitled to be released on posting the amount  
 35 of bail set forth in the applicable bail schedule.

36 ~~SEC. 6.~~

37 *SEC. 2.* If the Commission on State Mandates determines that  
 38 this act contains costs mandated by the state, reimbursement to  
 39 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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