

AMENDED IN SENATE MAY 10, 2011

SENATE BILL

No. 430

Introduced by Senator Kehoe

(Coauthors: Assembly Members Atkins and Fletcher)

February 16, 2011

An act to ~~add Section 249 to~~ *amend Section 273.5 of the Penal Code,* relating to strangulation.

LEGISLATIVE COUNSEL'S DIGEST

SB 430, as amended, Kehoe. Strangulation.

Existing law establishes various crimes against the person, such as assault and battery, and provides that any person who willfully inflicts 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, is guilty of a felony punishable by imprisonment in the state prison for 2, 3, or 4 years, or ~~as a misdemeanor with specified penalties by incarceration in a county jail not exceeding one year, or by a fine, or by both imprisonment and a fine, as specified.~~ Existing law defines "traumatic condition" for these purposes to mean a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

This bill would specify that "traumatic injury" includes injury as a result of strangulation or suffocation and defines the terms "strangulation" and "suffocation" for those purposes.

~~This bill would provide that any person who willfully and unlawfully strangles, suffocates, or attempts to suffocate a person is guilty of a felony punishable by incarceration in the state prison for a term of 2, 3, or 4 years. The bill would provide that if the defendant and victim~~

~~are in a specified relationship, the defendant would be subject to an enhancement of an additional 2 years in state prison. The bill would provide that evidence of either an intent to kill or injure the victim or visible injuries is not required to convict a defendant of violating these provisions.~~

~~By creating a new crime, 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 no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes-no~~. State-mandated local program: ~~yes-no~~.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 273.5 of the Penal Code is amended to*
2 *read:*

3 273.5. (a) Any person who willfully inflicts upon a person
4 who is his or her spouse, former spouse, cohabitant, former
5 cohabitant, or the mother or father of his or her child, corporal
6 injury resulting in a traumatic condition, is guilty of a felony, and
7 upon conviction thereof shall be punished by imprisonment in the
8 state prison for two, three, or four years, or in a county jail for not
9 more than one year, or by a fine of up to six thousand dollars
10 (\$6,000) or by both that fine and imprisonment.

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

14 (c) As used in this section, “traumatic condition” means a
15 condition of the body, such as a wound, or external or internal
16 injury, *including, but not limited to, injury as a result of*
17 *strangulation or suffocation*, whether of a minor or serious nature,
18 caused by a physical force. *For purposes of this section,*
19 *“strangulation” and “suffocation” include impeding the normal*
20 *breathing or circulation of the blood of a person by applying*
21 *pressure on the throat or neck.*

22 (d) For the purpose of this section, a person shall be considered
23 the father or mother of another person’s child if the alleged male

1 parent is presumed the natural father under Sections 7611 and 7612
2 of the Family Code.

3 (e) (1) Any person convicted of violating this section for acts
4 occurring within seven years of a previous conviction under
5 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
6 244, 244.5, or 245, shall be punished by imprisonment in a county
7 jail for not more than one year, or by imprisonment in the state
8 prison for two, four, or five years, or by both imprisonment and a
9 fine of up to ten thousand dollars (\$10,000).

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

16 (f) If probation is granted to any person convicted under
17 subdivision (a), the court shall impose probation consistent with
18 the provisions of Section 1203.097.

19 (g) If probation is granted, or the execution or imposition of a
20 sentence is suspended, for any defendant convicted under
21 subdivision (a) who has been convicted of any prior offense
22 specified in subdivision (e), the court shall impose one of the
23 following conditions of probation:

24 (1) If the defendant has suffered one prior conviction within the
25 previous seven years for a violation of any offense specified in
26 subdivision (e), it shall be a condition thereof, in addition to the
27 provisions contained in Section 1203.097, that he or she be
28 imprisoned in a county jail for not less than 15 days.

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

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

38 (h) If probation is granted upon conviction of a violation of
39 subdivision (a), the conditions of probation may include, consistent

1 with the terms of probation imposed pursuant to Section 1203.097,
2 in lieu of a fine, one or both of the following requirements:

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

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

9 For any order to pay a fine, make payments to a battered
10 women's shelter, or pay restitution as a condition of probation
11 under this subdivision, the court shall make a determination of the
12 defendant's ability to pay. In no event shall any order to make
13 payments to a battered women's shelter be made if it would impair
14 the ability of the defendant to pay direct restitution to the victim
15 or court-ordered child support. Where the injury to a married person
16 is caused in whole or in part by the criminal acts of his or her
17 spouse in violation of this section, the community property may
18 not be used to discharge the liability of the offending spouse for
19 restitution to the injured spouse, required by Section 1203.04, as
20 operative on or before August 2, 1995, or Section 1202.4, or to a
21 shelter for costs with regard to the injured spouse and dependents,
22 required by this section, until all separate property of the offending
23 spouse is exhausted.

24 (i) Upon conviction under subdivision (a), the sentencing court
25 shall also consider issuing an order restraining the defendant from
26 any contact with the victim, which may be valid for up to 10 years,
27 as determined by the court. It is the intent of the Legislature that
28 the length of any restraining order 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. This
31 protective order may be issued by the court whether the defendant
32 is sentenced to state prison, county jail, or if imposition of sentence
33 is suspended and the defendant is placed on probation.

34 ~~SECTION 1. Section 249 is added to the Penal Code, to read:~~

35 ~~249. (a) Any person who willfully and unlawfully strangles,~~
36 ~~suffocates, or attempts to suffocate a person is guilty of a felony~~
37 ~~punishable by incarceration in the state prison for a term of two,~~
38 ~~three, or four years.~~

39 ~~(b) For a defendant to be convicted of a violation of subdivision~~
40 ~~(a), evidence of either of the following is not required:~~

1 ~~(1) An intent to kill or injure the victim.~~

2 ~~(2) Visible injuries.~~

3 ~~(e) If the defendant and the victim are in a relationship described~~
4 ~~in subdivision (b) of Section 13700, the defendant shall be subject~~
5 ~~to an enhanced penalty of two additional years imprisonment in~~
6 ~~the state prison.~~

7 ~~(d) (1) “Strangle” for purposes of this section means to~~
8 ~~intentionally, knowingly, or recklessly impede the normal breathing~~
9 ~~or circulation of the blood of a person by applying pressure on the~~
10 ~~throat or neck.~~

11 ~~(2) “Suffocate” for purposes of this section means to~~
12 ~~intentionally, knowingly, or recklessly impede the normal breathing~~
13 ~~of a person.~~

14 ~~(e) Nothing in this section shall preclude prosecution of a person~~
15 ~~under any other provision of this code.~~

16 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
17 ~~Section 6 of Article XIII B of the California Constitution because~~
18 ~~the only costs that may be incurred by a local agency or school~~
19 ~~district will be incurred because this act creates a new crime or~~
20 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
21 ~~for a crime or infraction, within the meaning of Section 17556 of~~
22 ~~the Government Code, or changes the definition of a crime within~~
23 ~~the meaning of Section 6 of Article XIII B of the California~~
24 ~~Constitution.~~