

**ASSEMBLY BILL**

**No. 885**

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**Introduced by Assembly Member Ammiano**

February 22, 2013

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An act to amend Section 646.9 of the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 885, as introduced, Ammiano. Stalking.

Existing law provides that a person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat, as specified, is guilty of stalking, and may be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison. Existing law further provides that a person who engages in the above-described behavior when there is a temporary restraining order, injunction, or other court order in effect prohibiting the specified behavior against the same party, may be punished by imprisonment in the state prison for 2, 3, or 4 years.

This bill would make technical, nonsubstantive changes to those provisions.

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 646.9 of the Penal Code is amended to  
2 read:

1 646.9. (a) ~~Any~~A person who willfully, maliciously, and  
2 repeatedly follows or willfully and maliciously harasses another  
3 person and who makes a credible threat with the intent to place  
4 that person in reasonable fear for his or her safety, or the safety of  
5 his or her immediate family is guilty of the crime of stalking,  
6 punishable by imprisonment in a county jail for not more than one  
7 year, or by a fine of not more than one thousand dollars (\$1,000),  
8 or by both that fine and imprisonment, or by imprisonment in the  
9 state prison.

10 (b) ~~Any~~A person who violates subdivision (a) when there is a  
11 temporary restraining order, injunction, or ~~any~~ other court order  
12 in effect prohibiting the behavior described in subdivision (a)  
13 against the same party, shall be punished by imprisonment in the  
14 state prison for two, three, or four years.

15 (c) (1) ~~Every~~A person who, after having been convicted of a  
16 felony under Section 273.5, 273.6, or 422, commits a violation of  
17 subdivision (a) shall be punished by imprisonment in a county jail  
18 for not more than one year, or by a fine of not more than one  
19 thousand dollars (\$1,000), or by both that fine and imprisonment,  
20 or by imprisonment in the state prison for two, three, or five years.

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

25 (d) In addition to the penalties provided in this section, the  
26 sentencing court may order a person convicted of a felony under  
27 this section to register as a sex offender pursuant to Section  
28 290.006.

29 (e) For the purposes of this section, “harasses” means engages  
30 in a knowing and willful course of conduct directed at a specific  
31 person that seriously alarms, annoys, torments, or terrorizes the  
32 person, and that serves no legitimate purpose.

33 (f) For the purposes of this section, “course of conduct” means  
34 two or more acts occurring over a period of time, however short,  
35 evidencing a continuity of purpose. Constitutionally protected  
36 activity is not included within the meaning of “course of conduct.”

37 (g) For the purposes of this section, “credible threat” means a  
38 verbal or written threat, including that performed through the use  
39 of an electronic communication device, or a threat implied by a  
40 pattern of conduct or a combination of verbal, written, or

1 electronically communicated statements and conduct, made with  
2 the intent to place the person that is the target of the threat in  
3 reasonable fear for his or her safety or the safety of his or her  
4 family, and made with the apparent ability to carry out the threat  
5 so as to cause the person who is the target of the threat to  
6 reasonably fear for his or her safety or the safety of his or her  
7 family. It is not necessary to prove that the defendant had the intent  
8 to actually carry out the threat. The present incarceration of a  
9 person making the threat shall not be a bar to prosecution under  
10 this section. Constitutionally protected activity is not included  
11 within the meaning of “credible threat.”

12 (h) For purposes of this section, the term “electronic  
13 communication device” includes, but is not limited to, telephones,  
14 cellular phones, computers, video recorders, fax machines, or  
15 pagers. “Electronic communication” has the same meaning as the  
16 term defined in Subsection 12 of Section 2510 of Title 18 of the  
17 United States Code.

18 (i) This section shall not apply to conduct that occurs during  
19 labor picketing.

20 (j) If probation is granted, or the execution or imposition of a  
21 sentence is suspended, for ~~any~~ a person convicted under this  
22 section, it shall be a condition of probation that the person  
23 participate in counseling, as designated by the court. However, the  
24 court, upon a showing of good cause, may find that the counseling  
25 requirement shall not be imposed.

26 (k) (1) The sentencing court ~~also~~ shall *also* consider issuing an  
27 order restraining the defendant from any contact with the victim,  
28 that may be valid for up to 10 years, as determined by the court.  
29 It is the intent of the Legislature that the length of ~~any~~ a restraining  
30 order be based upon the seriousness of the facts before the court,  
31 the probability of future violations, and the safety of the victim  
32 and his or her immediate family.

33 (2) This protective order may be issued by the court whether  
34 the defendant is sentenced to state prison, county jail, or if  
35 imposition of sentence is suspended and the defendant is placed  
36 on probation.

37 (l) For purposes of this section, “immediate family” means ~~any~~  
38 a spouse, parent, child, ~~any~~ a person related by consanguinity or  
39 affinity within the second degree, or ~~any other~~ another person who

1 regularly resides in the household, or who, within the prior six  
2 months, regularly resided in the household.  
3 (m) The court shall consider whether the defendant would  
4 benefit from treatment pursuant to Section 2684. If it is determined  
5 to be appropriate, the court shall recommend that the Department  
6 of Corrections and Rehabilitation make a certification as provided  
7 in Section 2684. Upon the certification, the defendant shall be  
8 evaluated and transferred to the appropriate hospital for treatment  
9 pursuant to Section 2684.

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