

ASSEMBLY BILL

No. 1982

Introduced by Assembly Member Ting

February 19, 2014

An act to amend Section 1109 of the Evidence Code, and to amend Section 646.9 of the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 1982, as introduced, Ting. Stalking.

Under existing law, any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes 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, is guilty of the crime of stalking, punishable 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 provides that a person who violates these provisions after having been convicted of certain other crimes is subject to additional punishment, as specified.

This bill would instead provide that a person is guilty of the crime of stalking when that person willfully engages in a course of conduct directed at a specific person or group of persons and knows or should have known that the course of conduct would cause a reasonable person to fear for his or her safety or the safety of his or her immediate family, or to suffer substantial emotional distress, as defined. The bill would include additional crimes for which a person is subject to additional punishment if that person violates these provisions after having been convicted of those crimes. The bill would also require a person who violates these provisions by engaging in a course of conduct directed

at a person who was a minor at the time during the course of that conduct to be punished by imprisonment in the state prison for 2, 3, or 5 years. By changing the definition of a crime, this bill would impose a state-mandated local program.

Under existing law, evidence of a person’s character or a trait of his or her character is inadmissible when offered to prove his or her conduct on a particular occasion, except as specified. Existing law provides, however, that when a defendant is accused of an offense involving domestic violence in a criminal action, evidence of the defendant’s commission of other domestic violence may be admitted to prove the defendant’s conduct, except when the court exercises its discretion to exclude the evidence of prior acts, as specified.

This bill would provide that when a defendant is accused of an offense involving stalking in a criminal action, evidence of the defendant’s prior acts of stalking may be admitted to prove the defendant’s conduct, except as specified.

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. State-mandated local program: yes.

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

- 1 SECTION 1. Section 1109 of the Evidence Code is amended
- 2 to read:
- 3 1109. (a) (1) Except as provided in subdivision (e) or (f), in
- 4 a criminal action in which the defendant is accused of an offense
- 5 involving domestic violence, evidence of the defendant’s
- 6 commission of other domestic violence is not made inadmissible
- 7 by Section 1101 if the evidence is not inadmissible pursuant to
- 8 Section 352.
- 9 (2) Except as provided in subdivision (e) or (f), in a criminal
- 10 action in which the defendant is accused of an offense involving
- 11 abuse of an elder or dependent person, evidence of the defendant’s
- 12 commission of other abuse of an elder or dependent person is not
- 13 made inadmissible by Section 1101 if the evidence is not
- 14 inadmissible pursuant to Section 352.

1 (3) Except as provided in subdivision (e) or (f) and subject to
2 a hearing conducted pursuant to Section 352, which shall include
3 consideration of any corroboration and remoteness in time, in a
4 criminal action in which the defendant is accused of an offense
5 involving child abuse, evidence of the defendant’s commission of
6 child abuse is not made inadmissible by Section 1101 if the
7 evidence is not inadmissible pursuant to Section 352. ~~Nothing in~~
8 ~~this~~ *This paragraph prohibits or limits does not prohibit or limit*
9 the admission of evidence pursuant to subdivision (b) of Section
10 1101.

11 (4) *Except as provided in subdivision (e) or (f), in a criminal*
12 *action in which the defendant is accused of an offense involving*
13 *stalking, evidence of the defendant’s commission of other acts of*
14 *stalking is not made inadmissible by Section 1101 if the evidence*
15 *is not inadmissible pursuant to Section 352.*

16 (b) In an action in which evidence is to be offered under this
17 section, the people shall disclose the evidence to the defendant,
18 including statements of witnesses or a summary of the substance
19 of any testimony that is expected to be offered, in compliance with
20 the provisions of Section 1054.7 of the Penal Code.

21 (c) This section shall not be construed to limit or preclude the
22 admission or consideration of evidence under any other statute or
23 case law.

24 (d) As used in this section:

25 (1) “Abuse of an elder or dependent person” means physical or
26 sexual abuse, neglect, financial abuse, abandonment, isolation,
27 abduction, or other treatment that results in physical harm, pain,
28 or mental suffering, the deprivation of care by a caregiver, or other
29 deprivation by a custodian or provider of goods or services that
30 are necessary to avoid physical harm or mental suffering.

31 (2) “Child abuse” means an act proscribed by Section 273d of
32 the Penal Code.

33 (3) “Domestic violence” has the meaning set forth in Section
34 13700 of the Penal Code. Subject to a hearing conducted pursuant
35 to Section 352, which shall include consideration of any
36 corroboration and remoteness in time, “domestic violence” has
37 the further meaning as set forth in Section 6211 of the Family
38 Code, *Code* if the act occurred no more than five years before the
39 charged offense.

1 (4) "Stalking" has the meaning set forth in Section 646.9 of the
2 Penal Code.

3 (e) Evidence of acts occurring more than 10 years before the
4 charged offense is inadmissible under this section, unless the court
5 determines that the admission of this evidence is in the interest of
6 justice.

7 (f) Evidence of the findings and determinations of administrative
8 agencies regulating the conduct of health facilities licensed under
9 Section 1250 of the Health and Safety Code is inadmissible under
10 this section.

11 SEC. 2. Section 646.9 of the Penal Code is amended to read:

12 646.9. (a) ~~Any~~A person who willfully, ~~maliciously, and~~
13 ~~repeatedly follows or willfully and maliciously harasses another~~
14 ~~person and who makes a credible threat with the intent to place~~
15 ~~that person in reasonable~~ *engages in a course of conduct directed*
16 *at a specific person or group of persons and knows or should have*
17 *known that the course of conduct would cause a reasonable person*
18 *to fear for his or her safety; or the safety of his or her immediate*
19 *family, or to suffer substantial emotional distress* is guilty of the
20 crime of stalking, punishable by imprisonment in a county jail for
21 not more than one year, or by a fine of not more than one thousand
22 dollars (\$1,000), or by both that fine and imprisonment, or by
23 imprisonment in the state prison.

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

29 (c) *A person who violates subdivision (a) by engaging in a*
30 *course of conduct directed at a person who was a minor at any*
31 *time during the course of conduct shall be punished by*
32 *imprisonment in the state prison for two, three, or five years.*

33 (e)
34 (d) (1) ~~Every~~A person who, after having been convicted of a
35 ~~felony crime~~ under Section 166, 273.5, 273.6, ~~or~~ 422, or 653m,
36 commits a violation of subdivision (a) shall be punished by
37 imprisonment in a county jail for not more than one year, or by a
38 fine of not more than one thousand dollars (\$1,000), or by both
39 that fine and imprisonment, or by imprisonment in the state prison
40 for two, three, or five years.

1 (2) ~~Every~~A 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)~~

6 (e) In addition to the penalties provided in this section, the
7 sentencing court may order a person convicted of a felony under
8 this section to register as a sex offender pursuant to Section
9 290.006.

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

14 (f) For the purposes of this section, “course of conduct” means
15 two or more acts occurring over a period of time, however short,
16 evidencing a continuity of purpose. *The conduct may include, but*
17 *is not limited to, acts committed directly, indirectly, electronically,*
18 *or through third parties. The conduct may also include, but is not*
19 *limited to, acts committed by any gesture, method, or device, or*
20 *following, monitoring, observing, physically or electronically*
21 *surveilling, threatening, interfering with a person’s property, or*
22 *identity theft of, false personation of, or communicating to or about,*
23 *a person.* Constitutionally protected activity is not included within
24 the meaning of “course of conduct.”

25 ~~(g) For the purposes of this section, “credible threat” means a~~
26 ~~verbal or written threat, including that performed through the use~~
27 ~~of an electronic communication device, or a threat implied by a~~
28 ~~pattern of conduct or a combination of verbal, written, or~~
29 ~~electronically communicated statements and conduct, made with~~
30 ~~the intent to place the person that is the target of the threat in~~
31 ~~reasonable fear for his or her safety or the safety of his or her~~
32 ~~family, and made with the apparent ability to carry out the threat~~
33 ~~so as to cause the person who is the target of the threat to~~
34 ~~reasonably fear for his or her safety or the safety of his or her~~
35 ~~family. It is not necessary to prove that the defendant had the intent~~
36 ~~to actually carry out the threat. The present incarceration of a~~
37 ~~person making the threat shall not be a bar to prosecution under~~
38 ~~this section. Constitutionally protected activity is not included~~
39 ~~within the meaning of “credible threat.”~~

1 (g) For purposes of this section, “substantial emotional distress”
2 means a greater level of distress than everyday mental distress or
3 being upset, but does not require that the victim seek psychological
4 or medical treatment.

5 ~~(h) For purposes of this section, the term “electronic~~
6 ~~communication device” includes, but is not limited to, telephones,~~
7 ~~cellular phones, computers, video recorders, fax machines, or~~
8 ~~paggers. “Electronic communication” has the same meaning as the~~
9 ~~term defined in Subsection 12 of Section 2510 of Title 18 of the~~
10 ~~United States Code.~~

11 ~~(i)~~
12 (h) This section shall not apply to conduct that occurs during
13 labor picketing.

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

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

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

33 ~~(l)~~
34 (k) For purposes of this section, “immediate family” means ~~any~~
35 a spouse, parent, child, ~~any domesticated pet~~, a person related by
36 consanguinity or affinity within the second degree, or any other
37 person who regularly resides in the household, or who, within the
38 prior six months, regularly resided in the household.

39 ~~(m)~~

1 (l) The court shall consider whether the defendant would benefit
2 from treatment pursuant to Section 2684. If it is determined to be
3 appropriate, the court shall recommend that the Department of
4 Corrections and Rehabilitation make a certification as provided in
5 Section 2684. Upon the certification, the defendant shall be
6 evaluated and transferred to the appropriate hospital for treatment
7 pursuant to Section 2684.

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