

Assembly Bill No. 2320

Passed the Assembly August 24, 2016

Chief Clerk of the Assembly

Passed the Senate August 18, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 273.6, 402, 646.9, and 4573.5 of, and to add Section 290.97 to, the Penal Code, relating to unmanned aircraft systems.

LEGISLATIVE COUNSEL’S DIGEST

AB 2320, Calderon. Unmanned aircraft systems.

(1) Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil and public unmanned aircraft systems, commonly known as drones, into the national airspace system.

Existing state law generally authorizes a court to issue an order for the protection of certain persons, including, among others, the victims of domestic violence, elder and dependent adult abuse, workplace violence, and civil harassment. Under existing law, an intentional and knowing violation of those types of protective orders is a misdemeanor. If the violation results in physical injury, or occurs within specified time periods of a previous violation, existing law imposes additional penalties. Existing law also makes the crime of stalking another person, as defined, punishable as a misdemeanor or felony. Existing law makes it a felony to commit that offense when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior.

This bill would specifically prohibit a person who is prohibited from coming within a specified distance of another person, from operating an unmanned aircraft system in a way that causes an unmanned aircraft, as those terms are defined, to fly within the prohibited distance of the other person or from capturing images of the other person by using an unmanned aircraft system. By creating a new crime, the bill would impose a state-mandated local program.

(2) Existing law requires a person who has been convicted of specified sex offenses to register with local law enforcement authorities as a sex offender.

This bill would specifically authorize a judge to order a person required to register pursuant to those provisions for an offense committed on or after January 1, 2017, to not operate an unmanned

aircraft system if the judge finds that restriction is in the public interest. Because a violation of that provision would be a crime, the bill would impose a state-mandated local program.

(3) Existing law provides that every person who goes to the scene of an emergency or stops at the scene of an emergency for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person's employment to view that scene or activities, and thereby impedes police officers, firefighters, emergency medical or other emergency personnel, or military personnel in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

This bill would also make the operation or use of an unmanned aircraft system, that is at the scene of an emergency, regardless of the operator's location, punishable as a misdemeanor. By expanding the scope of a crime, this bill would impose a state-mandated local program.

(4) Existing law makes a 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, guilty of the crime of stalking, punishable as a misdemeanor or a felony.

This bill would specifically include, for purposes of these provisions, the operation or use of an unmanned aircraft system in the definition of a person.

(5) Existing law makes a person who knowingly brings into certain correctional facilities or certain other places where prisoners or inmates of those facilities are located, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of the correctional facility, guilty of a felony.

This bill would specifically include, for purposes of these provisions, the operation or use of an unmanned aircraft system in the definition of a person.

(6) The bill would make related legislative findings and declarations.

(7) 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) The Federal Aviation Act of 1958 established the Federal Aviation Administration (FAA) and made the FAA responsible for the control and use of navigable airspace within the United States.

(b) The FAA regulates unmanned aircraft systems, also known as drones.

(c) Public entities, including law enforcement agencies, firefighter units, border and port patrols, disaster relief workers, search and rescue personnel, qualifying public universities, military training facilities, and other government operational mission units, may operate unmanned aircraft systems by applying for a Certificate of Waiver or Authorization from the FAA.

(d) The FAA is in the process of developing rules that are intended to safely integrate small unmanned aircraft systems into the national airspace system and that, following issuance of a notice of proposed rulemaking and public comment period, are expected to be released in 2016 or 2017.

(e) The small unmanned aircraft system rules are anticipated to be similar to the current hobbyist rules for operations of model unmanned aircraft systems that limit the area of operation to low-risk and controlled environments and the size of the system to less than 55 pounds.

(f) While the FAA is developing the small unmanned aircraft system rules, private commercial entities on a

company-by-company basis may apply to the FAA for a Section 333 exemption from the current rules for manned aircraft by showing that the entity operates with at least an equivalent level of safety. The FAA has granted over 1,900 Section 333 exemptions to date for the commercial operation of unmanned aircraft systems in the photography, film, utilities, energy, infrastructure, real estate, agricultural, and construction industries.

(g) In addition to being used in military training and operations and public safety areas, unmanned aircraft systems may be used in a wide variety of activities, including oil and natural gas pipeline inspection, transportation, natural disaster aid, search and rescue, precision agriculture, natural resource and environmental protection, bridge and infrastructure inspection, public utility support, construction and building inspection, surveying, golf course marketing, wind turbine inspection, realtor marketing photography, and prison monitoring.

(h) While the public has expressed concerns with the operation of unmanned aircraft systems, including privacy and safety issues, there are benefits that may be realized by the state, including the state's various industry sectors, from conducting research on unmanned aircraft systems in the state and developing, manufacturing, and operating unmanned aircraft systems in the state.

(i) The FAA has warned that a "patchwork quilt" of inconsistent regulation raises substantial safety concerns, impedes innovation, and makes it virtually impossible for end-users to understand the rules for operating unmanned aircraft systems.

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

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

(b) A violation of subdivision (a) that results in physical injury, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both that fine and imprisonment.

However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interest of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

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

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

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

(3) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the order described in subdivision (a).

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

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or “a credible threat” of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or pursuant to subdivision (h) of Section 1170.

(e) A subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to a victim, shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interest of justice and for reasons

stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

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

(g) (1) A person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from doing so by the provisions of a protective order as defined in Section 136.2 of this code, Section 6218 of the Family Code, or Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code, shall be punished under Section 29825.

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

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

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

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

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the

defendant's ability to pay. An order to make payments to a battered women's shelter shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(j) (1) This subdivision applies to a person who is both of the following:

(A) The person is subject to a protective order, as defined in Section 6218 of the Family Code, or a protective order issued pursuant to this code, Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, or Section 15657.03 of the Welfare and Institutions Code.

(B) The person is prohibited by the protective order described in subparagraph (A) from coming within a specified distance of another person.

(2) A person described in paragraph (1) shall not do either of the following:

(A) Operate an unmanned aircraft system in a way that causes an unmanned aircraft to fly within the prohibited distance of the other person.

(B) Capture images of the other person by using an unmanned aircraft system.

(3) A violation of paragraph (2) is a violation of the protective order.

(4) For the purposes of this subdivision, the following definitions apply:

(A) "Unmanned aircraft" means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) "Unmanned aircraft system" means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the

unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

SEC. 3. Section 290.97 is added to the Penal Code, to read:

290.97. (a) A judge may order a person required to register pursuant to this chapter for an offense committed on or after January 1, 2017, to not operate an unmanned aircraft system if the judge finds that restriction is in the public interest.

(b) For purposes of this section, both of the following definitions apply:

(1) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(2) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

SEC. 4. Section 402 of the Penal Code is amended to read:

402. (a) (1) A person who goes to the scene of an emergency, or stops at the scene of an emergency, for the purpose of viewing the scene or the activities of police officers, firefighters, emergency medical, or other emergency personnel, or military personnel coping with the emergency in the course of their duties during the time it is necessary for emergency vehicles or those personnel to be at the scene of the emergency or to be moving to or from the scene of the emergency for the purpose of protecting lives or property, unless it is part of the duties of that person’s employment to view that scene or those activities, and thereby impedes police officers, firefighters, emergency medical, or other emergency personnel or military personnel, in the performance of their duties in coping with the emergency, is guilty of a misdemeanor.

(2) For purposes of this subdivision, a person includes a person, regardless of his or her location, who operates or uses an unmanned aircraft system that is at the scene of an emergency. For purposes of this paragraph, both of the following definitions apply:

(A) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to,

communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) A person who knowingly resists or interferes with the lawful efforts of a lifeguard in the discharge or attempted discharge of an official duty in an emergency situation, when the person knows or reasonably should know that the lifeguard is engaged in the performance of his or her official duty, is guilty of a misdemeanor.

(c) For the purposes of this section, an emergency includes a condition or situation involving injury to persons, damage to property, or peril to the safety of persons or property, which results from a fire, an explosion, an airplane crash, flooding, windstorm damage, a railroad accident, a traffic accident, a powerplant accident, a toxic chemical or biological spill, or any other natural or human-caused event.

SEC. 5. Section 646.9 of the Penal Code is amended to read:

646.9. (a) (1) A 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 one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(2) For purposes of this subdivision, a person includes a person who operates or uses an unmanned aircraft system. For purposes of this paragraph, both of the following definitions apply:

(A) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a)

against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

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

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

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

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

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

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

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

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

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

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

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

(l) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

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

SEC. 6. Section 4573.5 of the Penal Code is amended to read:
4573.5. (a) (1) A person who knowingly brings into any state prison or other institution under the jurisdiction of the Department

of Corrections, or into any prison camp, prison farm, or any other place where prisoners or inmates of these institutions are located under the custody of prison or institution officials, officers, or employees, or into any county, city and county, or city jail, road camp, farm or any other institution or place where prisoners or inmates are being held under the custody of any sheriff, chief of police, peace officer, probation officer, or employees, or within the grounds belonging to any institution or place, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of the Department of Corrections, the rules of the prison, institution, camp, farm, place, or jail, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony.

(2) For purposes of this subdivision, a person includes a person who operates or uses an unmanned aircraft system. For purposes of this paragraph, both of the following definitions apply:

(A) “Unmanned aircraft” means an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft.

(B) “Unmanned aircraft system” means an unmanned aircraft and associated elements, including, but not limited to, communication links and the components that control the unmanned aircraft that are required for the pilot in command to operate safely and efficiently in the national airspace system.

(b) The prohibitions and sanctions addressed in this section shall be clearly and prominently posted outside of, and at the entrance to, the grounds of all detention facilities under the jurisdiction of, or operated by, the state or any city, county, or city and county.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2016

Governor