

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 263**

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**Introduced by Senator Gaines**

February 18, 2015

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An act to amend Section ~~4210~~ 273.6 of the ~~Public Resources Penal Code~~, relating to ~~fire prevention~~. *protective orders*.

LEGISLATIVE COUNSEL'S DIGEST

SB 263, as amended, Gaines. ~~Fire prevention: state responsibility areas~~. *Protective orders: use of an unmanned aircraft system.*

*Existing federal law, the Federal Aviation Administration Modernization and Reform Act of 2012, provides for the integration of civil unmanned aircraft systems, commonly known as drones, into the national airspace system by September 30, 2015. Existing federal law requires the Administrator of the Federal Aviation Administration to develop and implement operational and certification requirements for the operation of public unmanned aircraft systems in the national airspace system by December 31, 2015.*

*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 subject to certain protective orders, when the person is prohibited by the protective order 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.*

*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.*

~~Existing law makes certain findings and declarations regarding fire protection of the public trust resources on lands in state responsibility areas, including that the costs of fire prevention activities aimed at reducing the effects of structures in state responsibility areas should be borne by the owners of the structures.~~

~~This bill would make nonsubstantive changes to this law.~~

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

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

1     SECTION 1. Section 273.6 of the Penal Code is amended to  
2 read:

3     273.6. (a) Any intentional and knowing violation of a  
4 protective order, as defined in Section 6218 of the Family Code,  
5 or of an order issued pursuant to Section 527.6, 527.8, or 527.85  
6 of the Code of Civil Procedure, or Section 15657.03 of the Welfare  
7 and Institutions Code, is a misdemeanor punishable by a fine of  
8 not more than one thousand dollars (\$1,000), or by imprisonment  
9 in a county jail for not more than one year, or by both that fine and  
10 imprisonment.

11     (b) In the event of a violation of subdivision (a) that results in  
12 physical injury, the person shall be punished by a fine of not more  
13 than two thousand dollars (\$2,000), or by imprisonment in a county

1 jail for not less than 30 days nor more than one year, or by both  
2 that fine and imprisonment. However, if the person is imprisoned  
3 in a county jail for at least 48 hours, the court may, in the interest  
4 of justice and for reasons stated on the record, reduce or eliminate  
5 the 30-day minimum imprisonment required by this subdivision.  
6 In determining whether to reduce or eliminate the minimum  
7 imprisonment pursuant to this subdivision, the court shall consider  
8 the seriousness of the facts before the court, whether there are  
9 additional allegations of a violation of the order during the  
10 pendency of the case before the court, the probability of future  
11 violations, the safety of the victim, and whether the defendant has  
12 successfully completed or is making progress with counseling.

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

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

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

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

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

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

32 (e) In the event of a subsequent conviction for a violation of an  
33 order described in subdivision (a) for an act occurring within one  
34 year of a prior conviction for a violation of an order described in  
35 subdivision (a) that results in physical injury to a victim, the person  
36 shall be punished by a fine of not more than two thousand dollars  
37 (\$2,000), or by imprisonment in a county jail for not less than six  
38 months nor more than one year, by both that fine and  
39 imprisonment, or by imprisonment pursuant to subdivision (h) of  
40 Section 1170. However, if the person is imprisoned in a county

1 jail for at least 30 days, the court may, in the interest of justice and  
2 for reasons stated in the record, reduce or eliminate the six-month  
3 minimum imprisonment required by this subdivision. In  
4 determining whether to reduce or eliminate the minimum  
5 imprisonment pursuant to this subdivision, the court shall consider  
6 the seriousness of the facts before the court, whether there are  
7 additional allegations of a violation of the order during the  
8 pendency of the case before the court, the probability of future  
9 violations, the safety of the victim, and whether the defendant has  
10 successfully completed or is making progress with counseling.

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

14 (g) (1) Every person who owns, possesses, purchases, or  
15 receives a firearm knowing he or she is prohibited from doing so  
16 by the provisions of a protective order as defined in Section 136.2  
17 of this code, Section 6218 of the Family Code, or Section 527.6,  
18 527.8, or 527.85 of the Code of Civil Procedure, or Section  
19 15657.03 of the Welfare and Institutions Code, shall be punished  
20 under Section 29825.

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

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

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

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

39 (i) For any order to pay a fine, make payments to a battered  
40 women's shelter, or pay restitution as a condition of probation

1 under subdivision (e), the court shall make a determination of the  
2 defendant's ability to pay. In no event shall any order to make  
3 payments to a battered women's shelter be made if it would impair  
4 the ability of the defendant to pay direct restitution to the victim  
5 or court-ordered child support. Where the injury to a married person  
6 is caused in whole or in part by the criminal acts of his or her  
7 spouse in violation of this section, the community property may  
8 not be used to discharge the liability of the offending spouse for  
9 restitution to the injured spouse, required by Section 1203.04, as  
10 operative on or before August 2, 1995, or Section 1202.4, or to a  
11 shelter for costs with regard to the injured spouse and dependents,  
12 required by this section, until all separate property of the offending  
13 spouse is exhausted.

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

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

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

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

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

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

31 *(3) A violation of paragraph (2) shall be a violation of the*  
32 *protective order.*

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

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

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

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

3 *SEC. 2. No reimbursement is required by this act pursuant to*  
4 *Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*

12 ~~SECTION 1. Section 4210 of the Public Resources Code is~~  
13 ~~amended to read:~~

14 ~~4210. The Legislature finds and declares all of the following:~~

15 ~~(a) Fire protection of the public trust resources on lands in the~~  
16 ~~state responsibility areas remains a vital interest to California.~~  
17 ~~Lands that are covered in whole or in part by a diverse plant~~  
18 ~~community prevent excessive erosion, retard runoff, reduce~~  
19 ~~sedimentation, and accelerate water percolation to assist in the~~  
20 ~~maintenance of critical sources of water for environmental,~~  
21 ~~irrigation, domestic, or industrial uses.~~

22 ~~(b) The presence of structures within state responsibility areas~~  
23 ~~can pose an increased risk of fire ignition and an increased potential~~  
24 ~~for fire damage within the state's wildlands and watersheds. The~~  
25 ~~presence of structures within state responsibility areas can also~~  
26 ~~impair wildland firefighting techniques and could result in greater~~  
27 ~~damage to state lands caused by wildfires.~~

28 ~~(c) The costs of fire prevention activities aimed at reducing the~~  
29 ~~effects of structures in state responsibility areas should be borne~~  
30 ~~by the owners of the structures.~~

31 ~~(d) Individual owners of structures within state responsibility~~  
32 ~~areas receive a disproportionately larger benefit from fire~~  
33 ~~prevention activities than that realized by the state's citizens~~  
34 ~~generally.~~

35 ~~(e) It is the intent of the Legislature that the economic burden~~  
36 ~~of fire prevention activities that are associated with structures in~~  
37 ~~state responsibility areas shall be equitably distributed among the~~  
38 ~~citizens of the state who generally benefit from those activities~~  
39 ~~and those owners of structures in the state responsibility areas who~~  
40 ~~receive a specific benefit other than that general benefit.~~

1 (f) ~~It is necessary to impose a fire prevention fee to pay for fire~~  
2 ~~prevention activities in the state responsibility areas that~~  
3 ~~specifically benefit owners of structures in the state responsibility~~  
4 ~~areas.~~

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