

**Introduced by Senator Gaines**January 4, 2016

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An act to amend Section 273.6 of the Penal Code, relating to unmanned aircraft systems.

## LEGISLATIVE COUNSEL'S DIGEST

SB 808, as introduced, Gaines. Protective orders: unmanned aircraft systems.

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 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.

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 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~~

12 A violation of subdivision (a) that results in physical injury, ~~the~~  
13 ~~person~~ shall be punished by a fine of not more than two thousand  
14 dollars (\$2,000), or by imprisonment in a county jail for not less  
15 than 30 days nor more than one year, or by both that fine and  
16 imprisonment. However, if the person is imprisoned in a county  
17 jail for at least 48 hours, the court may, in the interest of justice  
18 and for reasons stated on the record, reduce or eliminate the 30-day  
19 minimum imprisonment required by this subdivision. In  
20 determining whether to reduce or eliminate the minimum  
21 imprisonment pursuant to this subdivision, the court shall consider  
22 the seriousness of the facts before the court, whether there are  
23 additional allegations of a violation of the order during the

1 pendency of the case before the court, the probability of future  
2 violations, the safety of the victim, and whether the defendant has  
3 successfully completed or is making progress with counseling.

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

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

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

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

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

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

23 ~~(e) In the event of a~~

24 A subsequent conviction for a violation of an order described in  
25 subdivision (a) for an act occurring within one year of a prior  
26 conviction for a violation of an order described in subdivision (a)  
27 that results in physical injury to a victim, ~~the person~~ shall be  
28 punished by a fine of not more than two thousand dollars (\$2,000),  
29 or by imprisonment in a county jail for not less than six months  
30 nor more than one year, by both that fine and imprisonment, or by  
31 imprisonment pursuant to subdivision (h) of Section 1170.  
32 However, if the person is imprisoned in a county jail for at least  
33 30 days, the court may, in the interest of justice and for reasons  
34 stated in the record, reduce or eliminate the six-month minimum  
35 imprisonment required by this subdivision. In determining whether  
36 to reduce or eliminate the minimum imprisonment pursuant to this  
37 subdivision, the court shall consider the seriousness of the facts  
38 before the court, whether there are additional allegations of a  
39 violation of the order during the pendency of the case before the  
40 court, the probability of future violations, the safety of the victim,

1 and whether the defendant has successfully completed or is making  
2 progress with counseling.

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

6 (g) (1) ~~Every~~A person who owns, possesses, purchases, or  
7 receives a firearm knowing he or she is prohibited from doing so  
8 by the provisions of a protective order as defined in Section 136.2  
9 of this code, Section 6218 of the Family Code, or Section 527.6,  
10 527.8, or 527.85 of the Code of Civil Procedure, or Section  
11 15657.03 of the Welfare and Institutions Code, shall be punished  
12 under Section 29825.

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

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

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

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

31 (i) For any order to pay a fine, make payments to a battered  
32 women's shelter, or pay restitution as a condition of probation  
33 under subdivision (e), the court shall make a determination of the  
34 defendant's ability to pay. ~~In no event shall any~~ An order to make  
35 payments to a battered women's shelter *shall not* be made if it  
36 would impair the ability of the defendant to pay direct restitution  
37 to the victim or court-ordered child support. ~~Where~~ *If* the injury  
38 to a married person is caused in whole or in part by the criminal  
39 acts of his or her spouse in violation of this section, the community  
40 property may not be used to discharge the liability of the offending

1 spouse for restitution to the injured spouse, required by Section  
2 1203.04, as operative on or before August 2, 1995, or Section  
3 1202.4, or to a shelter for costs with regard to the injured spouse  
4 and dependents, required by this section, until all separate property  
5 of the offending spouse is exhausted.

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

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

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

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

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

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

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

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

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

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

35 SEC. 2. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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