

ASSEMBLY BILL

No. 878

Introduced by Assembly Member Rogan

February 22, 1995

An act to amend Sections 6203 and 6320 of the Family Code, and to amend Section 273.6 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 878, as introduced, Rogan. Domestic violence: protective orders.

(1) Existing law, the Domestic Violence Protection Act, defines abuse to include reasonable apprehension of imminent serious bodily injury, and provides for the issuance of protective orders, including ex parte orders prohibiting abusive conduct or various forms of contact with a party, punishable as specified.

This bill would expand the definition of abuse for these purposes to specify various forms of conduct which may cause reasonable apprehension of imminent serious bodily harm and makes corresponding changes with respect to the conduct which may be prohibited by an ex parte protective order, thereby imposing a state-mandated local program by imposing new duties on local officers.

(2) 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, including the creation of a State Mandates Claims Fund to pay the costs of

mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 6203 of the Family Code is
2 amended to read:

3 6203. "Abuse" means intentionally or recklessly to
4 cause or attempt to cause bodily injury, or sexual assault,
5 or to place a person in reasonable apprehension of
6 imminent serious bodily injury to that person or to
7 another. *Reasonable apprehension of imminent serious
8 bodily harm may be caused by any sinister conduct,
9 including, but not limited to, stalking in violation of
10 Section 646.9 of the Penal Code, annoying or harassing
11 telephone calls, contacting by mail with the intent to
12 harass, or the intentional destruction of personal
13 property.*

14 SEC. 2. Section 6320 of the Family Code is amended
15 to read:

16 6320. The court may issue an ex parte order enjoining
17 a party from contacting, molesting, attacking, striking,
18 *stalking*, threatening, sexually assaulting, battering,
19 *harassing*, telephoning, *including annoying telephone
20 calls*, contacting repeatedly by mail with the intent to
21 *annoy or harass, destroying personal property*, or
22 disturbing the peace of the other party, and, in the
23 discretion of the court, on a showing of good cause, of
24 other named family-~~and~~ or household members.

25 SEC. 3. Section 273.6 of the Penal Code is amended to
26 read:

27 273.6. (a) Any intentional and knowing violation of a
28 protective order, as defined in Section 6218 of the Family



1 Code, or of an order issued pursuant to Section 527.6 or
2 527.8 of the Code of Civil Procedure is a misdemeanor
3 punishable by a fine of not more than one thousand
4 dollars (\$1,000), or by imprisonment in a county jail for
5 not more than one year, or by both the fine and
6 imprisonment.

7 (b) In the event of a violation of subdivision (a) which
8 results in physical injury, the person shall be punished by
9 a fine of not more than two thousand dollars (\$2,000), or
10 by imprisonment in a county jail for not less than 30 days
11 nor more than one year, or by both the fine and
12 imprisonment. However, if the person is imprisoned in a
13 county jail for at least 48 hours, the court may, in the
14 interests of justice and for reasons stated on the record,
15 reduce or eliminate the 30-day minimum imprisonment
16 required by this subdivision. In determining whether to
17 reduce or eliminate the minimum imprisonment
18 pursuant to this subdivision, the court shall consider the
19 seriousness of the facts before the court, whether there
20 are additional allegations of a violation of the order during
21 the pendency of the case before the court, the probability
22 of future violations, the safety of the victim, and whether
23 the defendant has successfully completed or is making
24 progress with counseling.

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

27 (1) An order enjoining any party from molesting,
28 attacking, striking, *stalking*, threatening, sexually
29 assaulting, battering, harassing, *telephoning*, *including*
30 *annoying telephone calls*, contacting repeatedly by mail
31 with the intent to *annoy or* harass, or disturbing the peace
32 of the other party, or other named family ~~and~~ *or*
33 household members.

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

36 (3) An order enjoining a party from specified behavior
37 which the court determined was necessary to effectuate
38 the order under subdivision (a).

39 (d) A subsequent conviction for a violation of an order
40 described in subdivision (a), occurring within seven



1 years of a prior conviction for a violation of an order
2 described in subdivision (a) and involving an act of
3 violence or “a credible threat” of violence, as defined in
4 subdivision (c) of Section 139, is punishable by
5 imprisonment in a county jail not to exceed one year, or
6 in the state prison.

7 (e) In the event of a subsequent conviction for a
8 violation of an order described in subdivision (a) for an
9 act occurring within one year of a prior conviction for a
10 violation of an order described in subdivision (a) which
11 results in physical injury to the same victim, the person
12 shall be punished by a fine of not more than two thousand
13 dollars (\$2,000), or by imprisonment in a county jail for
14 not less than six months nor more than one year, by both
15 that fine and imprisonment, or by imprisonment in the
16 state prison. However, if the person is imprisoned in a
17 county jail for at least 30 days, the court may, in the
18 interests of justice and for reasons stated in the record,
19 reduce or eliminate the six-month minimum
20 imprisonment required by this subdivision. In
21 determining whether to reduce or eliminate the
22 minimum imprisonment pursuant to this subdivision, the
23 court shall consider the seriousness of the facts before the
24 court, whether there are additional allegations of a
25 violation of the order during the pendency of the case
26 before the court, the probability of future violations, the
27 safety of the victim, and whether the defendant has
28 successfully completed or is making progress with
29 counseling.

30 (f) The prosecuting agency of each county shall have
31 the primary responsibility for the enforcement of orders
32 issued pursuant to subdivisions (a), (b), (d), and (e).

33 (g) The court may order a person convicted under this
34 section to undergo counseling, and, if appropriate, to
35 complete a batterer’s treatment program.

36 (h) If probation is granted upon conviction of a
37 violation of subdivision (a), (b), or (c), the conditions of
38 probation may include, in lieu of a fine, one or both of the
39 following requirements:



1 (1) That the defendant make payments to a battered
2 women's shelter, up to a maximum of five thousand
3 dollars (\$5,000), pursuant to Section 1203.097.

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

8 (i) For any order to pay a fine, make payments to a
9 battered women's shelter, or pay restitution as a
10 condition of probation under subdivision (e), the court
11 shall make a determination of the defendant's ability to
12 pay. In no event shall any order to make payments to a
13 battered women's shelter be made if it would impair the
14 ability of the defendant to pay direct restitution to the
15 victim or court ordered child support. Where the injury
16 to a married person is caused in whole or in part by the
17 criminal acts of his or her spouse in violation of this
18 section, the community property may not be used to
19 discharge the liability of the offending spouse for
20 restitution to the injured spouse, required by Section
21 1203.04, or to a shelter for costs with regard to the injured
22 spouse and dependents, required by this section, until all
23 separate property of the offending spouse is exhausted.

24 SEC. 4. Notwithstanding Section 17610 of the
25 Government Code, if the Commission on State Mandates
26 determines that this act contains costs mandated by the
27 state, reimbursement to local agencies and school
28 districts for those costs shall be made pursuant to Part 7
29 (commencing with Section 17500) of Division 4 of Title
30 2 of the Government Code. If the statewide cost of the
31 claim for reimbursement does not exceed one million
32 dollars (\$1,000,000), reimbursement shall be made from
33 the State Mandates Claims Fund.

34 Notwithstanding Section 17580 of the Government
35 Code, unless otherwise specified, the provisions of this act
36 shall become operative on the same date that the act
37 takes effect pursuant to the California Constitution.

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