

AMENDED IN ASSEMBLY APRIL 25, 1995
AMENDED IN ASSEMBLY MARCH 27, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 985

Introduced by Assembly Member Firestone

February 23, 1995

An act to amend Section 6254 of the Government Code, and to amend Section 646.9 of, and to add Section 646.92 to, the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 985, as amended, Firestone. Stalking.

(1) Existing law provides that a person who willfully, maliciously, and repeatedly follows or harasses another person and 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.

~~This bill instead would provide that a person who willfully, maliciously, and repeatedly follows or harasses another person and in so doing engages in a course of conduct that would cause a reasonable person to fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking. A "credible threat" is defined as a verbal or written threat or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and 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 immediate family.

This bill would redefine the term “credible threat” as such a threat made with the intent that the statement or conduct be taken as a threat and with the apparent ability to carry out the threat. By changing the definition of a crime, the bill would impose a state-mandated local program.

(2) Existing law authorizes a court to issue a restraining order against a defendant who has committed the offense of stalking and provides that the duration of the restraining order may be longer than 5 years only in an extreme case.

This bill would eliminate this restriction on the duration of the order.

(3) Existing law requires a sex offender to register with local law enforcement officials within 14 days of coming into a city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. Failure to register under these provisions is a crime.

This bill would authorize a court to order a person who is guilty of a felony violation of the offense of stalking to register under these provisions.

(4) The California Public Records Act prohibits state and local law enforcement agencies from disclosing specified information regarding the victim of certain crimes.

This bill additionally would prohibit the disclosure of information regarding the victim of the crimes of stalking or assault with intent to commit mayhem or a specified sex offense.

(5) 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:

SECTION 1. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda which are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems

1 development, or market or crop reports, which are
2 obtained in confidence from any person.

3 (f) Records of complaints to, or investigations
4 conducted by, or records of intelligence information or
5 security procedures of, the office of the Attorney General
6 and the Department of Justice, and any state or local
7 police agency, or any investigatory or security files
8 compiled by any other state or local police agency, or any
9 investigatory or security files compiled by any other state
10 or local agency for correctional, law enforcement, or
11 licensing purposes, except that state and local law
12 enforcement agencies shall disclose the names and
13 addresses of persons involved in, or witnesses other than
14 confidential informants to, the incident, the description
15 of any property involved, the date, time, and location of
16 the incident, all diagrams, statements of the parties
17 involved in the incident, the statements of all witnesses,
18 other than confidential informants, to the victims of an
19 incident, or an authorized representative thereof, an
20 insurance carrier against which a claim has been or might
21 be made, and any person suffering bodily injury or
22 property damage or loss, as the result of the incident
23 caused by arson, burglary, fire, explosion, larceny,
24 robbery, carjacking, vandalism, vehicle theft, or a crime
25 as defined by subdivision (c) of Section 13960, unless the
26 disclosure would endanger the safety of a witness or other
27 person involved in the investigation, or unless disclosure
28 would endanger the successful completion of the
29 investigation or a related investigation. However,
30 nothing in this division shall require the disclosure of that
31 portion of those investigative files which reflect the
32 analysis or conclusions of the investigating officer.

33 Other provisions of this subdivision notwithstanding,
34 state and local law enforcement agencies shall make
35 public the following information, except to the extent
36 that disclosure of a particular item of information would
37 endanger the safety of a person involved in an
38 investigation or would endanger the successful
39 completion of the investigation or a related investigation:



1 (1) The full name, current address, and occupation of
2 every individual arrested by the agency, the individual's
3 physical description including date of birth, color of eyes
4 and hair, sex, height and weight, the time and date of
5 arrest, the time and date of booking, the location of the
6 arrest, the factual circumstances surrounding the arrest,
7 the amount of bail set, the time and manner of release or
8 the location where the individual is currently being held,
9 and all charges the individual is being held upon,
10 including any outstanding warrants from other
11 jurisdictions and parole or probation holds.

12 (2) Subject to the restrictions imposed by Section 841.5
13 of the Penal Code, the time, substance, and location of all
14 complaints or requests for assistance received by the
15 agency and the time and nature of the response thereto,
16 including, to the extent the information regarding crimes
17 alleged or committed or any other incident investigated
18 is recorded, the time, date, and location of occurrence,
19 the time and date of the report, the name, age, and
20 current address of the victim, except that the address of
21 the victim of any crime defined by Section 220, 261, 264,
22 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7,
23 422.75, or 646.9 of the Penal Code shall not be disclosed,
24 the factual circumstances surrounding the crime or
25 incident, and a general description of any injuries,
26 property, or weapons involved. The name of a victim of
27 any crime defined by Section 220, 261, 264, 264.1, 273a,
28 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9
29 of the Penal Code may be withheld at the victim's
30 request, or at the request of the victim's parent or
31 guardian if the victim is a minor. When a person is the
32 victim of more than one crime, information disclosing
33 that the person is a victim of a crime defined by Section
34 220, 261, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6,
35 422.7, 422.75, or 646.9 of the Penal Code may be deleted
36 at the request of the victim, or the victim's parent or
37 guardian if the victim is a minor, in making the report of
38 the crime, or of any crime or incident accompanying the
39 crime, available to the public in compliance with the
40 requirements of this paragraph.

1 (g) Test questions, scoring keys, and other
2 examination data used to administer a licensing
3 examination, examination for employment, or academic
4 examination, except as provided for in Chapter 3
5 (commencing with Section 99150) of Part 65 of the
6 Education Code.

7 (h) The contents of real estate appraisals or
8 engineering or feasibility estimates and evaluations made
9 for or by the state or local agency relative to the
10 acquisition of property, or to prospective public supply
11 and construction contracts, until all of the property has
12 been acquired or all of the contract agreement obtained.
13 However, the law of eminent domain shall not be affected
14 by this provision.

15 (i) Information required from any taxpayer in
16 connection with the collection of local taxes which is
17 received in confidence and the disclosure of the
18 information to other persons would result in unfair
19 competitive disadvantage to the person supplying the
20 information.

21 (j) Library circulation records kept for the purpose of
22 identifying the borrower of items available in libraries,
23 and library and museum materials made or acquired and
24 presented solely for reference or exhibition purposes.
25 The exemption in this subdivision shall not apply to
26 records of fines imposed on the borrowers.

27 (k) Records the disclosure of which is exempted or
28 prohibited pursuant to federal or state law, including, but
29 not limited to, provisions of the Evidence Code relating
30 to privilege.

31 (l) Correspondence of and to the Governor or
32 employees of the Governor's office or in the custody of or
33 maintained by the Governor's legal affairs secretary,
34 provided that public records shall not be transferred to
35 the custody of the Governor's legal affairs secretary to
36 evade the disclosure provisions of this chapter.

37 (m) In the custody of or maintained by the Legislative
38 Counsel, except those records in the public data base
39 maintained by the Legislative Counsel that are described
40 in Section 10248.



1 (n) Statements of personal worth or personal financial
2 data required by a licensing agency and filed by an
3 applicant with the licensing agency to establish his or her
4 personal qualification for the license, certificate, or
5 permit applied for.

6 (o) Financial data contained in applications for
7 financing under Division 27 (commencing with Section
8 44500) of the Health and Safety Code, where an
9 authorized officer of the California Pollution Control
10 Financing Authority determines that disclosure of the
11 financial data would be competitively injurious to the
12 applicant and the data is required in order to obtain
13 guarantees from the United States Small Business
14 Administration. The California Pollution Control
15 Financing Authority shall adopt rules for review of
16 individual requests for confidentiality under this section
17 and for making available to the public those portions of
18 an application which are subject to disclosure under this
19 chapter.

20 (p) Records of state agencies related to activities
21 governed by Chapter 10.3 (commencing with Section
22 3512) of Division 4 of Title 1, Chapter 10.5 (commencing
23 with Section 3525) of Division 4 of Title 1, and Chapter 12
24 (commencing with Section 3560) of Division 4 of Title 1,
25 which reveal a state agency's deliberative processes,
26 impressions, evaluations, opinions, recommendations,
27 meeting minutes, research, work products, theories, or
28 strategy, or which provide instruction, advice, or training
29 to employees who do not have full collective bargaining
30 and representation rights under the above chapters.
31 Nothing in this subdivision shall be construed to limit the
32 disclosure duties of a state agency with respect to any
33 other records relating to the activities governed by the
34 employee relations acts referred to in this subdivision.

35 (q) Records of state agencies related to activities
36 governed by Articles 2.6 (commencing with Section
37 14081), 2.8 (commencing with Section 14087.5), and 2.91
38 (commencing with Section 14089) of Chapter 7 of Part 3
39 of Division 9 of the Welfare and Institutions Code, which
40 reveal the special negotiator's deliberative processes,

1 discussions, communications, or any other portion of the
2 negotiations with providers of health care services,
3 impressions, opinions, recommendations, meeting
4 minutes, research, work product, theories, or strategy, or
5 which provide instruction, advice, or training to
6 employees.

7 Except for the portion of a contract containing the rates
8 of payment, contracts for inpatient services entered into
9 pursuant to these articles, on or after April 1, 1984, shall
10 be open to inspection one year after they are fully
11 executed. In the event that a contract for inpatient
12 services which is entered into prior to April 1, 1984, is
13 amended on or after April 1, 1984, the amendment,
14 except for any portion containing the rates of payment,
15 shall be open to inspection one year after it is fully
16 executed. If the California Medical Assistance
17 Commission enters into contracts with health care
18 providers for other than inpatient hospital services, those
19 contracts shall be open to inspection one year after they
20 are fully executed.

21 Three years after a contract or amendment is open to
22 inspection under this subdivision, the portion of the
23 contract or amendment containing the rates of payment
24 shall be open to inspection.

25 Notwithstanding any other provision of law, the entire
26 contract or amendment shall be open to inspection by the
27 Joint Legislative Audit Committee. The Joint Legislative
28 Audit Committee shall maintain the confidentiality of the
29 contracts and amendments until such time as a contract
30 or amendment is fully open to inspection by the public.

31 (r) Records of Native American graves, cemeteries,
32 and sacred places maintained by the Native American
33 Heritage Commission.

34 (s) A final accreditation report of the Joint
35 Commission on Accreditation of Hospitals which has
36 been transmitted to the State Department of Health
37 Services pursuant to subdivision (b) of Section 1282 of the
38 Health and Safety Code.

39 (t) Records of a local hospital district, formed pursuant
40 to Division 23 (commencing with Section 32000) of the

1 Health and Safety Code, or the records of a municipal
2 hospital, formed pursuant to Article 7 (commencing with
3 Section 37600) or Article 8 (commencing with Section
4 37650) of Chapter 5 of Division 3 of Title 4 of this code,
5 which relate to any contract with an insurer or nonprofit
6 hospital service plan for inpatient or outpatient services
7 for alternative rates pursuant to Section 10133 or 11512 of
8 the Insurance Code. However, the record shall be open
9 to inspection within one year after the contract is fully
10 executed.

11 (u) Information contained in applications for licenses
12 to carry firearms issued pursuant to Section 12050 of the
13 Penal Code by the sheriff of a county or the chief or other
14 head of a municipal police department which indicates
15 when or where the applicant is vulnerable to attack or
16 which concerns the applicant's medical or psychological
17 history or that of members of his or her family.

18 (v) (1) Records of the Major Risk Medical Insurance
19 Program related to activities governed by Part 6.3
20 (commencing with Section 12695), and Part 6.5
21 (commencing with Section 12700), of Division 2 of the
22 Insurance Code, and which reveal the deliberative
23 processes, discussions, communications, or any other
24 portion of the negotiations with health plans, or the
25 impressions, opinions, recommendations, meeting
26 minutes, research, work product, theories, or strategy of
27 the board or its staff, or records that provide instructions,
28 advice, or training to employees.

29 (2) (A) Except for the portion of a contract that
30 contains the rates of payment, contracts for health
31 coverage entered into pursuant to Part 6.3 (commencing
32 with Section 12695), or Part 6.5 (commencing with
33 Section 12700), of Division 2 of the Insurance Code, on or
34 after July 1, 1991, shall be open to inspection one year
35 after they have been fully executed.

36 (B) In the event that a contract for health coverage
37 that is entered into prior to July 1, 1991, is amended on or
38 after July 1, 1991, the amendment, except for any portion
39 containing the rates of payment, shall be open to

1 inspection one year after the amendment has been fully
2 executed.

3 (3) Three years after a contract or amendment is open
4 to inspection pursuant to this subdivision, the portion of
5 the contract or amendment containing the rates of
6 payment shall be open to inspection.

7 (4) Notwithstanding any other provision of law, the
8 entire contract or amendments to a contract shall be open
9 to inspection by the Joint Legislative Audit Committee.
10 The Joint Legislative Audit Committee shall maintain the
11 confidentiality of the contracts and amendments thereto,
12 until the contract or amendments to a contract is open to
13 inspection pursuant to paragraph (3).

14 (w) (1) Records of the Major Risk Medical Insurance
15 Program related to activities governed by Chapter 14
16 (commencing with Section 10700) of Part 2 of Division 2
17 of the Insurance Code, and that reveal the deliberative
18 processes, discussions, communications, or any other
19 portion of the negotiations with health plans, or the
20 impressions, opinions, recommendations, meeting
21 minutes, research, work product, theories, or strategy of
22 the board or its staff, or records that provide instructions,
23 advice, or training to employees.

24 (2) Except for the portion of a contract that contains
25 the rates of payment, contracts for health coverage
26 entered into pursuant to Chapter 14 (commencing with
27 Section 10700) of Part 2 of Division 2 of the Insurance
28 Code, on or after January 1, 1993, shall be open to
29 inspection one year after they have been fully executed.

30 (3) Notwithstanding any other provision of law, the
31 entire contract or amendments to a contract shall be open
32 to inspection by the Joint Legislative Audit Committee.
33 The Joint Legislative Audit Committee shall maintain the
34 confidentiality of the contracts and amendments thereto,
35 until the contract or amendments to a contract is open to
36 inspection pursuant to paragraph (2).

37 (x) Financial data contained in applications for
38 registration, or registration renewal, as a service
39 contractor filed with the Director of the Department of
40 Consumer Affairs pursuant to Chapter 20 (commencing

1 with Section 9800) of Division 3 of the Business and
2 Professions Code, for the purpose of establishing the
3 service contractor's net worth, or, financial data
4 regarding the funded accounts held in escrow for service
5 contracts held in force in this state by a service contractor.

6 Nothing in this section prevents any agency from
7 opening its records concerning the administration of the
8 agency to public inspection, unless disclosure is otherwise
9 prohibited by law.

10 Nothing in this section prevents any health facility from
11 disclosing to a certified bargaining agent relevant
12 financing information pursuant to Section 8 of the
13 National Labor Relations Act.

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

16 646.9. (a) Any person who willfully, maliciously, ~~and~~
17 ~~repeatedly follows or harasses another person, and in so~~
18 ~~doing engages in a course of conduct that would cause a~~
19 ~~reasonable person to fear for his or her safety, or the~~ *and*
20 *repeatedly follows or harasses another person and who*
21 *makes a credible threat with the intent to place that*
22 *person in reasonable fear for his or her safety, or the* safety
23 of his or her immediate family, is guilty of the crime of
24 stalking, punishable by imprisonment in a county jail for
25 not more than one year or by a fine of not more than one
26 thousand dollars (\$1,000), or by both that fine and
27 imprisonment, or by imprisonment in the state prison.

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

34 (c) Every person who, having been convicted of a
35 felony under this section, commits a second or subsequent
36 violation of this section shall be punished by
37 imprisonment in the state prison for two, three, or four
38 years.

39 (d) In addition to the penalties provided in this
40 section, the sentencing court may order a person

1 convicted of a felony under this section to register as a sex
2 offender pursuant to subparagraph (E) of paragraph (2)
3 of subdivision (a) of Section 290. ~~It is the intent of the~~
4 ~~Legislature that the finding of the sentencing court be~~
5 ~~based upon the severity of the offense, whether or not the~~
6 ~~offense is sexual in nature, and the probability of future~~
7 ~~violations. The court shall state on the record the reasons~~
8 ~~for its findings and the reasons for requiring registration.~~

9 (e) For the purposes of this section, “harasses” means
10 a knowing and willful course of ~~action~~ *conduct* directed
11 at a specific person that seriously alarms, annoys,
12 torments, or terrorizes the person, and that serves no
13 legitimate purpose. This course of ~~action~~ *conduct* must be
14 such as would cause a reasonable person to suffer
15 substantial emotional distress, and must actually cause
16 substantial emotional distress to the person. ~~The present~~
17 ~~incarceration of a person engaging in the course of action~~
18 ~~is not a bar to prosecution under this section.~~

19 (f) For purposes of this section, “course of conduct”
20 means a pattern of conduct composed of a series of acts
21 over a period of time, however short, evidencing a
22 continuity of purpose. Constitutionally protected activity
23 is not included within the meaning of “course of
24 conduct.”

25 (g) *For the purposes of this section, “credible threat”*
26 *means a verbal or written threat or a threat implied by a*
27 *pattern of conduct or a combination of verbal or written*
28 *statements and conduct made with the intent that the*
29 *statement or conduct be taken as a threat and with the*
30 *apparent ability to carry out the threat so as to cause the*
31 *person who is the target of the threat to reasonably fear*
32 *for his or her safety or the safety of his or her family. It is*
33 *not necessary to prove that the defendant had the intent*
34 *to actually carry out the threat. The present incarceration*
35 *of a person making the threat shall not be a bar to*
36 *prosecution under this section.*

37 (h) This section shall not apply to conduct that occurs
38 during labor picketing.

39 ~~(h)~~

(i) 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.

~~(i) The sentencing court may issue an order~~

(j) *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.

~~(j)–~~

(k) 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.

~~(k)–~~

(l) 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 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. 3. Section 646.92 is added to the Penal Code, to read:

646.92. (a) The Department of Corrections, county sheriff, or director of the local department of corrections shall give notice not less than 15 days prior to the release from the state prison or a county jail of any person who is convicted of violating Section 646.9 or convicted of a felony offense involving domestic violence, as defined in

1 Section 6211 of the Family Code, to any person the court
2 identifies as a victim of the offense, a family member of
3 the victim, or a witness to the offense by telephone and
4 certified mail at his or her last known address, upon
5 request. A victim, family member, or witness shall keep
6 the Department of Corrections or county sheriff
7 informed of his or her current mailing address and
8 telephone number to be entitled to receive notice. A
9 victim may designate another person for the purpose of
10 receiving notification. However, the duty to keep the
11 Department of Corrections or county sheriff informed of
12 a current mailing address and telephone number shall
13 remain with the victim.

14 (b) All information relating to any person who
15 receives notice under this section shall remain
16 confidential and shall not be made available to the person
17 convicted of violating this section.

18 (c) For purposes of this section, “release” includes a
19 release from the state prison or a county jail because time
20 has been served, a release from the state prison or a
21 county jail to parole or probation supervision, or an
22 escape from an institution or reentry facility.

23 (d) The Department of Corrections or county sheriff
24 shall give notice of an escape from an institution or
25 reentry facility of any person convicted of violating
26 Section 646.9 or convicted of a felony offense involving
27 domestic violence, as defined in Section 6211 of the
28 Family Code, to the notice recipients described in
29 subdivision (a).

30 (e) Substantial compliance satisfies the notification
31 requirements of subdivision (a).

32 SEC. 4. *The Legislature finds and declares that the*
33 *amendments made by this act to subdivision (g) of*
34 *Section 646.9 of the Penal Code are declaratory of existing*
35 *law.*

36 SEC. 5. No reimbursement is required by this act
37 pursuant to Section 6 of Article XIII B of the California
38 Constitution because the only costs that may be incurred
39 by a local agency or school district will be incurred
40 because this act creates a new crime or infraction,

1 eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section
3 17556 of the Government Code, or changes the definition
4 of a crime within the meaning of Section 6 of Article
5 XIII B of the California Constitution.

6 Notwithstanding Section 17580 of the Government
7 Code, unless otherwise specified, the provisions of this act
8 shall become operative on the same date that the act
9 takes effect pursuant to the California Constitution.

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