

AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2425

Introduced by Assembly Member Corbett

February 24, 2000

~~An act to amend Section 646.9 of, and to add Section 646.93~~
An act to amend Sections 646.9 and 646.93 of, and to add
Section 646.94 to, the Penal Code, relating to stalking.

LEGISLATIVE COUNSEL'S DIGEST

AB 2425, as amended, Corbett. Stalking.

(1) Under existing law, 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 either a misdemeanor or a felony. A person who commits that offense when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior proscribed by that offense against the same party is guilty of a felony, punishable by imprisonment in the state prison for 2, 3, or 4 years. A person who is convicted a 2nd or subsequent time of violating either of these 2 offenses is punishable by imprisonment in the state prison for 2, 3, or 4 years.

This bill would increase the punishment for a 2nd violation of the first offense described above by imprisonment in the state prison for 2, 3, or 6 years and would expand the specified offenses that would support this increased punishment to

include the willful infliction of corporal injury, the intentional and knowing violation of a court order, as specified, or making a threat to commit a crime as specified. ~~Additionally, the bill would make it a felony punishable by imprisonment in the state prison for 2, 3, or 8 years for a person convicted of a specified offense who is then convicted of violating this provision while there is a when that violation would also constitute a violation of an emergency protective order, temporary restraining order, injunction, or any other court order in effect prohibiting the prescribed behavior against the same party. By defining a new offense—By expanding the definition of a crime this bill would impose a state-mandated local program.~~

(2) *Existing law requires the county sheriff to give notice of the release on bail of a person arrested for stalking. The notice must be directed to the domestic violence unit of the prosecuting agency of the county or city where the victim resides, and that agency is required to inform the county jail as to the specific person or persons who must be contacted.*

This bill instead would require the sheriff in the county where the arrestee is incarcerated to designate a telephone number available for public inquiry regarding the bail or release status of the arrestee, as specified. By imposing new duties on local officials, the bill would impose a state-mandated local program.

(3) Existing law requires that a prison inmate who has completed his or her term of imprisonment, be released into the community upon supervised parole for a specified period of time.

This bill would require the Department of Corrections to ensure that any parolee convicted of the offense of stalking under the provisions stated in (1) who is deemed to pose a high risk of committing a repeat stalking offense be placed on an intensive and specialized parole supervision program for a *the* period ~~not to exceed 5 years. The required program would include referral to specialized services when needed, prevention classes, and counseling sessions. The department would be authorized to require parolees subject to this program to pay some or all of the costs associated with the~~



~~treatment subject to the parolee's ability to pay those costs, as defined of parole.~~

~~(3) 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.~~

(4) 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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 646.9 of the Penal Code is
2 amended to read:
3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or harasses another person and who
5 makes a credible threat with the intent to place that
6 person in reasonable fear for his or her safety, or the safety
7 of his or her immediate family, is guilty of the crime of
8 stalking, punishable by imprisonment in a county jail for
9 not more than one year or by a fine of not more than one
10 thousand dollars (\$1,000), or by both that fine and
11 imprisonment, or by imprisonment in the state prison.



1 (b) Any person who violates subdivision (a) when
2 there is a temporary restraining order, injunction, or any
3 other court order in effect prohibiting the behavior
4 described in subdivision (a) against the same party, shall
5 be punished by imprisonment in the state prison for two,
6 three, or four years.

7 (c) Every person who, after having been convicted of
8 a felony under subdivision (a) or under Section 273.5,
9 273.6, or 422, commits a violation of this section shall be
10 punished by imprisonment in the state prison for two,
11 three, or six years.

12 ~~(d) Every person who, after having been convicted of~~
13 ~~a felony under this section or under Section 273.5, 273.6,~~
14 ~~or 422, commits a violation of this section when there is~~
15 ~~a temporary restraining order, injunction, or any other~~
16 ~~court order in effect prohibiting the behavior described~~
17 ~~in subdivision (a) against the same party, shall be~~
18 ~~punished by imprisonment in the state prison for two,~~
19 ~~three, or eight years.~~

20 ~~(e)~~

21 (d) In addition to the penalties provided in this
22 section, the sentencing court may order a person
23 convicted of a felony under this section to register as a sex
24 offender pursuant to subparagraph (E) of paragraph (2)
25 of subdivision (a) of Section 290.

26 ~~(f)~~

27 (e) For the purposes of this section, “harasses” means
28 a knowing and willful course of conduct directed at a
29 specific person that seriously alarms, annoys, torments, or
30 terrorizes the person, and that serves no legitimate
31 purpose. This course of conduct must be such as would
32 cause a reasonable person to suffer substantial emotional
33 distress, and must actually cause substantial emotional
34 distress to the person.

35 ~~(g)~~

36 (f) For purposes of this section, “course of conduct”
37 means a pattern of conduct composed of a series of acts
38 over a period of time, however short, evidencing a
39 continuity of purpose. Constitutionally protected activity



1 is not included within the meaning of “course of
2 conduct.”

3 ~~(h)~~

4 (g) For the purposes of this section, “credible threat”
5 means a verbal or written threat, including that
6 performed through the use of an electronic
7 communication device, or a threat implied by a pattern
8 of conduct or a combination of verbal, written, or
9 electronically communicated statements and conduct
10 made with the intent to place the person that is the target
11 of the threat in reasonable fear for his or her safety or the
12 safety of his or her family and made with the apparent
13 ability to carry out the threat so as to cause the person who
14 is the target of the threat to reasonably fear for his or her
15 safety or the safety of his or her family. It is not necessary
16 to prove that the defendant had the intent to actually
17 carry out the threat. The present incarceration of a
18 person making the threat shall not be a bar to prosecution
19 under this section.

20 ~~(i)~~

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

27 ~~(j)~~

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

30 ~~(k)~~

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

38 ~~(l)~~

39 (k) The sentencing court also shall consider issuing an
40 order restraining the defendant from any contact with



1 the victim, that may be valid for up to 10 years, as
 2 determined by the court. It is the intent of the Legislature
 3 that the length of any restraining order be based upon the
 4 seriousness of the facts before the court, the probability
 5 of future violations, and the safety of the victim and his or
 6 her immediate family.

7 ~~(m)~~

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

14 ~~(n)~~

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

23 ~~SEC. 2. Section 646.93 is added to the Penal Code, to~~
 24 ~~read:~~

25 ~~646.93. (a) (1)~~

26 *SEC. 2. Section 646.93 of the Penal Code is amended*
 27 *to read:*

28 ~~646.93. (a) The county sheriff shall give notice of the~~
 29 ~~release on bail of any person arrested for violating Section~~
 30 ~~646.9. The notice shall be directed to the domestic~~
 31 ~~violence unit of the prosecuting agency of the county or~~
 32 ~~city where the victim resides or any person so designated~~
 33 ~~by that agency. The prosecuting agency in each county~~
 34 ~~or city shall inform the county jail in writing as to the~~
 35 ~~specific person or persons who should be contacted in~~
 36 ~~their agency. (1) In those counties where the arrestee is~~
 37 ~~initially incarcerated in a jail operated by the county~~
 38 ~~sheriff, the sheriff shall designate a telephone number~~
 39 ~~that shall be available to the public to inquire regarding~~
 40 ~~bail status or to determine if the person arrested has been~~



1 released and if not yet released, the scheduled release
2 date, if known.

3 (2) In those counties where the arrestee is initially
4 incarcerated in an incarceration facility other than a jail
5 operated by the county sheriff and in those counties that
6 do not operate a Victim Notification (VNE) system, a
7 telephone number shall be available to the public to
8 inquire regarding bail status or to determine if the person
9 arrested has been released and if not yet released, the
10 scheduled release date, if known.

11 (3) If an arrestee is transferred to another
12 incarceration facility and is no longer in the custody of the
13 initial arresting agency, the transfer date and new
14 incarceration location shall be made available through
15 the telephone number designated by the arresting
16 agency.

17 (4) The resource car provided to victims pursuant to
18 Section 264.2 shall list the designated telephone numbers
19 to which this section refers.

20 (b) Any request to lower bail shall be heard in open
21 court in accordance with Section 1270.1. In addition, the
22 prosecutor shall make all reasonable efforts to notify the
23 victim or victims of the bail hearing. The victims may be
24 present at the hearing and shall be permitted to address
25 the court on the issue of bail.

26 (c) Unless good cause is shown not to impose the
27 following conditions, the judge shall impose as additional
28 conditions of release on bail that:

29 (1) The defendant shall not initiate contact in person,
30 by telephone, or any other means with the alleged
31 victims.

32 (2) The defendant shall not knowingly go within 100
33 yards of the alleged victims, their residence, or place of
34 employment.

35 (3) The defendant shall not possess any firearms or
36 other deadly or dangerous weapons.

37 (4) The defendant shall obey all laws.

38 (5) The defendant, upon request at the time of his or
39 her appearance in court, shall provide the court with an
40 address where he or she is residing or will reside, a



1 business address and telephone number if employed, and
2 a residence telephone number if the defendant's
3 residence has a telephone.

4 A showing by declaration that any of these conditions
5 are violated shall, unless good cause is shown, result in the
6 issuance of a no-bail warrant.

7 *SEC. 3. Section 646.94 is added to the Penal Code, to*
8 *read:*

9 *646.94. (a) The Department of Corrections shall*
10 *ensure that any parolee convicted of violating Section*
11 *646.9 on or after January 1, 2001, who is deemed to pose*
12 *a high risk of committing a repeat stalking offense be*
13 *placed on an intensive and specialized parole supervision*
14 *program for a period not to exceed five years, unless the*
15 *parole authority for good cause waives parole and*
16 *discharges the inmate from the custody of the*
17 *department.*

18 ~~(2) Upon successful completion of parole, or at the end~~
19 ~~of the maximum statutory period of parole as provided in~~
20 ~~this section, the inmate shall be discharged from the~~
21 ~~eustody of the department. The date of the maximum~~
22 ~~statutory period of parole under this section shall be~~
23 ~~computed from the date of initial parole and shall be a~~
24 ~~period chronologically determined. Time during which~~
25 ~~parole is suspended because the parolee has absconded or~~
26 ~~has been returned to custody as a parole violator shall not~~
27 ~~be credited toward any period of parole unless the~~
28 ~~parolee is found not guilty of the parole violation.~~
29 ~~However, in no case, except as provided in Section 3064,~~
30 ~~may a prisoner subject to three years on parole be~~
31 ~~retained under parole supervision or in custody for a~~
32 ~~period longer than four years from the date of his or her~~
33 ~~initial parole, and, except as provided in Section 3064, in~~
34 ~~no case may a prisoner subject to five years on parole be~~
35 ~~retained under parole supervision or in custody for a~~
36 ~~period longer than seven years from the date of his or her~~
37 ~~initial parole. *the period of parole.*~~

38 (b) (1) The department shall accomplish the
39 requirements of this section by redirecting part of the
40 staff resources now used for the supervision of those



1 parolees it classifies as posing a relatively lesser risk to
2 public safety.

3 (2) The program shall include referral to specialized
4 services, for example substance abuse treatment, for
5 offenders needing those specialized services.

6 (3) Parolees participating in this program shall be
7 required to participate in relapse prevention classes as a
8 condition of parole.

9 (4) Parole agents may conduct group counseling
10 sessions as part of the program.

11 (5) The department may include other appropriate
12 offenders in the treatment program if doing so facilitates
13 the effectiveness of the treatment program.

14 (c) The program shall be established with the
15 assistance and supervision of the staff of the department
16 primarily by obtaining the services of mental health
17 providers specializing in the treatment of stalking
18 patients. Each parolee placed into this program shall be
19 required to participate in clinical counseling programs
20 aimed at reducing the likelihood that the parolee will
21 commit or attempt to commit acts of violence or stalk
22 their victim.

23 (d) The department may require persons subject to
24 this section to pay some or all of the costs associated with
25 this treatment, subject to the person's ability to pay.
26 "Ability to pay" means the overall capability of the person
27 to reimburse the costs, or a portion of the costs, of
28 providing mental health treatment, and shall include, but
29 shall not be limited to, consideration of all of the following
30 factors:

31 (1) Present financial position.

32 (2) Reasonably discernible future financial position.

33 (3) Likelihood that the person shall be able to obtain
34 employment after the date of parole.

35 (4) Any other factor or factors that may bear upon the
36 person's financial capability to reimburse the department
37 for the costs.

38 (e) For purposes of this section a mental health
39 provider specializing in the treatment of stalking patients
40 shall meet all of the following requirements:

1 (1) Be a licensed clinical social worker, as defined in
2 Article 4 (commencing with Section 4996) of Chapter 14
3 of Division 2 of the Business and Professions Code, a
4 clinical psychologist, as defined in Section 1316.5 of the
5 Health and Safety Code, or a physician and surgeon
6 engaged in the practice of psychiatry.

7 (2) Have clinical experience in the area of assessment
8 and treatment of stalking patients.

9 (3) Have two letters of reference from professions who
10 can attest to the applicant’s experience in counseling
11 stalking patients.

12 (f) (1) The program shall target parolees convicted of
13 violating Section 646.9 who meet the following
14 conditions:

15 (A) The offender is within one year of being released
16 on parole.

17 (B) The offender has been subject to a clinical
18 assessment.

19 (C) A review of the offender’s criminal history
20 indicates that the offender poses a high risk of committing
21 further acts of stalking or acts of violence against his or her
22 victim or other persons upon his or her release on parole.

23 (D) The parolee, based on his or her clinical
24 assessment, may be amenable to treatment.

25 (2) Clinical treatment for inmates who meet the
26 conditions for placement in this program shall begin prior
27 to the inmate’s parole date, while the inmate is still
28 incarcerated. This paragraph shall not apply to inmates
29 receiving treatment at a state hospital pursuant to Section
30 2684.

31 ~~SEC. 3. No reimbursement is required by this act~~
32 ~~pursuant to Section 6 of Article XIII B of the California~~
33 ~~Constitution because the only costs that may be incurred~~
34 ~~by a local agency or school district will be incurred~~
35 ~~because this act creates a new crime or infraction,~~
36 ~~eliminates a crime or infraction, or changes the penalty~~
37 ~~for a crime or infraction, within the meaning of Section~~
38 ~~17556 of the Government Code, or changes the definition~~
39 ~~of a crime within the meaning of Section 6 of Article~~
40 ~~XIII B of the California Constitution.~~



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

11 *However, notwithstanding Section 17610 of the*
12 *Government Code, if the Commission on State Mandates*
13 *determines that this act contains other costs mandated by*
14 *the state, reimbursement to local agencies and school*
15 *districts for those costs shall be made pursuant to Part 7*
16 *(commencing with Section 17500) of Division 4 of Title*
17 *2 of the Government Code. If the statewide cost of the*
18 *claim for reimbursement does not exceed one million*
19 *dollars (\$1,000,000), reimbursement shall be made from*
20 *the State Mandates Claims Fund.*

