

Assembly Bill No. 2425

CHAPTER 669

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

[Approved by Governor September 24, 2000. Filed
with Secretary of State September 26, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2425, 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 5 years. This bill would also increase the penalty for anyone who is convicted of the first offense described above after having previously been convicted of specified offenses; including 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, to imprisonment in a county jail for not more than one year, or by a fine of \$1,000, or by both that fine and imprisonment, or by imprisonment in the state prison for 2, 3, or 5 years. 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 or other designated county official 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. The bill would

specify that the designated county official is not required to establish a new telephone number, rather it is only required to specify on the victim resource card the telephone number that a victim should call to obtain this information. 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, contingent upon a Budget Act appropriation, 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 the period of parole. This bill would require the department to evaluate this parole program and make a report to the Legislature, as specified.

(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.

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

SECTION 1. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any person who willfully, maliciously, and repeatedly follows or harasses another person and who 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, punishable by imprisonment in a county jail for not more than one year or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

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



(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

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

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

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

(g) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family and made with 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 family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section.

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

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



(j) 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.

(k) 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.

(l) 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.

(m) 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. 2. Section 646.93 of the Penal Code is amended to read:

646.93. (a) (1) In those counties where the arrestee is initially incarcerated in a jail operated by the county sheriff, the sheriff shall designate a telephone number that shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not require a county sheriff or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted.

(2) In those counties where the arrestee is initially incarcerated in an incarceration facility other than a jail operated by the county sheriff and in those counties that do not operate a Victim Notification (VNE) system, a telephone number shall be available to the public to inquire about bail status or to determine if the person arrested has been released and if not yet released, the scheduled release date, if known. This subdivision does not require a municipal police agency



or jail administrator to establish a new telephone number but shall require that the information contained on the victim resource card, as defined in Section 264.2, specify the phone number that a victim should call to obtain this information. This subdivision shall not require the county sheriff or municipal police departments to produce new victim resource cards containing a designated phone number for the public to inquire about the bail or custody status of a person who has been arrested until their existing supply of victim resource cards has been exhausted.

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

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

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

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

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

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

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

(4) The defendant shall obey all laws.

(5) The defendant, upon request at the time of his or her appearance in court, shall provide the court with an address where he or she is residing or will reside, a business address and telephone number if employed, and a residence telephone number if the defendant's residence has a telephone.

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

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

646.94. (a) Contingent upon a Budget Act appropriation, the Department of Corrections shall ensure that any parolee convicted of violating Section 646.9 on or after January 1, 2002, 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 period not to exceed the period of parole.



(b) (1) The program shall include referral to specialized services, for example substance abuse treatment, for offenders needing those specialized services.

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

(3) Parole agents may conduct group counseling sessions as part of the program.

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

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

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

(1) Present financial position.

(2) Reasonably discernible future financial position.

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

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

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

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

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

(3) Have two letters of reference from professionals who can attest to the applicant's experience in counseling stalking patients.

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

(A) The offender has been subject to a clinical assessment.

(B) A review of the offender's criminal history indicates that the offender poses a high risk of committing further acts of stalking or



acts of violence against his or her victim or other persons upon his or her release on parole.

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

(g) On or before January 1, 2006, the Department of Corrections shall evaluate the intensive and specialized parole supervision program and make a report to the Legislature regarding the results of the program, including, but not limited to, the recidivism rate for repeat stalking related offenses committed by persons placed into the program and a cost-benefit analysis of the program.

(h) This section shall become operative upon the appropriation of sufficient funds in the Budget Act to implement this section.

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

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

