

AMENDED IN SENATE APRIL 12, 1999

AMENDED IN SENATE MARCH 22, 1999

**SENATE BILL**

**No. 218**

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**Introduced by Senator Solis**

(Principal coauthors: Assembly Members Jackson and  
Kuehl)

January 21, 1999

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An act to amend Section 185 of the Code of Civil Procedure, to amend Sections 6343 and 6389 of the Family Code, to amend Section 124250 of the Health and Safety Code, to amend Sections 166, 273d, 273.5, 273.6, 836, 1328, 11163.3, and 12028.5 of, to repeal Sections 273.55 and 273.56 of, and to add Section 11163.6 to, the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Solis. Domestic violence.

(1) Existing law requires every written proceeding in a judicial court to be in the English language.

This bill would declare that nothing in this section prohibits a court from issuing an unofficial translation of a court order or document in a language other than English. It would also require the Judicial Council, by July 1, 2001, to make available in other languages, specified court orders and forms relating to domestic violence.

(2) Existing law authorizes a court, after notice and a hearing, to issue an order requiring a restrained person to participate in batterer's treatment counseling.

This bill would require the court, after notice and a hearing, to order a restrained person to participate in a batterer's treatment program that has been approved by the probation department ~~pursuant to~~ *as meeting the standards stated in a specified provision of law.*

(3) Existing law prohibits a person subject to a specified protective order from owning or possessing a firearm while that order is in effect and if prohibited by that order. The court is authorized to order a person subject to a protective order to relinquish any firearm in that person's immediate possession or control as specified upon a determination by a preponderance of the evidence that the restrained person is likely to use or display or threaten to use a firearm in any further act of violence.

This bill would eliminate the need for the court to make the above-mentioned factual determination by a preponderance of the evidence, and would instead require the court to order the restrained person to relinquish any firearm in that person's immediate possession or control, as specified.

(4) Existing law requires the Maternal and Child Health Branch of the State Department of Health Services to administer a comprehensive shelter-based services grant program to battered women's shelters and to consult with an advisory council that is to remain in existence until January 1, 1998.

This bill would eliminate the January 1, 1998, sunset clause relating to the existence of the advisory council.

(5) Existing law punishes as a contempt of court the willful disobedience of any process or lawfully issued court order.

This bill would also punish as a contempt of court, the willful disobedience of a court order or out-of-state court order, including orders pending trial that are made at the request of a party alleging domestic violence. By expanding the definition of a crime, this bill would impose a state-mandated local program.

(6) Existing law makes it a felony for any person to willfully inflict upon a child any injury resulting in a traumatic condition.

This bill would make technical changes.



(7) Existing law requires that if probation is granted to any person who is convicted of willfully inflicting a traumatic condition, as defined, on a person with a specified domestic relationship to that person, and the person has previously been convicted of 2 or more violations of that offense within a specified period of time, the court must impose as a condition of probation, imprisonment in the county jail for not less than 30 days and participation in a batterer's treatment program as specified.

This bill would eliminate from the above provisions, the requirement of participation in a batterer's treatment program and would require instead, that as a condition of probation, a defendant who has previously been convicted of a violation of the above offense, within a specified period of time, be imprisoned in a county jail for not less than 15 days, or if the defendant has previously been convicted of 2 or more offenses within 7 years of the current violation, he or she be imprisoned in a county jail for not less than 60 days. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

(8) Existing law makes it a felony for any person convicted of willfully inflicting upon his or her spouse or other specified domestic partner, a corporal injury resulting in a traumatic condition. If a person was convicted of that offense within 7 years prior to the current offense, the court is required to impose, as a condition of probation, imprisonment in a county jail for not less than 96 hours and participation in and successful completion of a batterer's treatment program.

Existing law also requires that if probation is granted to a person convicted under that same provision, as a condition of probation, he or she must be imprisoned in a county jail for not less than 15 days and participate in and successfully complete a batterer's treatment program. However, if probation is granted to a person who has been convicted of that offense who has had 2 or more prior convictions of that offense with 7 years, it must be a condition of probation that he or she be imprisoned in a county jail for not less than 60 days and that he or she participate in and successfully complete a batterer's treatment program.



This bill would delete these 2 provisions of law relating to the granting of probation.

(9) Existing law punishes as a crime any intentional and knowing violation of a protective order or other order, as defined.

This bill would amend the above provision by expanding the list of specified orders to include any order issued by another state as recognized under a specified provision of law relating to out-of-state orders and orders requiring the relinquishment of a firearm. By expanding the definition of a crime, this bill imposes a state-mandated local program.

(10) Existing law gives discretion to a peace officer who is responding to a call alleging a violation of a domestic violence protective or restraining order as specified and who has probable cause to believe that the person subject to the order has notice of the order and has committed an act in violation of that order, to arrest that person without a warrant and take him or her into custody whether or not the violation took place in the presence of the arresting officer.

This bill would instead require that the peace officer must, *consistent with a specified provision relating to law enforcement response to domestic violence*, make a lawful arrest under the above circumstances. By increasing the duties of local officials, this bill would impose a state-mandated local program.

(11) Existing law requires that when service is made on a minor, it must be made on the minor's parent, guardian, conservator, or similar fiduciary, or other specified persons.

This bill would authorize the court having jurisdiction of the case to appoint a guardian ad litem to receive service of a subpoena of the child and to produce the child in court.

(12) Existing law authorizes a county to establish an interagency domestic violence death review team to assist local agencies in identifying and reviewing domestic violence deaths. However, existing law prohibits the disclosure of confidential and privileged information that is relevant to a domestic violence death review team.

This bill would authorize disclosure by the domestic violence review team to members of that team of otherwise confidential or privileged information regarding the victim or



any other information deemed relevant, to members of that team. The bill would make it a misdemeanor punishable by a fine and up to one year in a county jail, for any member of the team, their agency or employee, who without prior approval of all of the members of the team, discloses any information obtained during the investigation. The bill would also authorize the disclosure of specified types of information to a domestic violence death review team, notwithstanding other provisions of law including the lawyer-client privilege, the psychotherapist-client privilege, the domestic violence victim-counselor privilege, and the sexual assault victim-counselor privilege, if the information is about a person who died as a result of, or whose death was likely the result of, domestic violence, a minor child of that deceased person, or a person who has been convicted of causing a death in connection with an incidence of domestic violence. By creating a new crime, this bill would impose a state-mandated local program.

The bill would also require the domestic violence review teams to collect and summarize data regarding the statistical occurrence of specified circumstances of deaths resulting from domestic violence.

(13) Existing law authorizes specified law enforcement officers who are at the scene of a family violence incident involving a threat to human life or physical assault, to take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search. This provision also defines the terms “abuse,” “family violence,” and “family or household member.”

This bill instead would replace the term “family violence” with the term “domestic violence,” would delete the above-mentioned definitions and would replace them with definitions of the terms “abuse” and “domestic violence” that track the definitions of those terms in the Family Code.

(14) Under existing federal law, known as the Violent Crime Control and Law Enforcement Act of 1994, it is unlawful for any person to possess or purchase a firearm or ammunition who is subject to a restraining order that prohibits that person from harassing, stalking, or threatening



an intimate partner of that person or a child of that person or that partner.

This bill would enact that same prohibition with a limited exemption for peace officers and military officers who are on duty. By defining a new crime, this bill would impose a state-mandated local program.

(15) 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 185 of the Code of Civil  
2 Procedure is amended to read:

3 185. (a) Every written proceeding in a court of  
4 justice in this state shall be in the English language, and  
5 judicial proceedings shall be conducted, preserved, and  
6 published in no other. Nothing in this section shall  
7 prohibit a court from issuing an unofficial translation of  
8 a court order or document issued pursuant to Part 1  
9 (commencing with Section 6200) of Division 10 of the  
10 Family Code or Section 136.2 of the Penal Code in a  
11 language other than English.

12 (b) The Judicial Council shall, by July 1, 2001, make the  
13 court orders and forms specified in this subdivision



1 available in languages other than English, as Judicial  
2 Council deems appropriate, to all courts. The Judicial  
3 Council shall make available orders and forms pertaining  
4 to protective orders issued pursuant to Sections 527.6 and  
5 527.8 of the Code of Civil Procedure, Part 1 (commencing  
6 with Section 6200) of Division 10 of the Family Code, and  
7 Section 136.2 of the Penal Code.

8 SEC. 2. Section 6343 of the Family Code is amended  
9 to read:

10 6343. (a) After notice and a hearing, the court may  
11 issue an order requiring any party to participate in  
12 counseling with a licensed mental health professional, or  
13 through other community programs and services that  
14 provide appropriate counseling, including, but not  
15 limited to, mental health or substance abuse services,  
16 where it is shown that the parties intend to continue to  
17 reside in the same household or have continued to reside  
18 in the same household after previous instances of  
19 domestic violence. The court may also order a restrained  
20 party to participate in a batterer's treatment program  
21 approved by the probation department as provided in  
22 Section 1203.097 of the Penal Code.

23 (b) Where there has been a history of domestic  
24 violence between the parties or where a protective order,  
25 as defined in Section 6218, is in effect, at the request of the  
26 party alleging domestic violence in a written declaration  
27 under penalty of perjury or who is protected by the order,  
28 the parties shall participate in counseling separately and  
29 at separate times. The court may also order a restrained  
30 party to participate in a batterer's treatment program  
31 approved by the probation department as ~~provided in~~  
32 *meeting the standards stated in subdivision (c) of Section*  
33 *1203.097 of the Penal Code for up to one year, provided*  
34 ~~that the program selected has counseling available for the~~  
35 ~~designated period of time.~~

36 (c) Each party shall bear the cost of his or her own  
37 counseling separately, unless good cause appears for a  
38 different apportionment.

39 SEC. 3. Section 6389 of the Family Code is amended  
40 to read:



1 6389. (a) A person subject to a protective order, as  
2 defined in Section 6218, may not own or possess a firearm  
3 while that protective order is in effect.

4 (b) The Judicial Council shall provide a notice on all  
5 forms requesting a protective order that, at the hearing  
6 for a protective order, the respondent shall be ordered to  
7 relinquish possession or control of any firearms for a  
8 period not to exceed the duration of the restraining order.

9 (c) If the respondent is present in court at a duly  
10 noticed hearing, the court shall order the respondent to  
11 relinquish any firearm in that person's immediate  
12 possession or control, or subject to that person's  
13 immediate possession or control, within 24 hours of the  
14 order, by either surrendering the firearm to the control  
15 of local law enforcement officials, or by selling the firearm  
16 to a licensed gun dealer, as specified in Section 12071 of  
17 the Penal Code. If the respondent is not present at the  
18 hearing, the respondent shall relinquish the firearm  
19 within 48 hours after being served with the order. A  
20 person ordered to relinquish any firearm pursuant to this  
21 subdivision shall file with the court a receipt showing the  
22 firearm was surrendered to the local law enforcement  
23 agency or sold to a licensed gun dealer within 72 hours  
24 after receiving the order. In the event that it is necessary  
25 to continue the date of any hearing due to a request for  
26 a relinquishment order pursuant to this section, the court  
27 shall ensure that all applicable protective orders  
28 described in Section 6218 remain in effect or bifurcate the  
29 issues and grant the permanent restraining order  
30 pending the date of the hearing.

31 (d) If the respondent declines to relinquish possession  
32 of any firearm based upon the assertion of the right  
33 against self-incrimination, as provided by the Fifth  
34 Amendment to the United States Constitution and  
35 Section 15 of Article I of the California Constitution, the  
36 court may grant use immunity for the act of relinquishing  
37 the firearm.

38 (e) A local law enforcement agency may charge the  
39 respondent a fee for the storage of any firearm pursuant  
40 to this section. This fee shall not exceed the actual cost



1 incurred by the local law enforcement agency for the  
2 storage of the firearm. For purposes of this subdivision,  
3 “actual cost” means expenses directly related to taking  
4 possession of a firearm, storing the firearm, and  
5 surrendering possession of the firearm to a licensed  
6 dealer as defined in Section 12071 of the Penal Code or to  
7 the respondent.

8 (f) The restraining order requiring a person to  
9 relinquish a firearm pursuant to subdivision (c) shall state  
10 on its face that the firearm shall be relinquished to the  
11 local law enforcement agency for that jurisdiction or sold  
12 to a licensed gun dealer, and that proof of surrender or  
13 sale shall be filed with the court within a specified period  
14 of receipt of the order. The order shall also state on its face  
15 the expiration date for relinquishment. Nothing in this  
16 section shall limit a respondent’s right under existing law  
17 to petition the court at a later date for modification of the  
18 order.

19 (g) The restraining order requiring a person to  
20 relinquish a firearm pursuant to subdivision (c) shall  
21 prohibit the person from possessing or controlling any  
22 firearm for the duration of the order. At the expiration of  
23 the order, the local law enforcement agency shall return  
24 possession of any surrendered firearm to the respondent,  
25 within five days after the expiration of the  
26 relinquishment order, unless the local law enforcement  
27 agency determines that (1) the firearm has been stolen,  
28 (2) the respondent is prohibited from possessing a  
29 firearm because the respondent is in any prohibited class  
30 for the possession of firearms, as defined in Sections 12021  
31 and 12021.1 of the Penal Code and Sections 8100 and 8103  
32 of the Welfare and Institutions Code, or (3) another  
33 successive restraining order is used against the  
34 respondent under this section. If the local law  
35 enforcement agency determines that the respondent is  
36 the legal owner of any firearm deposited with the local  
37 law enforcement agency and is prohibited from  
38 possessing any firearm, the respondent shall be entitled  
39 to sell or transfer the firearm to a licensed dealer as  
40 defined in Section 12071 of the Penal Code. If the firearm



1 has been stolen, the firearm shall be restored to the lawful  
2 owner upon his or her identification of the firearm and  
3 proof of ownership.

4 (h) The court may, as part of the relinquishment  
5 order, grant an exemption from the relinquishment  
6 requirements of this section for a particular firearm if the  
7 respondent can show that a particular firearm is  
8 necessary as a condition of continued employment and  
9 that the current employer is unable to reassign the  
10 respondent to another position where a firearm is  
11 unnecessary. If an exemption is granted pursuant to this  
12 subdivision, the order shall provide that the firearm shall  
13 be in the physical possession of the respondent only  
14 during scheduled work hours and during travel to and  
15 from his or her place of employment.

16 (i) During the period of the relinquishment order, a  
17 respondent is entitled to make one sale of all firearms that  
18 are in the possession of a local law enforcement agency  
19 pursuant to this section. A licensed gun dealer, who  
20 presents a local law enforcement agency with a bill of sale  
21 indicating that all firearms owned by the respondent that  
22 are in the possession of the local law enforcement agency  
23 have been sold by the respondent to the licensed gun  
24 dealer, shall be given possession of those firearms, at the  
25 location where a respondent's firearms are stored, within  
26 five days of presenting the local law enforcement agency  
27 with a bill of sale.

28 (j) The disposition of any unclaimed property under  
29 this section shall be made pursuant to Section 1413 of the  
30 Penal Code.

31 (k) The return of a firearm to any person pursuant to  
32 subdivision (g) shall not be subject to the requirements  
33 of subdivision (d) of Section 12072 of the Penal Code.

34 (l) If the respondent notifies the court that he or she  
35 owns a firearm that is not in his or her immediate  
36 possession, the court may limit the order to exclude that  
37 firearm if the judge is satisfied the respondent is unable  
38 to gain access to that firearm while the protective order  
39 is in effect.



1 (m) Any respondent to a protective order who violates  
2 any order issued pursuant to this section is guilty of a  
3 misdemeanor, which shall be punishable by  
4 imprisonment in a county jail not exceeding one year, by  
5 a fine not exceeding one thousand dollars (\$1,000), or by  
6 both that imprisonment and fine.

7 SEC. 4. Section 124250 of the Health and Safety Code  
8 is amended to read:

9 124250. (a) The following definitions shall apply for  
10 purposes of this section:

11 (1) “Domestic violence” means the infliction or threat  
12 of physical harm against past or present adult or  
13 adolescent female intimate partners, and shall include  
14 physical, sexual, and psychological abuse against the  
15 woman, and is a part of a pattern of assaultive, coercive,  
16 and controlling behaviors directed at achieving  
17 compliance from or control over, that woman.

18 (2) “Shelter based” means an established system of  
19 services where battered women and their children may  
20 be provided safe or confidential emergency housing on a  
21 24-hour basis, including, but not limited to, hotel or motel  
22 arrangements, haven, and safe houses.

23 (3) “Emergency shelter” means a confidential or safe  
24 location that provides emergency housing on a 24-hour  
25 basis for battered women and their children.

26 (b) The Maternal and Child Health Branch of the  
27 State Department of Health Services shall administer a  
28 comprehensive shelter-based services grant program to  
29 battered women’s shelters pursuant to this section.

30 (c) The Maternal and Child Health Branch shall  
31 administer grants, awarded as the result of a request for  
32 application process, to battered women’s shelters that  
33 propose to maintain shelters or services previously  
34 granted funding pursuant to this section, to expand  
35 existing services or create new services, and to establish  
36 new battered women’s shelters to provide services, in any  
37 of the following four areas:

38 (1) Emergency shelter to women and their children  
39 escaping violent family situations.



1 (2) Transitional housing programs to help women and  
2 their children find housing and jobs so that they are not  
3 forced to choose between returning to a violent  
4 relationship or becoming homeless. The programs may  
5 offer up to 18 months of housing, case management, job  
6 training and placement, counseling, support groups, and  
7 classes in parenting and family budgeting.

8 (3) Legal and other types of advocacy and  
9 representation to help women and their children pursue  
10 the appropriate legal options.

11 (4) Other support services for battered women and  
12 their children.

13 (d) In implementing the grant program pursuant to  
14 this section, the State Department of Health Services  
15 shall consult with an advisory council. The council shall be  
16 composed of not to exceed 13 voting members and two  
17 nonvoting members appointed as follows:

18 (1) Seven members appointed by the Governor.

19 (2) Three members appointed by the Speaker of the  
20 Assembly.

21 (3) Three members appointed by the Senate  
22 Committee on Rules.

23 (4) Two nonvoting ex officio members who shall be  
24 Members of the Legislature, one appointed by the  
25 Speaker of the Assembly and one appointed by the Senate  
26 Committee on Rules. Any Member of the Legislature  
27 appointed to the council shall meet with, and participate  
28 in the activities of, the council to the extent that  
29 participation is not incompatible with his or her position  
30 as a Member of the Legislature.

31 The membership of the council shall consist of domestic  
32 violence advocates, battered women service providers,  
33 and representatives of women's organizations, law  
34 enforcement, and other groups involved with domestic  
35 violence. At least one-half of the council membership  
36 shall consist of domestic violence advocates or battered  
37 women service providers from organizations such as the  
38 California Alliance Against Domestic Violence.



1 It is the intent of the Legislature that the council  
2 membership reflect the ethnic, racial, cultural, and  
3 geographic diversity of the state.

4 (e) The department shall collaborate closely with the  
5 council in the development of funding priorities, the  
6 framing of the Request for Proposals, and the solicitation  
7 of proposals.

8 (f) (1) The Maternal and Child Health Branch of the  
9 State Department of Health Services shall administer  
10 grants, awarded as the result of a request for application  
11 process, to agencies to conduct demonstration projects to  
12 serve battered women, including, but not limited to,  
13 creative and innovative service approaches, such as  
14 community response teams and pilot projects to develop  
15 new interventions emphasizing prevention and  
16 education, and other support projects identified by the  
17 advisory council.

18 (2) For purposes of this subdivision, “agency” means  
19 a state agency, a local government, a community-based  
20 organization, or a nonprofit organization.

21 (g) It is the intent of the Legislature that services  
22 funded by this program include services in underserved  
23 and ethnic and racial communities. Therefore, the  
24 Maternal and Child Health Branch of the State  
25 Department of Health Services shall do all of the  
26 following:

27 (1) Fund shelters pursuant to this section that reflect  
28 the ethnic, racial, economic, cultural, and geographic  
29 diversity of the state.

30 (2) Target geographic areas and ethnic and racial  
31 communities of the state whereby, based on a needs  
32 assessment, it is determined that no shelter-based  
33 services exist or that additional resources are necessary.

34 (h) The director may award additional grants to  
35 shelter-based agencies when it is determined that there  
36 exists a critical need for shelter or shelter-based services.

37 (i) As a condition of receiving funding pursuant to this  
38 section, battered women’s shelters shall do all of the  
39 following:



1 (1) Provide matching funds or in-kind contributions  
2 equivalent to not less than 20 percent of the grant they  
3 would receive. The matching funds or in-kind  
4 contributions may come from other governmental or  
5 private sources.

6 (2) Ensure that appropriate staff and volunteers  
7 having client contact meet the definition of “domestic  
8 violence counselor” as specified in subdivision (a) of  
9 Section 1037.1 of the Evidence Code. The minimum  
10 training specified in paragraph (2) of subdivision (a) of  
11 Section 1037.1 of the Evidence Code shall be provided to  
12 those staff and volunteers who do not meet the  
13 requirements of paragraph (1) of subdivision (a) of  
14 Section 1037.1 of the Evidence Code.

15 SEC. 5. Section 166 of the Penal Code is amended to  
16 read:

17 166. (a) Except as provided in subdivisions (b) and  
18 (c), every person guilty of any contempt of court, of any  
19 of the following kinds, is guilty of a misdemeanor:

20 (1) Disorderly, contemptuous, or insolent behavior  
21 committed during the sitting of any court of justice, in  
22 immediate view and presence of the court, and directly  
23 tending to interrupt its proceedings or to impair the  
24 respect due to its authority.

25 (2) Behavior as specified in paragraph (1) committed  
26 in the presence of any referee, while actually engaged in  
27 any trial or hearing, pursuant to the order of any court, or  
28 in the presence of any jury while actually sitting for the  
29 trial of a cause, or upon any inquest or other proceedings  
30 authorized by law.

31 (3) Any breach of the peace, noise, or other  
32 disturbance directly tending to interrupt the proceedings  
33 of any court.

34 (4) Willful disobedience of any process or order  
35 lawfully issued by any court.

36 (5) Willful disobedience of any court order or  
37 out-of-state court order, lawfully issued by any court,  
38 including orders pending trial.

39 (6) Resistance willfully offered by any person to the  
40 lawful order or process of any court.



1 (7) The contumacious and unlawful refusal of any  
2 person to be sworn as a witness; or, when so sworn, the like  
3 refusal to answer any material question.

4 (8) The publication of a false or grossly inaccurate  
5 report of the proceedings of any court.

6 (9) Presenting to any court having power to pass  
7 sentence upon any prisoner under conviction, or to any  
8 member of the court, any affidavit or testimony or  
9 representation of any kind, verbal or written, in  
10 aggravation or mitigation of the punishment to be  
11 imposed upon the prisoner, except as provided in this  
12 code.

13 (b) (1) Any person who is guilty of contempt of court  
14 under paragraph (4) of subdivision (a) by willfully  
15 contacting a victim by phone, mail, or directly and who  
16 has been previously convicted of a violation of Section  
17 646.9 shall be punished by imprisonment in a county jail  
18 for not more than one year, by a fine of five thousand  
19 dollars (\$5,000), or by both that fine and imprisonment.

20 (2) For the purposes of sentencing under this  
21 subdivision, each contact shall constitute a separate  
22 violation of this subdivision.

23 (3) The present incarceration of a person who makes  
24 contact with a victim in violation of paragraph (1) is not  
25 a defense to a violation of this subdivision.

26 (c) (1) Notwithstanding paragraph (4) of subdivision  
27 (a), any willful and knowing violation of any protective  
28 order or stay away court order issued pursuant to Section  
29 136.2, in a pending criminal proceeding involving  
30 domestic violence, as defined in Section 13700, or issued  
31 as a condition of probation after a conviction in a criminal  
32 proceeding involving domestic violence, as defined in  
33 Section 13700, which is an order described in paragraph  
34 (3), shall constitute contempt of court, a misdemeanor,  
35 punishable by imprisonment in a county jail for not more  
36 than one year, by a fine of not more than one thousand  
37 dollars (\$1,000), or by both that imprisonment and fine.

38 (2) If a violation of paragraph (1) results in a physical  
39 injury, the person shall be imprisoned in a county jail for



1 at least 48 hours, whether a fine or imprisonment is  
2 imposed, or the sentence is suspended.

3 (3) Paragraphs (1) and (2) shall apply to the following  
4 court orders:

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

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

9 (C) An order enjoining a party from specified  
10 behavior that the court determined was necessary to  
11 effectuate the orders described in paragraph (1).

12 (4) A second or subsequent conviction for a violation  
13 of any order described in paragraph (1) occurring within  
14 seven years of a prior conviction for a violation of any of  
15 those orders and involving an act of violence or “a  
16 credible threat” of violence, as provided in subdivisions  
17 (c) and (d) of Section 139, is punishable by imprisonment  
18 in a county jail not to exceed one year, or in the state  
19 prison for 16 months or two or three years.

20 (5) The prosecuting agency of each county shall have  
21 the primary responsibility for the enforcement of the  
22 orders described in paragraph (1).

23 (d) (1) If probation is granted upon conviction of a  
24 violation of subdivision (c), the court shall require  
25 participation in a batterer’s treatment program as a  
26 condition of probation, unless, considering all of the facts  
27 and circumstances, the court finds participating in a  
28 batterer’s treatment program inappropriate for the  
29 defendant.

30 (2) If probation is granted upon conviction of a  
31 violation of subdivision (c), the conditions of probation  
32 may include, in lieu of a fine, one or both of the following  
33 requirements:

34 (A) That the defendant make payments to a battered  
35 women’s shelter, up to a maximum of one thousand  
36 dollars (\$1,000).

37 (B) That the defendant provide restitution to  
38 reimburse the victim for reasonable costs of counseling  
39 and other reasonable expenses that the court finds are the  
40 direct result of the defendant’s offense.



1 (3) For any order to pay a fine, make payments to a  
2 battered women's shelter, or pay restitution as a  
3 condition of probation under this subdivision or  
4 subdivision (c), the court shall make a determination of  
5 the defendant's ability to pay. In no event shall any order  
6 to make payments to a battered women's shelter be made  
7 if it would impair the ability of the defendant to pay direct  
8 restitution to the victim or court-ordered child support.

9 (4) Where the injury to a married person is caused in  
10 whole or in part by the criminal acts of his or her spouse  
11 in violation of subdivision (c), the community property  
12 may not be used to discharge the liability of the offending  
13 spouse for restitution to the injured spouse, required by  
14 Section 1203.04, as operative on or before August 2, 1995,  
15 or Section 1202.4, or to a shelter for costs with regard to  
16 the injured spouse and dependents, required by this  
17 subdivision, until all separate property of the offending  
18 spouse is exhausted.

19 (5) Any person violating any order described in  
20 subdivision (c), may be punished for any substantive  
21 offenses described under Section 136.1 or 646.9. No  
22 finding of contempt shall be a bar to prosecution for a  
23 violation of Section 136.1 or 646.9. However, any person  
24 held in contempt for a violation of subdivision (c) shall be  
25 entitled to credit for any punishment imposed as a result  
26 of that violation against any sentence imposed upon  
27 conviction of an offense described in Section 136.1 or  
28 646.9. Any conviction or acquittal for any substantive  
29 offense under Section 136.1 or 646.9 shall be a bar to a  
30 subsequent punishment for contempt arising out of the  
31 same act.

32 SEC. 6. Section 273d of the Penal Code is amended to  
33 read:

34 273d. (a) Any person who willfully inflicts upon a  
35 child any cruel or inhuman corporal punishment or an  
36 injury resulting in a traumatic condition is guilty of a  
37 felony and shall be punished by imprisonment in the state  
38 prison for two, four, or six years, or in a county jail for not  
39 more than one year, by a fine of up to six thousand dollars  
40 (\$6,000), or by both that imprisonment and fine.



1 (b) Any person who is found guilty of violating  
2 subdivision (a) shall receive a four-year enhancement for  
3 a prior conviction of that offense provided that no  
4 additional term shall be imposed under this subdivision  
5 for any prison term served prior to a period of 10 years in  
6 which the defendant remained free of both prison  
7 custody and the commission of an offense that results in  
8 a felony conviction.

9 (c) If a person is convicted of violating this section and  
10 probation is granted, the court shall require the following  
11 minimum conditions of probation:

12 (1) A mandatory minimum period of probation of 36  
13 months.

14 (2) A criminal court protective order protecting the  
15 victim from further acts of violence or threats, and, if  
16 appropriate, residence exclusion or stay-away conditions.

17 (3) (A) Successful completion of no less than one year  
18 of a child abuser's treatment counseling program  
19 approved by the probation department. The defendant  
20 shall be ordered to begin participation in the program  
21 immediately upon the grant of probation. The counseling  
22 program shall meet the criteria specified in Section 273.1.  
23 The defendant shall produce documentation of program  
24 enrollment to the court within 30 days of enrollment,  
25 along with quarterly progress reports.

26 (B) The terms of probation for offenders shall not be  
27 lifted until all reasonable fees due to the counseling  
28 program have been paid in full, but in no case shall  
29 probation be extended beyond the term provided in  
30 subdivision (a) of Section 1203.1. If the court finds that the  
31 defendant does not have the ability to pay the fees based  
32 on the defendant's changed circumstances, the court may  
33 reduce or waive the fees.

34 (4) If the offense was committed while the defendant  
35 was under the influence of drugs or alcohol, the  
36 defendant shall abstain from the use of drugs or alcohol  
37 during the period of probation and shall be subject to  
38 random drug testing by his or her probation officer.

39 (5) The court may waive any of the above minimum  
40 conditions of probation upon a finding that the condition



1 would not be in the best interests of justice. The court  
2 shall state on the record its reasons for any waiver.

3 SEC. 7. Section 273.5 of the Penal Code is amended to  
4 read:

5 273.5. (a) Any person who willfully inflicts upon his  
6 or her spouse, or any person who willfully inflicts upon  
7 any person with whom he or she is cohabiting, or any  
8 person who willfully inflicts upon any person who is the  
9 mother or father of his or her child, corporal injury  
10 resulting in a traumatic condition, is guilty of a felony, and  
11 upon conviction thereof shall be punished by  
12 imprisonment in the state prison for two, three, or four  
13 years, or in a county jail for not more than one year, or by  
14 a fine of up to six thousand dollars (\$6,000), or by both that  
15 fine and imprisonment.

16 (b) (1) Any person who is subject to a court order that  
17 meets all of the criteria specified in subparagraphs (A) to  
18 (C), inclusive, who possesses any firearm or ammunition  
19 or who receives any firearm or ammunition is guilty of a  
20 felony.

21 (A) The court order was issued after a hearing where  
22 the person subject to the order received actual notice of  
23 the hearing and an opportunity to participate in the  
24 hearing.

25 (B) The court order restrains the person from  
26 harassing, stalking, or threatening an intimate partner of  
27 that person or a child of that person or of an intimate  
28 partner of that person, or from engaging in other conduct  
29 that would place an intimate partner in reasonable fear  
30 of bodily injury to that intimate partner or child of that  
31 person or of that intimate partner.

32 (C) The court order includes a finding that the person  
33 represents a credible threat to the physical safety of the  
34 intimate partner or child of either the person or the  
35 intimate partner, or by its terms explicitly prohibits the use,  
36 attempted use, or threatened use of physical force against  
37 the intimate partner or child of either the person or the  
38 intimate partner that would reasonably be expected to  
39 cause bodily injury.



1 (2) An “intimate partner” under this subdivision  
2 means the spouse or former spouse of the person, an  
3 individual who is a parent of a child of the person, or an  
4 individual who cohabitates or has cohabited, or is having  
5 or has had a dating or engagement relationship, with the  
6 person.

7 (3) This subdivision does not apply to any on-duty state  
8 or federal law enforcement officer or military officer  
9 while on duty and acting within the scope and course of  
10 his or her equipment.

11 (c) Holding oneself out to be the husband or wife of  
12 the person with whom one is cohabiting is not necessary  
13 to constitute cohabitation as the term is used in this  
14 section.

15 (d) As used in this section, “traumatic condition”  
16 means a condition of the body, such as a wound or  
17 external or internal injury, whether of a minor or serious  
18 nature, caused by a physical force.

19 (e) For the purpose of this section, a person shall be  
20 considered the father or mother of another person’s child  
21 if the alleged male parent is presumed the natural father  
22 under Sections 7611 and 7612 of the Family Code.

23 (f) In any case in which a person is convicted of  
24 violating this section and probation is granted, the court  
25 shall require participation in a batterer’s treatment  
26 program as a condition of probation, as specified in  
27 Section 1203.097.

28 (g) If probation is granted, or the execution or  
29 imposition of a sentence is suspended, for any person  
30 convicted under subdivision (a) who previously has been  
31 convicted of a violation of subdivision (a) for an offense  
32 that occurred within seven years of the most recent  
33 conviction, it shall be a condition, of probation, in addition  
34 to the provisions contained in Section 1203.097, that he or  
35 she be imprisoned in a county jail for not less than 15 days.  
36 If the defendant has been previously convicted of two or  
37 more offenses that occurred within seven years of a  
38 violation of subdivision (a), it shall be a condition of  
39 probation, in addition to the provisions contained in  
40 Section 1203.097, that he or she be imprisoned in a county



1 jail for not less than 60 days. Any person convicted of  
2 violating Section 273.5, for acts occurring within seven  
3 years of a previous conviction under subdivision (d) of  
4 Section 243, or under Section 243.4, 244, 244.5, or 273.5, if  
5 the victim of the prior offense is a person designated  
6 under subdivision (a) of Section 273.5, shall be punished  
7 by imprisonment in a county jail for not more than one  
8 year, or by imprisonment in the state prison for two, four,  
9 or five years, or by both imprisonment and a fine of up to  
10 ten thousand dollars (\$10,000). However, the court, upon  
11 a showing of good cause, may find that the mandatory  
12 minimum imprisonment, as required by this subdivision,  
13 shall not be imposed and good cause shall be stated on the  
14 record.

15 (h) If probation is granted upon conviction of a  
16 violation of subdivision (a), the conditions of probation  
17 may include, consistent with the terms of probation  
18 imposed pursuant to Section 1203.97, in lieu of a fine, one  
19 or both of the following requirements:

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

23 (2) That the defendant reimburse the victim for  
24 reasonable costs of counseling and other reasonable  
25 expenses that the court finds are the direct result of the  
26 defendant's offense.

27 For any order to pay a fine, make payments to a  
28 battered women's shelter, or pay restitution as a  
29 condition of probation under this subdivision, the court  
30 shall make a determination of the defendant's ability to  
31 pay. In no event shall any order to make payments to a  
32 battered women's shelter be made if it would impair the  
33 ability of the defendant to pay direct restitution to the  
34 victim or court-ordered child support. Where the injury  
35 to a married person is caused in whole or in part by the  
36 criminal acts of his or her spouse in violation of this  
37 section, the community property may not be used to  
38 discharge the liability of the offending spouse for  
39 restitution to the injured spouse, required by Section  
40 1203.04, as operative on or before August 2, 1995, or



1 Section 1202.4, or to a shelter for costs with regard to the  
2 injured spouse and dependents, required by this section,  
3 until all separate property of the offending spouse is  
4 exhausted.

5 SEC. 8. Section 273.55 of the Penal Code is repealed.

6 SEC. 9. Section 273.56 of the Penal Code is repealed.

7 SEC. 10. Section 273.6 of the Penal Code is amended  
8 to read:

9 273.6. (a) Any intentional and knowing violation of a  
10 protective order, as defined in Section 6218 of the Family  
11 Code, or of an order issued pursuant to Section 527.6 or  
12 527.8 of the Code of Civil Procedure is a misdemeanor  
13 punishable by a fine of not more than one thousand  
14 dollars (\$1,000), or by imprisonment in a county jail for  
15 not more than one year, or by both that fine and  
16 imprisonment.

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

35 (c) Subdivisions (a) and (b) shall apply to the  
36 following court orders:

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

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



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

4 (4) Any order issued by another state that is  
5 recognized under Section 6380.5 of the Family Code.

6 (d) A subsequent conviction for a violation of an order  
7 described in subdivision (a), occurring within seven  
8 years of a prior conviction for a violation of an order  
9 described in subdivision (a) and involving an act of  
10 violence or “a credible threat” of violence, as defined in  
11 subdivision (c) of Section 139, is punishable by  
12 imprisonment in a county jail not to exceed one year, or  
13 in the state prison.

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

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



1 (g) The court may order a person convicted under this  
2 section to undergo counseling, and, if appropriate, to  
3 complete a batterer's treatment program.

4 (h) If probation is granted upon conviction of a  
5 violation of subdivision (a), (b), or (c), the conditions of  
6 probation may include, in lieu of a fine, one or both of the  
7 following requirements:

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

11 (2) That the defendant reimburse the victim for  
12 reasonable costs of counseling and other reasonable  
13 expenses that the court finds are the direct result of the  
14 defendant's offense.

15 (i) For any order to pay a fine, make payments to a  
16 battered women's shelter, or pay restitution as a  
17 condition of probation under subdivision (e), the court  
18 shall make a determination of the defendant's ability to  
19 pay. In no event shall any order to make payments to a  
20 battered women's shelter be made if it would impair the  
21 ability of the defendant to pay direct restitution to the  
22 victim or court-ordered child support. Where the injury  
23 to a married person is caused in whole or in part by the  
24 criminal acts of his or her spouse in violation of this  
25 section, the community property may not be used to  
26 discharge the liability of the offending spouse for  
27 restitution to the injured spouse, required by Section  
28 1203.04, as operative on or before August 2, 1995, or  
29 Section 1202.4, or to a shelter for costs with regard to the  
30 injured spouse and dependents, required by this section,  
31 until all separate property of the offending spouse is  
32 exhausted.

33 SEC. 11. Section 836 of the Penal Code is amended to  
34 read:

35 836. (a) A peace officer may arrest a person in  
36 obedience to a warrant, or, pursuant to the authority  
37 granted to him or her by Chapter 4.5 (commencing with  
38 Section 830) of Title 3 of Part 2, without a warrant, may  
39 arrest a person whenever any of the following  
40 circumstances occur:



1 (1) The officer has probable cause to believe that the  
2 person to be arrested has committed a public offense in  
3 the officer's presence.

4 (2) The person arrested has committed a felony,  
5 although not in the officer's presence.

6 (3) The officer has probable cause to believe that the  
7 person to be arrested has committed a felony, whether or  
8 not a felony, in fact, has been committed.

9 (b) Any time a peace officer is called out on a domestic  
10 call, it shall be mandatory that the officer make a good  
11 faith effort to inform the victim of his or her right to make  
12 a citizen's arrest. This information shall include advising  
13 the victim how to safely execute the arrest.

14 (c) (1) When a peace officer is responding to a call  
15 alleging a violation of a domestic violence protective or  
16 restraining order issued under the Family Code, Section  
17 527.6 of the Code of Civil Procedure, Section 213.5 of the  
18 Welfare and Institutions Code, Section 136.2 of this code,  
19 or paragraph (2) of subdivision (a) of Section 1203.097 of  
20 this code, or of a domestic violence protective or  
21 restraining order issued by the court of another state,  
22 tribe, or territory and the peace officer has probable  
23 cause to believe that the person against whom the order  
24 is issued has notice of the order and has committed an act  
25 in violation of the order, the officer shall, *consistent with*  
26 *subdivision (b) of Section 13701*, make a lawful arrest of  
27 the person without a warrant and take that person into  
28 custody whether or not the violation occurred in the  
29 presence of the arresting officer. The officer shall, as soon  
30 as possible after the arrest, confirm with the appropriate  
31 authorities or the Domestic Violence Protection Order  
32 Registry maintained pursuant to Section 6380 of the  
33 Family Code that a true copy of the protective order has  
34 been registered, unless the victim provides the officer  
35 with a copy of the protective order.

36 (2) The person against whom a protective order has  
37 been issued shall be deemed to have notice of the order  
38 if the victim presents to the officer proof of service of the  
39 order, the officer confirms with the appropriate  
40 authorities that a true copy of the proof of service is on



1 file, or the person against whom the protective order was  
2 issued was present at the protective order hearing or was  
3 informed by a peace officer of the contents of the  
4 protective order.

5 (3) In situations where mutual protective orders have  
6 been issued under Division 10 (commencing with Section  
7 6200) of the Family Code, liability for arrest under this  
8 subdivision applies only to those persons who are  
9 reasonably believed to have been the primary aggressor.  
10 In those situations, prior to making an arrest under this  
11 subdivision, the peace officer shall make reasonable  
12 efforts to identify, and may arrest, the primary aggressor  
13 involved in the incident. The primary aggressor is the  
14 person determined to be the most significant, rather than  
15 the first, aggressor. In identifying the primary aggressor,  
16 an officer shall consider (A) the intent of the law to  
17 protect victims of domestic violence from continuing  
18 abuse, (B) the threats creating fear of physical injury, (C)  
19 the history of domestic violence between the persons  
20 involved, and (D) whether either person involved acted  
21 in self-defense.

22 (d) Notwithstanding paragraph (1) of subdivision (a),  
23 if a suspect commits an assault or battery upon a current  
24 or former spouse, fiancé, fiancée, a current or former  
25 cohabitant as defined in Section 6209 of the Family Code,  
26 a person with whom the suspect currently is having or has  
27 previously had an engagement relationship, a person  
28 with whom the suspect has parented a child, or is  
29 presumed to have parented a child pursuant to the  
30 Uniform Parentage Act (Part 3 (commencing with  
31 Section 7600) of Division 12 of the Family Code), a child  
32 of the suspect, a child whose parentage by the suspect is  
33 the subject of an action under the Uniform Parentage Act,  
34 a child of a person in one of the above categories, or any  
35 other person related to the suspect by consanguinity or  
36 affinity within the second degree, a peace officer may  
37 arrest the suspect without a warrant where both of the  
38 following circumstances apply:



1 (1) The peace officer has probable cause to believe  
2 that the person to be arrested has committed the assault  
3 or battery, whether or not it has in fact been committed.

4 (2) The peace officer makes the arrest as soon as  
5 probable cause arises to believe that the person to be  
6 arrested has committed the assault or battery, whether or  
7 not it has in fact been committed.

8 (e) In addition to the authority to make an arrest  
9 without a warrant pursuant to paragraphs (1) and (3) of  
10 subdivision (a), a peace officer may, without a warrant,  
11 arrest a person for a violation of Section 12025 when all of  
12 the following apply:

13 (1) The officer has reasonable cause to believe that the  
14 person to be arrested has committed the violation of  
15 Section 12025.

16 (2) The violation of Section 12025 occurred within an  
17 airport, as defined in Section 21013 of the Public Utilities  
18 Code, in an area to which access is controlled by the  
19 inspection of persons and property.

20 (3) The peace officer makes the arrest as soon as  
21 reasonable cause arises to believe that the person to be  
22 arrested has committed the violation of Section 12025.

23 SEC. 12. Section 1328 of the Penal Code is amended  
24 to read:

25 1328. (a) A subpoena may be served by any person,  
26 except that the defendant may not serve a subpoena in  
27 the criminal action to which he or she is a party, but a  
28 peace officer shall serve in his or her county any subpoena  
29 delivered to him or her for service, either on the part of  
30 the people or of the defendant, and shall, without delay,  
31 make a written return of the service, subscribed by him  
32 or her, stating the time and place of service. The service  
33 is made by delivering a copy of the subpoena to the  
34 witness personally.

35 (b) (1) When service is to be made on a minor, service  
36 shall be made on the minor's parent, guardian,  
37 conservator, or similar fiduciary, or if one of them cannot  
38 be located with reasonable diligence, then service shall be  
39 made on any person having the care or control of the  
40 minor or with whom the minor resides or by whom the



1 minor is employed, unless the parent, guardian,  
2 conservator, or fiduciary or other specified person is the  
3 defendant, and on the minor if the minor is 12 years of age  
4 or older. The person so served shall have the obligation  
5 of producing the minor at the time and place designated  
6 in the subpoena. A willful failure to produce the minor is  
7 punishable as a contempt pursuant to Section 1218 of the  
8 Code of Civil Procedure. The person so served shall be  
9 allowed the fees and expenses that are provided for  
10 subpoenaed witnesses.

11 (2) The court having jurisdiction of the case shall have  
12 the power to appoint a guardian ad litem to receive  
13 service of a subpoena of the child and shall have the  
14 power to produce the child ordered to court under this  
15 section.

16 (c) Whenever any peace officer designated in Section  
17 830 is required as a witness before any court or magistrate  
18 in any action or proceeding in connection with a matter  
19 regarding an event or transaction which he or she has  
20 perceived or investigated in the course of his or her  
21 duties, a criminal subpoena issued pursuant to this  
22 chapter requiring his or her attendance may be served  
23 either by delivering a copy to the peace officer personally  
24 or by delivering two copies to his or her immediate  
25 superior or agent designated by his or her immediate  
26 superior to receive the service; or, in those counties  
27 where the local agencies have consented with the  
28 marshal's office or sheriff's office, where appropriate, to  
29 participate, by sending a copy by electronic means,  
30 including electronic mail, computer modem, facsimile, or  
31 other electronic means, to his or her immediate superior  
32 or agent designated by the immediate superior to receive  
33 the service. If the service is made by electronic means, the  
34 immediate superior or agency designated by his or her  
35 immediate superior shall acknowledge receipt of the  
36 subpoena by telephone or electronic means to the sender  
37 of origin. If service is made upon the immediate superior  
38 or agent designated by the immediate superior, the  
39 immediate superior or the agent shall deliver a copy of  
40 the subpoena to the peace officer as soon as possible and



1 in no event later than a time which will enable the peace  
2 officer to comply with the subpoena.

3 (d) If the immediate superior or his or her designated  
4 agent upon whom service is attempted to be made knows  
5 he or she will be unable to deliver a copy of the subpoena  
6 to the peace officer within a time which will allow the  
7 peace officer to comply with the subpoena, the  
8 immediate superior or agent may refuse to accept service  
9 of process and is excused from any duty, liability, or  
10 penalty arising in connection with the service, upon  
11 notifying the server of that fact.

12 (e) If the immediate superior or his or her agent is  
13 tendered service of a subpoena less than five working  
14 days prior to the date of hearing, and he or she is not  
15 reasonably certain he or she can complete the service, he  
16 or she may refuse acceptance.

17 (f) If the immediate superior or agent upon whom  
18 service has been made, subsequently determines that he  
19 or she will be unable to deliver a copy of the subpoena to  
20 the peace officer within a time which will allow the peace  
21 officer to comply with the subpoena, the immediate  
22 superior or agent shall notify the server or his or her office  
23 or agent not less than 48 hours prior to the hearing date  
24 indicated on the subpoena, and is thereby excused from  
25 any duty, liability, or penalty arising because of his or her  
26 failure to deliver a copy of the subpoena to the peace  
27 officer. The server, so notified, is therewith responsible  
28 for preparing the written return of service and for  
29 notifying the originator of the subpoena if required.

30 (g) Notwithstanding subdivision (c), in the case of  
31 peace officers employed by the California Highway  
32 Patrol, if service is made upon the immediate superior or  
33 upon an agent designated by the immediate superior of  
34 the peace officer, the immediate superior or the agent  
35 shall deliver a copy of the subpoena to the peace officer  
36 on the officer's first workday following acceptance of  
37 service of process. In this case, failure of the immediate  
38 superior or the designated agent to deliver the subpoena  
39 shall not constitute a defect in service.



1 SEC. 13. Section 11163.3 of the Penal Code is  
2 amended to read:

3 11163.3. (a) A county may establish an interagency  
4 domestic violence death review team to assist local  
5 agencies in identifying and reviewing domestic violence  
6 deaths, including homicides and suicides, and facilitating  
7 communication among the various agencies involved in  
8 domestic violence cases. Interagency domestic violence  
9 death review teams have been used successfully to ensure  
10 that incidents of domestic violence and abuse are  
11 recognized and that agency involvement is reviewed to  
12 develop recommendations for policies and protocols for  
13 community prevention and intervention initiatives to  
14 reduce and eradicate the incidence of domestic violence.

15 (b) For purposes of this section, “abuse” has the  
16 meaning set forth in Section 6203 of the Family Code and  
17 “domestic violence” has the meaning set forth in Section  
18 6211 of the Family Code.

19 (c) A county may develop a protocol that may be used  
20 as a guideline to assist coroners and other persons who  
21 perform autopsies on domestic violence victims in the  
22 identification of domestic violence, in the determination  
23 of whether domestic violence contributed to death or  
24 whether domestic violence had occurred prior to death,  
25 but was not the actual cause of death, and in the proper  
26 written reporting procedures for domestic violence,  
27 including the designation of the cause and mode of death.

28 (d) County domestic violence death review teams  
29 shall be comprised of, but not limited to, the following:

- 30 (1) Experts in the field of forensic pathology.
- 31 (2) Medical personnel with expertise in domestic  
32 violence abuse.
- 33 (3) Coroners and medical examiners.
- 34 (4) Criminologists.
- 35 (5) District attorneys and city attorneys.
- 36 (6) Domestic violence shelter service staff and  
37 battered women’s advocates.
- 38 (7) Law enforcement personnel.
- 39 (8) Representatives of local agencies that are involved  
40 with domestic violence abuse reporting.



1 (9) County health department staff who deal with  
2 domestic violence victims' health issues.

3 (10) Representatives of local child abuse agencies.

4 (11) Local professional associations of persons  
5 described in paragraphs (1) to (10), inclusive.

6 (e) An oral or written communication or a document  
7 shared within or produced by a domestic violence death  
8 review team related to a domestic violence death review  
9 is confidential and not subject to disclosure or  
10 discoverable by a third party. An oral or written  
11 communication or a document provided by a third party  
12 to a domestic violence death review team, or between a  
13 third party and a domestic violence death review team,  
14 is confidential and not subject to disclosure or  
15 discoverable by a third party. Notwithstanding the  
16 foregoing, recommendations of a domestic violence  
17 death review team upon the completion of a review may  
18 be disclosed at the discretion of a majority of the members  
19 of the domestic violence death review team.

20 (f) Each organization represented on a domestic  
21 violence death review team may share with other  
22 members of the team information in its possession  
23 concerning the victim who is the subject of the review or  
24 any person who was in contact with the victim and any  
25 other information deemed by the organization to be  
26 pertinent to the review. Any information shared by an  
27 organization with other members of a team is  
28 confidential. This provision shall permit the disclosure to  
29 members of the team of any information deemed  
30 confidential, privileged, or prohibited from disclosure by  
31 any other statute.

32 (g) Any member of the domestic violence death  
33 review team, their agent or employee who, without the  
34 prior approval of all of the members of the team, discloses  
35 or causes to be disclosed to anyone or any agency not a  
36 member of the team, any information obtained during  
37 investigations conducted under the authority of this  
38 statute, is guilty of a misdemeanor, and punishable by a  
39 fine of up to ten thousand dollars (\$10,000) and up to one  
40 year in a county jail.



1 (h) Written and oral information may be disclosed to  
2 a domestic violence death review team established  
3 pursuant to this section. The team may make a request in  
4 writing for the information sought and any person with  
5 information of the kind described in paragraph (2) of this  
6 subdivision may rely on the request in determining  
7 whether information may be disclosed to the team.

8 (1) No individual or agency that has information  
9 governed by this subdivision shall be required to disclose  
10 information. The intent of this subdivision is to allow the  
11 voluntary disclosure of information by the individual or  
12 agency that has the information.

13 (2) The following information may be disclosed  
14 pursuant to this subdivision:

15 (A) Notwithstanding Section 56.10 of the Civil Code,  
16 medical information.

17 (B) Notwithstanding Section 5328 of the Welfare and  
18 Institutions Code, mental health information.

19 (C) Notwithstanding Section 15633.5 of the Welfare  
20 and Institutions Code, information from elder abuse  
21 reports and investigations, except the identity of persons  
22 who have made reports, which shall not be disclosed.

23 (D) Notwithstanding Section 11167.5 of the Penal  
24 Code, information from child abuse reports and  
25 investigations, except the identity of persons who have  
26 made reports, which shall not be disclosed.

27 (E) State summary criminal history information,  
28 criminal offender record information, and local summary  
29 criminal history information, as defined in Sections 11075,  
30 11105, and 13300 of the Penal Code.

31 (F) Notwithstanding Section 11163.2 of the Penal  
32 Code, information pertaining to reports by health  
33 practitioners of persons suffering from physical injuries  
34 inflicted by means of a firearm or of persons suffering  
35 physical injury where the injury is a result of assaultive or  
36 abusive conduct, and information relating to whether a  
37 physician referred the person to local domestic violence  
38 services as recommended by Section 11161 of the Penal  
39 Code.



1 (G) Notwithstanding Section 827 of the Welfare and  
2 Institutions Code, information in any juvenile court  
3 proceeding.

4 (H) Information maintained by the Family Court,  
5 including information relating to the Family Conciliation  
6 Court Law pursuant to Section 1818 of the Family Code,  
7 and Mediation of Custody and Visitation Issues pursuant  
8 to Section 3177 of the Family Code.

9 (I) Information provided to probation officers in the  
10 course of the performance of their duties, including, but  
11 not limited to, the duty to prepare reports pursuant to  
12 Section 1203.10 of the Penal Code, as well as the  
13 information on which these reports are based.

14 (J) Notwithstanding Section 10825 of the Welfare and  
15 Institutions Code, records of in-home supportive services,  
16 unless disclosure is prohibited by federal law.

17 (3) The disclosure of written and oral information  
18 authorized under this subdivision shall apply  
19 notwithstanding Sections 2263, 2918, 4982, and 6068 of the  
20 Business and Professions Code, or the lawyer-client  
21 privilege protected by Article 3 (commencing with  
22 Section 950) of Chapter 4 of Division 8 of the Evidence  
23 Code, the physician-patient privilege protected by  
24 Article 6 (commencing with Section 990) of Chapter 4 of  
25 Division 8 of the Evidence Code, the  
26 psychotherapist-patient privilege protected by Article 7  
27 (commencing with Section 1010) of Chapter 4 of Division  
28 8 of the Evidence Code, the sexual assault  
29 victim-counselor privilege protected by Article 8.5  
30 (commencing with Section 1035) of Chapter 4 of Division  
31 8 of the Evidence Code, and the domestic violence  
32 victim-counselor privilege protected by Article 8.7  
33 (commencing with Section 1037) of Chapter 4 of Division  
34 8 of the Evidence Code.

35 SEC. 14. Section 11163.6 is added to the Penal Code,  
36 to read:

37 11163.6. In order to ensure consistent and uniform  
38 results, data shall be collected and summarized by the  
39 domestic violence death review teams to show the  
40 statistical occurrence of all domestic violence deaths in



1 the team's county that occur under the following  
2 circumstances:

3 (a) The deceased was a victim of a homicide  
4 committed by a current or former spouse, fiancé, or  
5 dating partner.

6 (b) The deceased was the victim of a suicide, was the  
7 current or former spouse, fiancé, or dating partner of the  
8 perpetrator and was also the victim of previous acts of  
9 domestic violence.

10 (c) The deceased was the perpetrator of the homicide  
11 of a former or current spouse, fiancé, or dating partner  
12 and the perpetrator was also the victim of a suicide.

13 (d) The deceased was the perpetrator of the homicide  
14 of a former or current spouse, fiancé, or dating partner  
15 and the perpetrator was also the victim of a homicide  
16 related to the domestic homicide incident.

17 (e) The deceased was a child of either the homicide  
18 victim or the perpetrator, or both.

19 (f) The deceased was a current or former spouse,  
20 fiancé, or dating partner of the current or former spouse,  
21 fiancé, or dating partner of the perpetrator.

22 (g) The deceased was a law enforcement officer,  
23 emergency medical personnel, or other agency  
24 responding to a domestic violence incident.

25 (h) The deceased was a family member, other than  
26 identified above, of the perpetrator.

27 (i) The deceased was the perpetrator of the homicide  
28 of a family member, other than identified above.

29 (j) The deceased was a person not included in the  
30 above categories and the homicide was related to  
31 domestic violence.

32 SEC. 15. Section 12028.5 of the Penal Code is  
33 amended to read:

34 12028.5. (a) As used in this section, the following  
35 definitions shall apply:

36 (1) "Abuse" means any of the following:

37 (A) Intentionally or recklessly to cause or attempt to  
38 cause bodily injury.

39 (B) Sexual assault.



1 (C) To place a person in reasonable apprehension of  
2 imminent serious bodily injury to that person or to  
3 another.

4 (D) To engage in any behavior that has been or could  
5 be enjoined pursuant to Section 6320 of the Family Code.

6 (2) “Domestic violence” means abuse perpetrated  
7 against any of the following persons:

8 (A) A spouse or former spouse.

9 (B) A cohabitant or former cohabitant, as defined in  
10 Section 6209 of the Family Code.

11 (C) A person with whom the respondent is having or  
12 has had a dating or engagement relationship.

13 (D) A person with whom the respondent has had a  
14 child, where the presumption applies that the male  
15 parent is the father of the child of the female parent  
16 under the Uniform Parentage Act (Part 3 (commencing  
17 with Section 7600) of Division 12 of the Family Code).

18 (E) A child of a party or a child who is the subject of  
19 an action under the Uniform Parentage Act, where the  
20 presumption applies that the male parent is the father of  
21 the child to be protected.

22 (F) Any other person related by consanguinity or  
23 affinity within the second degree.

24 (3) “Deadly weapon” means any weapon, the  
25 possession or concealed carrying of which is prohibited by  
26 Section 12020.

27 (b) A sheriff, undersheriff, deputy sheriff, marshal,  
28 deputy marshal, or police officer of a city, as defined in  
29 subdivision (a) of Section 830.1, a peace officer of the  
30 Department of the California Highway Patrol, as defined  
31 in subdivision (a) of Section 830.2, a member of the  
32 University of California Police Department, as defined in  
33 subdivision (b) of Section 830.2, an officer listed in Section  
34 830.6 while acting in the course and scope of his or her  
35 employment as a peace officer, a member of a California  
36 State University Police Department, as defined in  
37 subdivision (c) of Section 830.2, a peace officer of the  
38 Department of Parks and Recreation, as defined in  
39 subdivision (f) of Section 830.2, a peace officer, as defined  
40 in subdivision (d) of Section 830.31, and a peace officer,



1 as defined in Section 830.5, who is at the scene of a  
2 domestic violence incident involving a threat to human  
3 life or a physical assault, shall take temporary custody of  
4 any firearm or other deadly weapon in plain sight or  
5 discovered pursuant to a consensual search as necessary  
6 for the protection of the peace officer or other persons  
7 present. Upon taking custody of a firearm or other deadly  
8 weapon, the officer shall give the owner or person who  
9 possessed the firearm a receipt. The receipt shall describe  
10 the firearm or other deadly weapon and list any  
11 identification or serial number on the firearm. The  
12 receipt shall indicate where the firearm or other deadly  
13 weapon can be recovered and the date after which the  
14 owner or possessor can recover the firearm or other  
15 deadly weapon. No firearm or other deadly weapon shall  
16 be held less than 48 hours. Except as provided in  
17 subdivision (e), if a firearm or other deadly weapon is not  
18 retained for use as evidence related to criminal charges  
19 brought as a result of the family violence incident or is not  
20 retained because it was illegally possessed, the firearm or  
21 other deadly weapon shall be made available to the owner  
22 or person who was in lawful possession 48 hours after the  
23 seizure or as soon thereafter as possible, but no later than  
24 72 hours after the seizure. In any civil action or  
25 proceeding for the return of firearms or ammunition or  
26 other deadly weapon seized by any state or local law  
27 enforcement agency and not returned within 72 hours  
28 following the initial seizure, except as provided in  
29 subdivision (c), the court shall allow reasonable  
30 attorney's fees to the prevailing party.

31 (c) Any firearm or other deadly weapon which has  
32 been taken into custody that has been stolen shall be  
33 restored to the lawful owner, as soon as its use for  
34 evidence has been served, upon his or her identification  
35 of the firearm or other deadly weapon and proof of  
36 ownership.

37 (d) Any firearm or other deadly weapon taken into  
38 custody and held by a police, university police, or sheriff's  
39 department or by a marshal's office, by a peace officer of  
40 the Department of the California Highway Patrol, as



1 defined in subdivision (a) of Section 830.2, by a peace  
2 officer of the Department of Parks and Recreation, as  
3 defined in subdivision (f) of Section 830.2, by a peace  
4 officer, as defined in subdivision (d) of Section 830.31, or  
5 by a peace officer, as defined in Section 830.5, for longer  
6 than 12 months and not recovered by the owner or person  
7 who has lawful possession at the time it was taken into  
8 custody, shall be considered a nuisance and sold or  
9 destroyed as provided in subdivision (c) of Section 12028.  
10 Firearms or other deadly weapons not recovered within  
11 12 months due to an extended hearing process as  
12 provided in subdivision (i), are not subject to destruction  
13 until the court issues a decision, and then only if the court  
14 does not order the return of the firearm or other deadly  
15 weapon to the owner.

16 (e) In those cases where a law enforcement agency has  
17 reasonable cause to believe that the return of a firearm  
18 or other deadly weapon would be likely to result in  
19 endangering the victim or the person reporting the  
20 assault or threat, the agency shall advise the owner of the  
21 firearm or other deadly weapon, and within 10 days of the  
22 seizure, initiate a petition in superior court to determine  
23 if the firearm or other deadly weapon should be returned.

24 (f) The law enforcement agency shall inform the  
25 owner or person who had lawful possession of the firearm  
26 or other deadly weapon, at that person's last known  
27 address by registered mail, return receipt requested, that  
28 he or she has 30 days from the date of receipt of the notice  
29 to respond to the court clerk to confirm his or her desire  
30 for a hearing, and that the failure to respond shall result  
31 in a default order forfeiting the confiscated firearm or  
32 other deadly weapon. For the purposes of this  
33 subdivision, the person's last known address shall be  
34 presumed to be the address provided to the law  
35 enforcement officer by that person at the time of the  
36 family violence incident. In the event the person whose  
37 firearm or other deadly weapon was seized does not  
38 reside at the last address provided to the agency, the  
39 agency shall make a diligent, good faith effort to learn the



1 whereabouts of the person and to comply with these  
2 notification requirements.

3 (g) If the person requests a hearing, the court clerk  
4 shall set a hearing no later than 30 days from receipt of  
5 that request. The court clerk shall notify the person, the  
6 law enforcement agency involved, and the district  
7 attorney of the date, time, and place of the hearing.  
8 Unless it is shown by clear and convincing evidence that  
9 the return of the firearm or other deadly weapon would  
10 result in endangering the victim or the person reporting  
11 the assault or threat, the court shall order the return of the  
12 firearm or other deadly weapon and shall award  
13 reasonable attorney's fees to the prevailing party.

14 (h) If the person does not request a hearing or does not  
15 otherwise respond within 30 days of the receipt of the  
16 notice, the law enforcement agency may file a petition for  
17 an order of default and may dispose of the firearm or  
18 other deadly weapon as provided in Section 12028.

19 (i) If, at the hearing, the court does not order the  
20 return of the firearm or other deadly weapon to the  
21 owner or person who had lawful possession, that person  
22 may petition the court for a second hearing within 12  
23 months from the date of the initial hearing. If the owner  
24 or person who had lawful possession does not petition the  
25 court within this 12-month period for a second hearing or  
26 is unsuccessful at the second hearing in gaining return of  
27 the firearm or other deadly weapon, the firearm or other  
28 deadly weapon may be disposed of as provided in Section  
29 12028.

30 (j) The law enforcement agency, or the individual law  
31 enforcement officer, shall not be liable for any act in the  
32 good faith exercise of this section.

33 SEC. 16. No reimbursement is required by this act  
34 pursuant to Section 6 of Article XIII B of the California  
35 Constitution for certain costs that may be incurred by a  
36 local agency or school district because in that regard this  
37 act creates a new crime or infraction, eliminates a crime  
38 or infraction, or changes the penalty for a crime or  
39 infraction, within the meaning of Section 17556 of the  
40 Government Code, or changes the definition of a crime



1 within the meaning of Section 6 of Article XIII B of the  
2 California Constitution.

3 However, notwithstanding Section 17610 of the  
4 Government Code, if the Commission on State Mandates  
5 determines that this act contains other costs mandated by  
6 the state, reimbursement to local agencies and school  
7 districts for those costs shall be made pursuant to Part 7  
8 (commencing with Section 17500) of Division 4 of Title  
9 2 of the Government Code. If the statewide cost of the  
10 claim for reimbursement does not exceed one million  
11 dollars (\$1,000,000), reimbursement shall be made from  
12 the State Mandates Claims Fund.

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