

AMENDED IN ASSEMBLY JUNE 17, 1999

AMENDED IN SENATE APRIL 20, 1999

AMENDED IN SENATE APRIL 12, 1999

AMENDED IN SENATE MARCH 22, 1999

SENATE BILL

No. 218

Introduced by Senator Solis

(Principal coauthors: Assembly Members Jackson and Kuehl)

January 21, 1999

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 *appropriate counseling, as specified, and batterer's treatment counseling.*

This bill would ~~require~~, *instead, authorize* 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 as meeting the standards stated in a specified provision of law. *The bill would also provide that the courts shall, in consultation with local domestic violence shelters and programs, develop a resource list of referrals to appropriate community domestic violence programs and services to be provided to each applicant for such an order.*

(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. *Existing law provides that the programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.*

This bill would eliminate the January 1, 1998, sunset clause relating to the existence of the advisory council, *and would provide that the programs may offer up to 24 months of*



housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(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~~ *authorize* domestic violence *death* 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) 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



1 Family Code or Section 136.2 of the Penal Code in a
2 language other than English.

3 (b) The Judicial Council shall, by July 1, 2001, make the
4 court orders and forms specified in this subdivision
5 available in languages other than English, as Judicial
6 Council deems appropriate, to all courts. The Judicial
7 Council shall make available orders and forms pertaining
8 to protective orders issued pursuant to Sections 527.6 and
9 527.8 of the Code of Civil Procedure, Part 1 (commencing
10 with Section 6200) of Division 10 of the Family Code, and
11 Section 136.2 of the Penal Code.

12 SEC. 2. Section 6343 of the Family Code is amended
13 to read:

14 6343. (a) After notice and a hearing, the court may
15 ~~issue an order requiring any party to participate in~~
16 ~~counseling with a licensed mental health professional, or~~
17 ~~through other community programs and services that~~
18 ~~provide appropriate counseling, including, but not~~
19 ~~limited to, mental health or substance abuse services,~~
20 ~~where it is shown that the parties intend to continue to~~
21 ~~reside in the same household or have continued to reside~~
22 ~~in the same household after previous instances of~~
23 ~~domestic violence. The court may also order a restrained~~
24 ~~issue an order requiring the restrained party to~~
25 ~~participate in a batterer's treatment program approved~~
26 ~~by the probation department as provided in Section~~
27 ~~1203.097 of the Penal Code.~~

28 ~~(b) Where there has been a history of domestic~~
29 ~~violence between the parties or where a protective order,~~
30 ~~as defined in Section 6218, is in effect, at the request of the~~
31 ~~party alleging domestic violence in a written declaration~~
32 ~~under penalty of perjury or who is protected by the order,~~
33 ~~the parties shall participate in counseling separately and~~
34 ~~at separate times. The court may also order a restrained~~
35 ~~party to participate in a batterer's treatment program~~
36 ~~approved by the probation department as meeting the~~
37 ~~standards stated in subdivision (c) of Section 1203.097 of~~
38 ~~the Penal Code.~~



1 ~~(c) Each party shall bear the cost of his or her own~~
2 ~~counseling separately, unless good cause appears for a~~
3 ~~different apportionment.~~

4 *(b) The courts shall, in consultation with local*
5 *domestic violence shelters and programs, develop a*
6 *resource list of referrals to appropriate community*
7 *domestic violence programs and services to be provided*
8 *to each applicant for an order under this section.*

9 SEC. 3. Section 6389 of the Family Code is amended
10 to read:

11 6389. (a) A person subject to a protective order, as
12 defined in Section 6218, may not own or possess a firearm
13 while that protective order is in effect.

14 (b) The Judicial Council shall provide a notice on all
15 forms requesting a protective order that, at the hearing
16 for a protective order, the respondent shall be ordered to
17 relinquish possession or control of any firearms for a
18 period not to exceed the duration of the restraining order.

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



1 (d) If the respondent declines to relinquish possession
2 of any firearm based upon the assertion of the right
3 against self-incrimination, as provided by the Fifth
4 Amendment to the United States Constitution and
5 Section 15 of Article I of the California Constitution, the
6 court may grant use immunity for the act of relinquishing
7 the firearm.

8 (e) A local law enforcement agency may charge the
9 respondent a fee for the storage of any firearm pursuant
10 to this section. This fee shall not exceed the actual cost
11 incurred by the local law enforcement agency for the
12 storage of the firearm. For purposes of this subdivision,
13 “actual cost” means expenses directly related to taking
14 possession of a firearm, storing the firearm, and
15 surrendering possession of the firearm to a licensed
16 dealer as defined in Section 12071 of the Penal Code or to
17 the respondent.

18 (f) The restraining order requiring a person to
19 relinquish a firearm pursuant to subdivision (c) shall state
20 on its face that the firearm shall be relinquished to the
21 local law enforcement agency for that jurisdiction or sold
22 to a licensed gun dealer, and that proof of surrender or
23 sale shall be filed with the court within a specified period
24 of receipt of the order. The order shall also state on its face
25 the expiration date for relinquishment. Nothing in this
26 section shall limit a respondent’s right under existing law
27 to petition the court at a later date for modification of the
28 order.

29 (g) The restraining order requiring a person to
30 relinquish a firearm pursuant to subdivision (c) shall
31 prohibit the person from possessing or controlling any
32 firearm for the duration of the order. At the expiration of
33 the order, the local law enforcement agency shall return
34 possession of any surrendered firearm to the respondent,
35 within five days after the expiration of the
36 relinquishment order, unless the local law enforcement
37 agency determines that (1) the firearm has been stolen,
38 (2) the respondent is prohibited from possessing a
39 firearm because the respondent is in any prohibited class
40 for the possession of firearms, as defined in Sections 12021



1 and 12021.1 of the Penal Code and Sections 8100 and 8103
2 of the Welfare and Institutions Code, or (3) another
3 successive restraining order is used against the
4 respondent under this section. If the local law
5 enforcement agency determines that the respondent is
6 the legal owner of any firearm deposited with the local
7 law enforcement agency and is prohibited from
8 possessing any firearm, the respondent shall be entitled
9 to sell or transfer the firearm to a licensed dealer as
10 defined in Section 12071 of the Penal Code. If the firearm
11 has been stolen, the firearm shall be restored to the lawful
12 owner upon his or her identification of the firearm and
13 proof of ownership.

14 (h) The court may, as part of the relinquishment
15 order, grant an exemption from the relinquishment
16 requirements of this section for a particular firearm if the
17 respondent can show that a particular firearm is
18 necessary as a condition of continued employment and
19 that the current employer is unable to reassign the
20 respondent to another position where a firearm is
21 unnecessary. If an exemption is granted pursuant to this
22 subdivision, the order shall provide that the firearm shall
23 be in the physical possession of the respondent only
24 during scheduled work hours and during travel to and
25 from his or her place of employment.

26 (i) During the period of the relinquishment order, a
27 respondent is entitled to make one sale of all firearms that
28 are in the possession of a local law enforcement agency
29 pursuant to this section. A licensed gun dealer, who
30 presents a local law enforcement agency with a bill of sale
31 indicating that all firearms owned by the respondent that
32 are in the possession of the local law enforcement agency
33 have been sold by the respondent to the licensed gun
34 dealer, shall be given possession of those firearms, at the
35 location where a respondent's firearms are stored, within
36 five days of presenting the local law enforcement agency
37 with a bill of sale.

38 (j) The disposition of any unclaimed property under
39 this section shall be made pursuant to Section 1413 of the
40 Penal Code.



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

4 (l) If the respondent notifies the court that he or she
5 owns a firearm that is not in his or her immediate
6 possession, the court may limit the order to exclude that
7 firearm if the judge is satisfied the respondent is unable
8 to gain access to that firearm while the protective order
9 is in effect.

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

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

18 124250. (a) The following definitions shall apply for
19 purposes of this section:

20 (1) "Domestic violence" means the infliction or threat
21 of physical harm against past or present adult or
22 adolescent female intimate partners, and shall include
23 physical, sexual, and psychological abuse against the
24 woman, and is a part of a pattern of assaultive, coercive,
25 and controlling behaviors directed at achieving
26 compliance from or control over, that woman.

27 (2) "Shelter based" means an established system of
28 services where battered women and their children may
29 be provided safe or confidential emergency housing on a
30 24-hour basis, including, but not limited to, hotel or motel
31 arrangements, haven, and safe houses.

32 (3) "Emergency shelter" means a confidential or safe
33 location that provides emergency housing on a 24-hour
34 basis for battered women and their children.

35 (b) The Maternal and Child Health Branch of the
36 State Department of Health Services shall administer a
37 comprehensive shelter-based services grant program to
38 battered women's shelters pursuant to this section.

39 (c) The Maternal and Child Health Branch shall
40 administer grants, awarded as the result of a request for



1 application process, to battered women's shelters that
2 propose to maintain shelters or services previously
3 granted funding pursuant to this section, to expand
4 existing services or create new services, and to establish
5 new battered women's shelters to provide services, in any
6 of the following four areas:

7 (1) Emergency shelter to women and their children
8 escaping violent family situations.

9 (2) Transitional housing programs to help women and
10 their children find housing and jobs so that they are not
11 forced to choose between returning to a violent
12 relationship or becoming homeless. The programs may
13 offer up to ~~18~~ 24 months of housing, case management, job
14 training and placement, counseling, support groups, and
15 classes in parenting and family budgeting.

16 (3) Legal and other types of advocacy and
17 representation to help women and their children pursue
18 the appropriate legal options.

19 (4) Other support services for battered women and
20 their children.

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

26 (1) Seven members appointed by the Governor.

27 (2) Three members appointed by the Speaker of the
28 Assembly.

29 (3) Three members appointed by the Senate
30 Committee on Rules.

31 (4) Two nonvoting ex officio members who shall be
32 Members of the Legislature, one appointed by the
33 Speaker of the Assembly and one appointed by the Senate
34 Committee on Rules. Any Member of the Legislature
35 appointed to the council shall meet with, and participate
36 in the activities of, the council to the extent that
37 participation is not incompatible with his or her position
38 as a Member of the Legislature.

39 The membership of the council shall consist of domestic
40 violence advocates, battered women service providers,



1 and representatives of women’s organizations, law
2 enforcement, and other groups involved with domestic
3 violence. At least one-half of the council membership
4 shall consist of domestic violence advocates or battered
5 women service providers from organizations such as the
6 California Alliance Against Domestic Violence.

7 It is the intent of the Legislature that the council
8 membership reflect the ethnic, racial, cultural, and
9 geographic diversity of the state.

10 (e) The department shall collaborate closely with the
11 council in the development of funding priorities, the
12 framing of the Request for Proposals, and the solicitation
13 of proposals.

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

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

27 (g) It is the intent of the Legislature that services
28 funded by this program include services in underserved
29 and ethnic and racial communities. Therefore, the
30 Maternal and Child Health Branch of the State
31 Department of Health Services shall do all of the
32 following:

33 (1) Fund shelters pursuant to this section that reflect
34 the ethnic, racial, economic, cultural, and geographic
35 diversity of the state.

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



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

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

7 (1) Provide matching funds or in-kind contributions
8 equivalent to not less than 20 percent of the grant they
9 would receive. The matching funds or in-kind
10 contributions may come from other governmental or
11 private sources.

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

21 SEC. 5. Section 166 of the Penal Code is amended to
22 read:

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

26 (1) Disorderly, contemptuous, or insolent behavior
27 committed during the sitting of any court of justice, in
28 immediate view and presence of the court, and directly
29 tending to interrupt its proceedings or to impair the
30 respect due to its authority.

31 (2) Behavior as specified in paragraph (1) committed
32 in the presence of any referee, while actually engaged in
33 any trial or hearing, pursuant to the order of any court, or
34 in the presence of any jury while actually sitting for the
35 trial of a cause, or upon any inquest or other proceedings
36 authorized by law.

37 (3) Any breach of the peace, noise, or other
38 disturbance directly tending to interrupt the proceedings
39 of any court.



1 (4) Willful disobedience of any process or order
2 lawfully issued by any court.

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

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

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

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

13 (9) Presenting to any court having power to pass
14 sentence upon any prisoner under conviction, or to any
15 member of the court, any affidavit or testimony or
16 representation of any kind, verbal or written, in
17 aggravation or mitigation of the punishment to be
18 imposed upon the prisoner, except as provided in this
19 code.

20 (b) (1) Any person who is guilty of contempt of court
21 under paragraph (4) of subdivision (a) by willfully
22 contacting a victim by phone, mail, or directly and who
23 has been previously convicted of a violation of Section
24 646.9 shall be punished by imprisonment in a county jail
25 for not more than one year, by a fine of five thousand
26 dollars (\$5,000), or by both that fine and imprisonment.

27 (2) For the purposes of sentencing under this
28 subdivision, each contact shall constitute a separate
29 violation of this subdivision.

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

33 (c) (1) Notwithstanding paragraph (4) of subdivision
34 (a), any willful and knowing violation of any protective
35 order or stay away court order issued pursuant to Section
36 136.2, in a pending criminal proceeding involving
37 domestic violence, as defined in Section 13700, or issued
38 as a condition of probation after a conviction in a criminal
39 proceeding involving domestic violence, as defined in
40 Section 13700, which is an order described in paragraph



1 (3), shall constitute contempt of court, a misdemeanor,
2 punishable by imprisonment in a county jail for not more
3 than one year, by a fine of not more than one thousand
4 dollars (\$1,000), or by both that imprisonment and fine.

5 (2) If a violation of paragraph (1) results in a physical
6 injury, the person shall be imprisoned in a county jail for
7 at least 48 hours, whether a fine or imprisonment is
8 imposed, or the sentence is suspended.

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

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

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

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

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

26 (5) The prosecuting agency of each county shall have
27 the primary responsibility for the enforcement of the
28 orders described in paragraph (1).

29 (d) (1) If probation is granted upon conviction of a
30 violation of subdivision (c), the court shall require
31 participation in a batterer’s treatment program as a
32 condition of probation, unless, considering all of the facts
33 and circumstances, the court finds participating in a
34 batterer’s treatment program inappropriate for the
35 defendant.

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



1 (A) That the defendant make payments to a battered
2 women's shelter, up to a maximum of one thousand
3 dollars (\$1,000).

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

8 (3) For any order to pay a fine, make payments to a
9 battered women's shelter, or pay restitution as a
10 condition of probation under this subdivision or
11 subdivision (c), the court shall make a determination of
12 the defendant's ability to pay. In no event shall any order
13 to make payments to a battered women's shelter be made
14 if it would impair the ability of the defendant to pay direct
15 restitution to the victim or court-ordered child support.

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

26 (5) Any person violating any order described in
27 subdivision (c), may be punished for any substantive
28 offenses described under Section 136.1 or 646.9. No
29 finding of contempt shall be a bar to prosecution for a
30 violation of Section 136.1 or 646.9. However, any person
31 held in contempt for a violation of subdivision (c) shall be
32 entitled to credit for any punishment imposed as a result
33 of that violation against any sentence imposed upon
34 conviction of an offense described in Section 136.1 or
35 646.9. Any conviction or acquittal for any substantive
36 offense under Section 136.1 or 646.9 shall be a bar to a
37 subsequent punishment for contempt arising out of the
38 same act.

39 SEC. 6. Section 273d of the Penal Code is amended to
40 read:



1 273d. (a) Any person who willfully inflicts upon a
2 child any cruel or inhuman corporal punishment or an
3 injury resulting in a traumatic condition is guilty of a
4 felony and shall be punished by imprisonment in the state
5 prison for two, four, or six years, or in a county jail for not
6 more than one year, by a fine of up to six thousand dollars
7 (\$6,000), or by both that imprisonment and fine.

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

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

19 (1) A mandatory minimum period of probation of 36
20 months.

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

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

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



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

6 (5) The court may waive any of the above minimum
7 conditions of probation upon a finding that the condition
8 would not be in the best interests of justice. The court
9 shall state on the record its reasons for any waiver.

10 SEC. 7. Section 273.5 of the Penal Code is amended to
11 read:

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

23 (b) Holding oneself out to be the husband or wife of
24 the person with whom one is cohabiting is not necessary
25 to constitute cohabitation as the term is used in this
26 section.

27 (c) As used in this section, “traumatic condition”
28 means a condition of the body, such as a wound or
29 external or internal injury, whether of a minor or serious
30 nature, caused by a physical force.

31 (d) For the purpose of this section, a person shall be
32 considered the father or mother of another person’s child
33 if the alleged male parent is presumed the natural father
34 under Sections 7611 and 7612 of the Family Code.

35 ~~(e) In any case in which a person is convicted of~~
36 ~~violating this section and probation is granted, the court~~
37 ~~shall require participation in a batterer’s treatment~~
38 ~~program as a condition of probation, as specified in~~



1 (e) If probation is granted, the court shall sentence the
2 defendant consistent with the provisions of Section
3 1203.097. Section 1203.097.

4 (f) If probation is granted, or the execution or
5 imposition of a sentence is suspended, for any person
6 convicted under subdivision (a) who previously has been
7 convicted of a violation of subdivision (a) for an offense
8 that occurred within seven years of the most recent
9 conviction, it shall be a condition, of probation, in addition
10 to the provisions contained in Section 1203.097, that he or
11 she be imprisoned in a county jail for not less than 15 days.
12 If the defendant has been previously convicted of two or
13 more offenses that occurred within seven years of a
14 violation of subdivision (a), it shall be a condition of
15 probation, in addition to the provisions contained in
16 Section 1203.097, that he or she be imprisoned in a county
17 jail for not less than 60 days. Any person convicted of
18 violating Section 273.5, for acts occurring within seven
19 years of a previous conviction under subdivision (d) of
20 Section 243, or under Section 243.4, 244, 244.5, or 273.5, if
21 the victim of the prior offense is a person designated
22 under subdivision (a) of Section 273.5, shall be punished
23 by imprisonment in a county jail for not more than one
24 year, or by imprisonment in the state prison for two, four,
25 or five years, or by both imprisonment and a fine of up to
26 ten thousand dollars (\$10,000). However, the court, upon
27 a showing of good cause, may find that the mandatory
28 minimum imprisonment, as required by this subdivision,
29 shall not be imposed and good cause shall be stated on the
30 record.

31 (g) If probation is granted upon conviction of a
32 violation of subdivision (a), the conditions of probation
33 may include, consistent with the terms of probation
34 imposed pursuant to Section 1203.97, in lieu of a fine, one
35 or both of the following requirements:

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

39 (2) That the defendant reimburse the victim for
40 reasonable costs of counseling and other reasonable



1 expenses that the court finds are the direct result of the
2 defendant's offense.

3 For any order to pay a fine, make payments to a
4 battered women's shelter, or pay restitution as a
5 condition of probation under this subdivision, the court
6 shall make a determination of the defendant's ability to
7 pay. In no event shall any order to make payments to a
8 battered women's shelter be made if it would impair the
9 ability of the defendant to pay direct restitution to the
10 victim or court-ordered child support. Where the injury
11 to a married person is caused in whole or in part by the
12 criminal acts of his or her spouse in violation of this
13 section, the community property may not be used to
14 discharge the liability of the offending spouse for
15 restitution to the injured spouse, required by Section
16 1203.04, as operative on or before August 2, 1995, or
17 Section 1202.4, or to a shelter for costs with regard to the
18 injured spouse and dependents, required by this section,
19 until all separate property of the offending spouse is
20 exhausted.

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

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

23 SEC. 10. Section 273.6 of the Penal Code is amended
24 to read:

25 273.6. (a) Any intentional and knowing violation of a
26 protective order, as defined in Section 6218 of the Family
27 Code, or of an order issued pursuant to Section 527.6 or
28 527.8 of the Code of Civil Procedure is a misdemeanor
29 punishable by a fine of not more than one thousand
30 dollars (\$1,000), or by imprisonment in a county jail for
31 not more than one year, or by both that fine and
32 imprisonment.

33 (b) In the event of a violation of subdivision (a) which
34 results in physical injury, the person shall be punished by
35 a fine of not more than two thousand dollars (\$2,000), or
36 by imprisonment in a county jail for not less than 30 days
37 nor more than one year, or by both that fine and
38 imprisonment. However, if the person is imprisoned in a
39 county jail for at least 48 hours, the court may, in the
40 interests of justice and for reasons stated on the record,



1 reduce or eliminate the 30-day minimum imprisonment
2 required by this subdivision. In determining whether to
3 reduce or eliminate the minimum imprisonment
4 pursuant to this subdivision, the court shall consider the
5 seriousness of the facts before the court, whether there
6 are additional allegations of a violation of the order during
7 the pendency of the case before the court, the probability
8 of future violations, the safety of the victim, and whether
9 the defendant has successfully completed or is making
10 progress with counseling.

11 (c) Subdivisions (a) and (b) shall apply to the
12 following court orders:

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

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

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

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

22 (d) A subsequent conviction for a violation of an order
23 described in subdivision (a), occurring within seven
24 years of a prior conviction for a violation of an order
25 described in subdivision (a) and involving an act of
26 violence or “a credible threat” of violence, as defined in
27 subdivision (c) of Section 139, is punishable by
28 imprisonment in a county jail not to exceed one year, or
29 in the state prison.

30 (e) In the event of a subsequent conviction for a
31 violation of an order described in subdivision (a) for an
32 act occurring within one year of a prior conviction for a
33 violation of an order described in subdivision (a) that
34 results in physical injury to ~~the same~~ a victim, the person
35 shall be punished by a fine of not more than two thousand
36 dollars (\$2,000), or by imprisonment in a county jail for
37 not less than six months nor more than one year, by both
38 that fine and imprisonment, or by imprisonment in the
39 state prison. However, if the person is imprisoned in a
40 county jail for at least 30 days, the court may, in the



1 interests of justice and for reasons stated in the record,
2 reduce or eliminate the six-month minimum
3 imprisonment required by this subdivision. In
4 determining whether to reduce or eliminate the
5 minimum imprisonment pursuant to this subdivision, the
6 court shall consider the seriousness of the facts before the
7 court, whether there are additional allegations of a
8 violation of the order during the pendency of the case
9 before the court, the probability of future violations, the
10 safety of the victim, and whether the defendant has
11 successfully completed or is making progress with
12 counseling.

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

16 ~~(g) The court may order a person convicted under this
17 section to undergo counseling, and, if appropriate, to
18 complete a batterer's treatment program.~~

19 ~~(h)~~

20 (g) If probation is granted upon conviction of a
21 violation of subdivision (a), (b), or (c), the conditions of
22 probation may include, in lieu of a fine, one or both of the
23 following requirements:

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

27 (2) That the defendant reimburse the victim for
28 reasonable costs of counseling and other reasonable
29 expenses that the court finds are the direct result of the
30 defendant's offense.

31 ~~(i)~~

32 (h) For any order to pay a fine, make payments to a
33 battered women's shelter, or pay restitution as a
34 condition of probation under subdivision (e), the court
35 shall make a determination of the defendant's ability to
36 pay. In no event shall any order to make payments to a
37 battered women's shelter be made if it would impair the
38 ability of the defendant to pay direct restitution to the
39 victim or court-ordered child support. Where the injury
40 to a married person is caused in whole or in part by the



1 criminal acts of his or her spouse in violation of this
2 section, the community property may not be used to
3 discharge the liability of the offending spouse for
4 restitution to the injured spouse, required by Section
5 1203.04, as operative on or before August 2, 1995, or
6 Section 1202.4, or to a shelter for costs with regard to the
7 injured spouse and dependents, required by this section,
8 until all separate property of the offending spouse is
9 exhausted.

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

12 836. (a) A peace officer may arrest a person in
13 obedience to a warrant, or, pursuant to the authority
14 granted to him or her by Chapter 4.5 (commencing with
15 Section 830) of Title 3 of Part 2, without a warrant, may
16 arrest a person whenever any of the following
17 circumstances occur:

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

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

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

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

31 (c) (1) When a peace officer is responding to a call
32 alleging a violation of a domestic violence protective or
33 restraining order issued under the Family Code, Section
34 527.6 of the Code of Civil Procedure, Section 213.5 of the
35 Welfare and Institutions Code, Section 136.2 of this code,
36 or paragraph (2) of subdivision (a) of Section 1203.097 of
37 this code, or of a domestic violence protective or
38 restraining order issued by the court of another state,
39 tribe, or territory and the peace officer has probable
40 cause to believe that the person against whom the order



1 is issued has notice of the order and has committed an act
2 in violation of the order, the officer shall, consistent with
3 subdivision (b) of Section 13701, make a lawful arrest of
4 the person without a warrant and take that person into
5 custody whether or not the violation occurred in the
6 presence of the arresting officer. The officer shall, as soon
7 as possible after the arrest, confirm with the appropriate
8 authorities or the Domestic Violence Protection Order
9 Registry maintained pursuant to Section 6380 of the
10 Family Code that a true copy of the protective order has
11 been registered, unless the victim provides the officer
12 with a copy of the protective order.

13 (2) The person against whom a protective order has
14 been issued shall be deemed to have notice of the order
15 if the victim presents to the officer proof of service of the
16 order, the officer confirms with the appropriate
17 authorities that a true copy of the proof of service is on
18 file, or the person against whom the protective order was
19 issued was present at the protective order hearing or was
20 informed by a peace officer of the contents of the
21 protective order.

22 (3) In situations where mutual protective orders have
23 been issued under Division 10 (commencing with Section
24 6200) of the Family Code, liability for arrest under this
25 subdivision applies only to those persons who are
26 reasonably believed to have been the primary aggressor.
27 In those situations, prior to making an arrest under this
28 subdivision, the peace officer shall make reasonable
29 efforts to identify, and may arrest, the primary aggressor
30 involved in the incident. The primary aggressor is the
31 person determined to be the most significant, rather than
32 the first, aggressor. In identifying the primary aggressor,
33 an officer shall consider (A) the intent of the law to
34 protect victims of domestic violence from continuing
35 abuse, (B) the threats creating fear of physical injury, (C)
36 the history of domestic violence between the persons
37 involved, and (D) whether either person involved acted
38 in self-defense.

39 (d) Notwithstanding paragraph (1) of subdivision (a),
40 if a suspect commits an assault or battery upon a current



1 or former spouse, fiancé, fiancée, a current or former
2 cohabitant as defined in Section 6209 of the Family Code,
3 a person with whom the suspect currently is having or has
4 previously had an engagement relationship, a person
5 with whom the suspect has parented a child, or is
6 presumed to have parented a child pursuant to the
7 Uniform Parentage Act (Part 3 (commencing with
8 Section 7600) of Division 12 of the Family Code), a child
9 of the suspect, a child whose parentage by the suspect is
10 the subject of an action under the Uniform Parentage Act,
11 a child of a person in one of the above categories, or any
12 other person related to the suspect by consanguinity or
13 affinity within the second degree, a peace officer may
14 arrest the suspect without a warrant where both of the
15 following circumstances apply:

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

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

23 (e) In addition to the authority to make an arrest
24 without a warrant pursuant to paragraphs (1) and (3) of
25 subdivision (a), a peace officer may, without a warrant,
26 arrest a person for a violation of Section 12025 when all of
27 the following apply:

28 (1) The officer has reasonable cause to believe that the
29 person to be arrested has committed the violation of
30 Section 12025.

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

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

38 SEC. 12. Section 1328 of the Penal Code is amended
39 to read:



1 1328. (a) A subpoena may be served by any person,
2 except that the defendant may not serve a subpoena in
3 the criminal action to which he or she is a party, but a
4 peace officer shall serve in his or her county any subpoena
5 delivered to him or her for service, either on the part of
6 the people or of the defendant, and shall, without delay,
7 make a written return of the service, subscribed by him
8 or her, stating the time and place of service. The service
9 is made by delivering a copy of the subpoena to the
10 witness personally.

11 (b) (1) When service is to be made on a minor, service
12 shall be made on the minor's parent, guardian,
13 conservator, or similar fiduciary, or if one of them cannot
14 be located with reasonable diligence, then service shall be
15 made on any person having the care or control of the
16 minor or with whom the minor resides or by whom the
17 minor is employed, unless the parent, guardian,
18 conservator, or fiduciary or other specified person is the
19 defendant, and on the minor if the minor is 12 years of age
20 or older. The person so served shall have the obligation
21 of producing the minor at the time and place designated
22 in the subpoena. A willful failure to produce the minor is
23 punishable as a contempt pursuant to Section 1218 of the
24 Code of Civil Procedure. The person so served shall be
25 allowed the fees and expenses that are provided for
26 subpoenaed witnesses.

27 (2) The court having jurisdiction of the case shall have
28 the power to appoint a guardian ad litem to receive
29 service of a subpoena of the child and shall have the
30 power to produce the child ordered to court under this
31 section.

32 (c) Whenever any peace officer designated in Section
33 830 is required as a witness before any court or magistrate
34 in any action or proceeding in connection with a matter
35 regarding an event or transaction which he or she has
36 perceived or investigated in the course of his or her
37 duties, a criminal subpoena issued pursuant to this
38 chapter requiring his or her attendance may be served
39 either by delivering a copy to the peace officer personally
40 or by delivering two copies to his or her immediate



1 superior or agent designated by his or her immediate
2 superior to receive the service; or, in those counties
3 where the local agencies have consented with the
4 marshal's office or sheriff's office, where appropriate, to
5 participate, by sending a copy by electronic means,
6 including electronic mail, computer modem, facsimile, or
7 other electronic means, to his or her immediate superior
8 or agent designated by the immediate superior to receive
9 the service. If the service is made by electronic means, the
10 immediate superior or agency designated by his or her
11 immediate superior shall acknowledge receipt of the
12 subpoena by telephone or electronic means to the sender
13 of origin. If service is made upon the immediate superior
14 or agent designated by the immediate superior, the
15 immediate superior or the agent shall deliver a copy of
16 the subpoena to the peace officer as soon as possible and
17 in no event later than a time which will enable the peace
18 officer to comply with the subpoena.

19 (d) If the immediate superior or his or her designated
20 agent upon whom service is attempted to be made knows
21 he or she will be unable to deliver a copy of the subpoena
22 to the peace officer within a time which will allow the
23 peace officer to comply with the subpoena, the
24 immediate superior or agent may refuse to accept service
25 of process and is excused from any duty, liability, or
26 penalty arising in connection with the service, upon
27 notifying the server of that fact.

28 (e) If the immediate superior or his or her agent is
29 tendered service of a subpoena less than five working
30 days prior to the date of hearing, and he or she is not
31 reasonably certain he or she can complete the service, he
32 or she may refuse acceptance.

33 (f) If the immediate superior or agent upon whom
34 service has been made, subsequently determines that he
35 or she will be unable to deliver a copy of the subpoena to
36 the peace officer within a time which will allow the peace
37 officer to comply with the subpoena, the immediate
38 superior or agent shall notify the server or his or her office
39 or agent not less than 48 hours prior to the hearing date
40 indicated on the subpoena, and is thereby excused from



1 any duty, liability, or penalty arising because of his or her
2 failure to deliver a copy of the subpoena to the peace
3 officer. The server, so notified, is therewith responsible
4 for preparing the written return of service and for
5 notifying the originator of the subpoena if required.

6 (g) Notwithstanding subdivision (c), in the case of
7 peace officers employed by the California Highway
8 Patrol, if service is made upon the immediate superior or
9 upon an agent designated by the immediate superior of
10 the peace officer, the immediate superior or the agent
11 shall deliver a copy of the subpoena to the peace officer
12 on the officer's first workday following acceptance of
13 service of process. In this case, failure of the immediate
14 superior or the designated agent to deliver the subpoena
15 shall not constitute a defect in service.

16 SEC. 13. Section 11163.3 of the Penal Code is
17 amended to read:

18 11163.3. (a) A county may establish an interagency
19 domestic violence death review team to assist local
20 agencies in identifying and reviewing domestic violence
21 deaths, including homicides and suicides, and facilitating
22 communication among the various agencies involved in
23 domestic violence cases. Interagency domestic violence
24 death review teams have been used successfully to ensure
25 that incidents of domestic violence and abuse are
26 recognized and that agency involvement is reviewed to
27 develop recommendations for policies and protocols for
28 community prevention and intervention initiatives to
29 reduce and eradicate the incidence of domestic violence.

30 (b) For purposes of this section, "abuse" has the
31 meaning set forth in Section 6203 of the Family Code and
32 "domestic violence" has the meaning set forth in Section
33 6211 of the Family Code.

34 (c) A county may develop a protocol that may be used
35 as a guideline to assist coroners and other persons who
36 perform autopsies on domestic violence victims in the
37 identification of domestic violence, in the determination
38 of whether domestic violence contributed to death or
39 whether domestic violence had occurred prior to death,
40 but was not the actual cause of death, and in the proper



1 written reporting procedures for domestic violence,
2 including the designation of the cause and mode of death.

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

5 (1) Experts in the field of forensic pathology.

6 (2) Medical personnel with expertise in domestic
7 violence abuse.

8 (3) Coroners and medical examiners.

9 (4) Criminologists.

10 (5) District attorneys and city attorneys.

11 (6) Domestic violence shelter service staff and
12 battered women's advocates.

13 (7) Law enforcement personnel.

14 (8) Representatives of local agencies that are involved
15 with domestic violence abuse reporting.

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

18 (10) Representatives of local child abuse agencies.

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

21 (e) An oral or written communication or a document
22 shared within or produced by a domestic violence death
23 review team related to a domestic violence death review
24 is confidential and not subject to disclosure or
25 discoverable by a third party. An oral or written
26 communication or a document provided by a third party
27 to a domestic violence death review team, or between a
28 third party and a domestic violence death review team,
29 is confidential and not subject to disclosure or
30 discoverable by a third party. Notwithstanding the
31 foregoing, recommendations of a domestic violence
32 death review team upon the completion of a review may
33 be disclosed at the discretion of a majority of the members
34 of the domestic violence death review team.

35 (f) Each organization represented on a domestic
36 violence death review team may share with other
37 members of the team information in its possession
38 concerning the victim who is the subject of the review or
39 any person who was in contact with the victim and any
40 other information deemed by the organization to be



1 pertinent to the review. Any information shared by an
2 organization with other members of a team is
3 confidential. This provision shall permit the disclosure to
4 members of the team of any information deemed
5 confidential, privileged, or prohibited from disclosure by
6 any other statute.

7 ~~(g) Any member of the domestic violence death~~
8 ~~review team, their agent or employee who, without the~~
9 ~~prior approval of all of the members of the team, discloses~~
10 ~~or causes to be disclosed to anyone or any agency not a~~
11 ~~member of the team, any information obtained during~~
12 ~~investigations conducted under the authority of this~~
13 ~~statute, is guilty of a misdemeanor, and punishable by a~~
14 ~~fine of up to ten thousand dollars (\$10,000) and up to one~~
15 ~~year in a county jail.~~

16 ~~(h)~~

17 (g) Written and oral information may be disclosed to
18 a domestic violence death review team established
19 pursuant to this section. The team may make a request in
20 writing for the information sought and any person with
21 information of the kind described in paragraph (2) of this
22 subdivision may rely on the request in determining
23 whether information may be disclosed to the team.

24 (1) No individual or agency that has information
25 governed by this subdivision shall be required to disclose
26 information. The intent of this subdivision is to allow the
27 voluntary disclosure of information by the individual or
28 agency that has the information.

29 (2) The following information may be disclosed
30 pursuant to this subdivision:

31 (A) Notwithstanding Section 56.10 of the Civil Code,
32 medical information.

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

35 (C) Notwithstanding Section 15633.5 of the Welfare
36 and Institutions Code, information from elder abuse
37 reports and investigations, except the identity of persons
38 who have made reports, which shall not be disclosed.

39 (D) Notwithstanding Section 11167.5 of the Penal
40 Code, information from child abuse reports and



1 investigations, except the identity of persons who have
2 made reports, which shall not be disclosed.

3 (E) State summary criminal history information,
4 criminal offender record information, and local summary
5 criminal history information, as defined in Sections 11075,
6 11105, and 13300 of the Penal Code.

7 (F) Notwithstanding Section 11163.2 of the Penal
8 Code, information pertaining to reports by health
9 practitioners of persons suffering from physical injuries
10 inflicted by means of a firearm or of persons suffering
11 physical injury where the injury is a result of assaultive or
12 abusive conduct, and information relating to whether a
13 physician referred the person to local domestic violence
14 services as recommended by Section 11161 of the Penal
15 Code.

16 (G) Notwithstanding Section 827 of the Welfare and
17 Institutions Code, information in any juvenile court
18 proceeding.

19 (H) Information maintained by the Family Court,
20 including information relating to the Family Conciliation
21 Court Law pursuant to Section 1818 of the Family Code,
22 and Mediation of Custody and Visitation Issues pursuant
23 to Section 3177 of the Family Code.

24 (I) Information provided to probation officers in the
25 course of the performance of their duties, including, but
26 not limited to, the duty to prepare reports pursuant to
27 Section 1203.10 of the Penal Code, as well as the
28 information on which these reports are based.

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

32 (3) The disclosure of written and oral information
33 authorized under this subdivision shall apply
34 notwithstanding Sections 2263, 2918, 4982, and 6068 of the
35 Business and Professions Code, or the lawyer-client
36 privilege protected by Article 3 (commencing with
37 Section 950) of Chapter 4 of Division 8 of the Evidence
38 Code, the physician-patient privilege protected by
39 Article 6 (commencing with Section 990) of Chapter 4 of
40 Division 8 of the Evidence Code, the



1 psychotherapist-patient privilege protected by Article 7
2 (commencing with Section 1010) of Chapter 4 of Division
3 8 of the Evidence Code, the sexual assault
4 victim-counselor privilege protected by Article 8.5
5 (commencing with Section 1035) of Chapter 4 of Division
6 8 of the Evidence Code, and the domestic violence
7 victim-counselor privilege protected by Article 8.7
8 (commencing with Section 1037) of Chapter 4 of Division
9 8 of the Evidence Code.

10 SEC. 14. Section 11163.6 is added to the Penal Code,
11 to read:

12 11163.6. In order to ensure consistent and uniform
13 results, data—~~shall~~ *may* be collected and summarized by
14 the domestic violence death review teams to show the
15 statistical occurrence of—~~all~~ domestic violence deaths in
16 the team’s county that occur under the following
17 circumstances:

18 (a) The deceased was a victim of a homicide
19 committed by a current or former spouse, fiancé, or
20 dating partner.

21 (b) The deceased was the victim of a suicide, was the
22 current or former spouse, fiancé, or dating partner of the
23 perpetrator and was also the victim of previous acts of
24 domestic violence.

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

28 (d) The deceased was the perpetrator of the homicide
29 of a former or current spouse, fiancé, or dating partner
30 and the perpetrator was also the victim of a homicide
31 related to the domestic homicide incident.

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

34 (f) The deceased was a current or former spouse,
35 fiancé, or dating partner of the current or former spouse,
36 fiancé, or dating partner of the perpetrator.

37 (g) The deceased was a law enforcement officer,
38 emergency medical personnel, or other agency
39 responding to a domestic violence incident.



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

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

5 (j) The deceased was a person not included in the
6 above categories and the homicide was related to
7 domestic violence.

8 SEC. 15. Section 12028.5 of the Penal Code is
9 amended to read:

10 12028.5. (a) As used in this section, the following
11 definitions shall apply:

12 (1) “Abuse” means any of the following:

13 (A) Intentionally or recklessly to cause or attempt to
14 cause bodily injury.

15 (B) Sexual assault.

16 (C) To place a person in reasonable apprehension of
17 imminent serious bodily injury to that person or to
18 another.

19 (D) To molest, attack, strike, stalk, destroy personal
20 property, or violate the terms of a domestic violence
21 protective order issued pursuant to Part 4 (commencing
22 with Section 6300) of Division 10 of the Family Code.

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

25 (A) A spouse or former spouse.

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

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

30 (D) A person with whom the respondent has had a
31 child, where the presumption applies that the male
32 parent is the father of the child of the female parent
33 under the Uniform Parentage Act (Part 3 (commencing
34 with Section 7600) of Division 12 of the Family Code).

35 (E) A child of a party or a child who is the subject of
36 an action under the Uniform Parentage Act, where the
37 presumption applies that the male parent is the father of
38 the child to be protected.

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



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

4 (b) A sheriff, undersheriff, deputy sheriff, marshal,
5 deputy marshal, or police officer of a city, as defined in
6 subdivision (a) of Section 830.1, a peace officer of the
7 Department of the California Highway Patrol, as defined
8 in subdivision (a) of Section 830.2, a member of the
9 University of California Police Department, as defined in
10 subdivision (b) of Section 830.2, an officer listed in Section
11 830.6 while acting in the course and scope of his or her
12 employment as a peace officer, a member of a California
13 State University Police Department, as defined in
14 subdivision (c) of Section 830.2, a peace officer of the
15 Department of Parks and Recreation, as defined in
16 subdivision (f) of Section 830.2, a peace officer, as defined
17 in subdivision (d) of Section 830.31, and a peace officer,
18 as defined in Section 830.5, who is at the scene of a
19 domestic violence incident involving a threat to human
20 life or a physical assault, shall take temporary custody of
21 any firearm or other deadly weapon in plain sight or
22 discovered pursuant to a consensual search as necessary
23 for the protection of the peace officer or other persons
24 present. Upon taking custody of a firearm or other deadly
25 weapon, the officer shall give the owner or person who
26 possessed the firearm a receipt. The receipt shall describe
27 the firearm or other deadly weapon and list any
28 identification or serial number on the firearm. The
29 receipt shall indicate where the firearm or other deadly
30 weapon can be recovered and the date after which the
31 owner or possessor can recover the firearm or other
32 deadly weapon. No firearm or other deadly weapon shall
33 be held less than 48 hours. Except as provided in
34 subdivision (e), if a firearm or other deadly weapon is not
35 retained for use as evidence related to criminal charges
36 brought as a result of the—~~family~~ *domestic* violence
37 incident or is not retained because it was illegally
38 possessed, the firearm or other deadly weapon shall be
39 made available to the owner or person who was in lawful
40 possession 48 hours after the seizure or as soon thereafter



1 as possible, but no later than 72 hours after the seizure. In
2 any civil action or proceeding for the return of firearms
3 or ammunition or other deadly weapon seized by any
4 state or local law enforcement agency and not returned
5 within 72 hours following the initial seizure, except as
6 provided in subdivision (c), the court shall allow
7 reasonable attorney's fees to the prevailing party.

8 (c) Any firearm or other deadly weapon which has
9 been taken into custody that has been stolen shall be
10 restored to the lawful owner, as soon as its use for
11 evidence has been served, upon his or her identification
12 of the firearm or other deadly weapon and proof of
13 ownership.

14 (d) Any firearm or other deadly weapon taken into
15 custody and held by a police, university police, or sheriff's
16 department or by a marshal's office, by a peace officer of
17 the Department of the California Highway Patrol, as
18 defined in subdivision (a) of Section 830.2, by a peace
19 officer of the Department of Parks and Recreation, as
20 defined in subdivision (f) of Section 830.2, by a peace
21 officer, as defined in subdivision (d) of Section 830.31, or
22 by a peace officer, as defined in Section 830.5, for longer
23 than 12 months and not recovered by the owner or person
24 who has lawful possession at the time it was taken into
25 custody, shall be considered a nuisance and sold or
26 destroyed as provided in subdivision (c) of Section 12028.
27 Firearms or other deadly weapons not recovered within
28 12 months due to an extended hearing process as
29 provided in subdivision (i), are not subject to destruction
30 until the court issues a decision, and then only if the court
31 does not order the return of the firearm or other deadly
32 weapon to the owner.

33 (e) In those cases where a law enforcement agency has
34 reasonable cause to believe that the return of a firearm
35 or other deadly weapon would be likely to result in
36 endangering the victim or the person reporting the
37 assault or threat, the agency shall advise the owner of the
38 firearm or other deadly weapon, and within 10 days of the
39 seizure, initiate a petition in superior court to determine
40 if the firearm or other deadly weapon should be returned.



1 (f) The law enforcement agency shall inform the
2 owner or person who had lawful possession of the firearm
3 or other deadly weapon, at that person's last known
4 address by registered mail, return receipt requested, that
5 he or she has 30 days from the date of receipt of the notice
6 to respond to the court clerk to confirm his or her desire
7 for a hearing, and that the failure to respond shall result
8 in a default order forfeiting the confiscated firearm or
9 other deadly weapon. For the purposes of this
10 subdivision, the person's last known address shall be
11 presumed to be the address provided to the law
12 enforcement officer by that person at the time of the
13 family violence incident. In the event the person whose
14 firearm or other deadly weapon was seized does not
15 reside at the last address provided to the agency, the
16 agency shall make a diligent, good faith effort to learn the
17 whereabouts of the person and to comply with these
18 notification requirements.

19 (g) If the person requests a hearing, the court clerk
20 shall set a hearing no later than 30 days from receipt of
21 that request. The court clerk shall notify the person, the
22 law enforcement agency involved, and the district
23 attorney of the date, time, and place of the hearing.
24 Unless it is shown by clear and convincing evidence that
25 the return of the firearm or other deadly weapon would
26 result in endangering the victim or the person reporting
27 the assault or threat, the court shall order the return of the
28 firearm or other deadly weapon and shall award
29 reasonable attorney's fees to the prevailing party.

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

35 (i) If, at the hearing, the court does not order the
36 return of the firearm or other deadly weapon to the
37 owner or person who had lawful possession, that person
38 may petition the court for a second hearing within 12
39 months from the date of the initial hearing. If the owner
40 or person who had lawful possession does not petition the



1 court within this 12-month period for a second hearing or
2 is unsuccessful at the second hearing in gaining return of
3 the firearm or other deadly weapon, the firearm or other
4 deadly weapon may be disposed of as provided in Section
5 12028.

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

9 SEC. 16. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution for certain costs that may be incurred by a
12 local agency or school district because in that regard this
13 act creates a new crime or infraction, eliminates a crime
14 or infraction, or changes the penalty for a crime or
15 infraction, within the meaning of Section 17556 of the
16 Government Code, or changes the definition of a crime
17 within the meaning of Section 6 of Article XIII B of the
18 California Constitution.

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

