

Introduced by Senator Solis

(Principal ~~coauthor: Assembly Member Jackson~~ *coauthors:*
Assembly Members Jackson and Kuehl)

January 21, 1999

An act to amend ~~Section 6343 of the Family Code, 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, 273.5, 273.6, 1328, 1163.3, 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 a specified provision of law.

(2)

(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.

(3)

(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.*

~~(4) Existing law requires that any person convicted of the offense of willful infliction of corporal injury who has previously been convicted of specified assaultive offenses within the last 7 years be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison for 2, 4, or 5 years or by both imprisonment and a fine up to \$10,000.~~

(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—~~sentenced convicted~~ *convicted* under that *same* provision,—~~it must be a~~ *as a* condition of probation—that, 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 ~~and~~ *who* has



had 2 or more prior convictions of that offense within 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*.

(5)

(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 ~~an~~ ~~other~~ 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.

(6)

(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 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.

(7)

(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.

(8)

(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.

(9)

(14) Under existing federal law, known as the Violent Crime Control and Law Enforcement Act of 1994, it is unlawful for any person ~~who is subject to a restraining order~~ 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 declare the Legislature’s intent to codify the above-mentioned federal law 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.~~

(10) ~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

(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~~ court of
4 justice in this ~~State~~ state shall be in the English language,
5 and judicial proceedings shall be conducted, preserved,
6 and 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*
14 *available in languages other than English, as Judicial*
15 *Council deems appropriate, to all courts. The Judicial*
16 *Council shall make available orders and forms pertaining*
17 *to protective orders issued pursuant to Sections 527.6 and*
18 *527.8 of the Code of Civil Procedure, Part 1 (commencing*
19 *with Section 6200) of Division 10 of the Family Code, and*
20 *Section 136.2 of the Penal Code.*

21 SEC. 2. Section 6343 of the Family Code is amended
22 to read:

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

36 (b) Where there has been a history of domestic
37 violence between the parties or where a protective order,
38 as defined in Section 6218, is in effect, at the request of the



1 party alleging domestic violence in a written declaration
2 under penalty of perjury or who is protected by the order,
3 the parties shall participate in counseling separately and
4 at separate times. The court may also order a restrained
5 party to participate in a batterer's treatment program
6 approved by the probation department as provided in
7 Section 1203.097 of the Penal Code; for up to one year,
8 provided that the program selected has counseling
9 available for the designated period of time.

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

13 ~~SEC. 2.~~

14 *SEC. 3. Section 6389 of the Family Code is amended*
15 *to read:*

16 6389. (a) A person subject to a protective order, as
17 defined in Section 6218, may not own or possess a firearm
18 while that protective order is in effect ~~when prohibited~~
19 ~~by an order issued pursuant to this section.~~

20 (b) The Judicial Council shall provide a notice on all
21 forms requesting a protective order that, at the hearing
22 for a protective order, the respondent ~~may~~ *shall* be
23 ordered to relinquish possession or control of any firearms
24 for a period not to exceed the duration of the restraining
25 order.

26 (c) If the respondent is present in court at a duly
27 noticed hearing, ~~and if the court determines by a~~
28 ~~preponderance of the evidence that the respondent is~~
29 ~~likely to use or display or threaten to use a firearm in any~~
30 ~~further act of violence,~~ the court ~~may~~ *shall* order the
31 respondent to relinquish any firearm in that person's
32 immediate possession or control, or subject to that
33 person's immediate possession or control, within 24 hours
34 of the order, by either surrendering the firearm to the
35 control of local law enforcement officials, or by selling the
36 firearm to a licensed gun dealer, as specified in Section
37 12071 of the Penal Code. If the respondent is not present
38 at the hearing, the respondent shall relinquish the
39 firearm within 48 hours after being served with the order.
40 A person ordered to relinquish any firearm pursuant to



1 this subdivision shall file with the court a receipt showing
2 the firearm was surrendered to the local law enforcement
3 agency or sold to a licensed gun dealer within 72 hours
4 after receiving the order. ~~However, a court may either~~
5 ~~extend or shorten these time requirements based upon~~
6 ~~good cause shown.~~ In the event that it is necessary to
7 continue the date of any hearing due to a request for a
8 relinquishment order pursuant to this section, the court
9 shall ensure that all applicable protective orders
10 described in Section 6218 remain in effect or bifurcate the
11 issues and grant the permanent restraining order
12 pending the date of the hearing.

13 (d) If the respondent declines to relinquish possession
14 of any firearm based upon the assertion of the right
15 against self-incrimination, as provided by the Fifth
16 Amendment to the United States Constitution and
17 Section 15 of Article I of the California Constitution, the
18 court may grant use immunity for the act of relinquishing
19 the firearm.

20 (e) A local law enforcement agency may charge the
21 respondent a fee for the storage of any firearm pursuant
22 to this section. This fee shall not exceed the actual cost
23 incurred by the local law enforcement agency for the
24 storage of the firearm. For purposes of this subdivision,
25 “actual cost” means expenses directly related to taking
26 possession of a firearm, storing the firearm, and
27 surrendering possession of the firearm to a licensed
28 dealer as defined in Section 12071 of the Penal Code or to
29 the respondent.

30 (f) ~~Any~~ *The* restraining order requiring a person to
31 relinquish a firearm pursuant to subdivision (c) shall state
32 on its face that the firearm shall be relinquished to the
33 local law enforcement agency for that jurisdiction or sold
34 to a licensed gun dealer, and that proof of surrender or
35 sale shall be filed with the court within a specified period
36 of receipt of the order. The order shall also state on its face
37 the expiration date for relinquishment. Nothing in this
38 section shall limit a respondent’s right under existing law
39 to petition the court at a later date for modification of the
40 order.



1 (g) ~~Any~~ *The* restraining order requiring a person to
2 relinquish a firearm pursuant to subdivision (c) shall
3 prohibit the person from possessing or controlling any
4 firearm for the duration of the order, ~~unless a shorter time~~
5 ~~period is specified by the court.~~ At the expiration of the
6 order, the local law enforcement agency shall return
7 possession of any surrendered firearm to the respondent,
8 within five days after the expiration of the
9 relinquishment order, unless the local law enforcement
10 agency determines that ~~either~~ (1) the firearm has been
11 stolen ~~or~~; (2) the respondent is prohibited from
12 possessing a firearm because the respondent is in any
13 prohibited class for the possession of firearms, as defined
14 in Sections 12021 and 12021.1 of the Penal Code and
15 Sections 8100 and 8103 of the Welfare and Institutions
16 Code, *or* (3) *another successive restraining order is used*
17 *against the respondent under this section.* If the local law
18 enforcement agency determines that the respondent is
19 the legal owner of any firearm deposited with the local
20 law enforcement agency and is prohibited from
21 possessing any firearm, the respondent shall be entitled
22 to sell or transfer the firearm to a licensed dealer as
23 defined in Section 12071 of the Penal Code. If the firearm
24 has been stolen, the firearm shall be restored to the lawful
25 owner upon his or her identification of the firearm and
26 proof of ownership.

27 (h) The court may, as part of the relinquishment
28 order, grant an exemption from the relinquishment
29 requirements of this section for a particular firearm if the
30 respondent can show that a particular firearm is
31 necessary as a condition of continued employment and
32 that the current employer is unable to reassign the
33 respondent to another position where a firearm is
34 unnecessary. If an exemption is granted pursuant to this
35 subdivision, the order shall provide that the firearm shall
36 be in the physical possession of the respondent only
37 during scheduled work hours and during travel to and
38 from his or her place of employment.

39 (i) During the period of the relinquishment order, a
40 respondent is entitled to make one sale of all firearms that



1 are in the possession of a local law enforcement agency
2 pursuant to this section. A licensed gun dealer, who
3 presents a local law enforcement agency with a bill of sale
4 indicating that all firearms owned by the respondent that
5 are in the possession of the local law enforcement agency
6 have been sold by the respondent to the licensed gun
7 dealer, shall be given possession of those firearms, at the
8 location where a respondent's firearms are stored, within
9 five days of presenting the local law enforcement agency
10 with a bill of sale.

11 (j) The disposition of any unclaimed property under
12 this section shall be made pursuant to Section 1413 of the
13 Penal Code.

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

17 ~~(l) If the judge orders the person subject to the~~
18 ~~protective order to relinquish his or her firearms and the~~
19 ~~defendant~~ respondent notifies the court that he or she
20 owns a firearm that is not in his or her immediate
21 possession, the court may limit the order to exclude that
22 firearm if the judge is satisfied the ~~defendant will not~~
23 ~~respondent is unable to~~ gain access to that firearm while
24 the protective order is in effect.

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

31 *SEC. 4. Section 124250 of the Health and Safety Code*
32 *is amended to read:*

33 124250. (a) The following definitions shall apply for
34 purposes of this section:

35 (1) "Domestic violence" means the infliction or threat
36 of physical harm against past or present adult or
37 adolescent female intimate partners, and shall include
38 physical, sexual, and psychological abuse against the
39 woman, and is a part of a pattern of assaultive, coercive,



1 and controlling behaviors directed at achieving
2 compliance from or control over, that woman.

3 (2) “Shelter-based” means an established system of
4 services where battered women and their children may
5 be provided safe or confidential emergency housing on a
6 24-hour basis, including, but not limited to, hotel or motel
7 arrangements, haven, and safe houses.

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

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

15 (c) The Maternal and Child Health Branch shall
16 administer grants, awarded as the result of a request for
17 application process, to battered women’s shelters that
18 propose to maintain shelters or services previously
19 granted funding pursuant to this section, to expand
20 existing services or create new services, and to establish
21 new battered women’s shelters to provide services, in any
22 of the following four areas:

23 (1) Emergency shelter to women and their children
24 escaping violent family situations.

25 (2) Transitional housing programs to help women and
26 their children find housing and jobs so that they are not
27 forced to choose between returning to a violent
28 relationship or becoming homeless. The programs may
29 offer up to 18 months of housing, case management, job
30 training and placement, counseling, support groups, and
31 classes in parenting and family budgeting.

32 (3) Legal and other types of advocacy and
33 representation to help women and their children pursue
34 the appropriate legal options.

35 (4) Other support services for battered women and
36 their children.

37 (d) In implementing the grant program pursuant to
38 this section, the State Department of Health Services
39 shall consult with an advisory council, ~~to remain in~~
40 ~~existence until January 1, 1998.~~ The council shall be



1 composed of not to exceed 13 voting members and two
2 nonvoting members appointed as follows:

3 (1) Seven members appointed by the Governor.

4 (2) Three members appointed by the Speaker of the
5 Assembly.

6 (3) Three members appointed by the Senate
7 Committee on Rules.

8 (4) Two nonvoting ex officio members who shall be
9 Members of the Legislature, one appointed by the
10 Speaker of the Assembly and one appointed by the Senate
11 Committee on Rules. Any Member of the Legislature
12 appointed to the council shall meet with, and participate
13 in the activities of, the council to the extent that
14 participation is not incompatible with his or her position
15 as a Member of the Legislature.

16 The membership of the council shall consist of domestic
17 violence advocates, battered women service providers,
18 and representatives of women's organizations, law
19 enforcement, and other groups involved with domestic
20 violence. At least one-half of the council membership
21 shall consist of domestic violence advocates or battered
22 women service providers from organizations such as the
23 California Alliance Against Domestic Violence.

24 It is the intent of the Legislature that the council
25 membership reflect the ethnic, racial, cultural, and
26 geographic diversity of the state.

27 (e) The department shall collaborate closely with the
28 council in the development of funding priorities, the
29 framing of the Request for Proposals, and the solicitation
30 of proposals.

31 (f) (1) The Maternal and Child Health Branch of the
32 State Department of Health Services shall administer
33 grants, awarded as the result of a request for application
34 process, to agencies to conduct demonstration projects to
35 serve battered women, including, but not limited to,
36 creative and innovative service approaches, such as
37 community response teams and pilot projects to develop
38 new interventions emphasizing prevention and
39 education, and other support projects identified by the
40 advisory council.



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

4 (g) It is the intent of the Legislature that services
5 funded by this program include services in underserved
6 and ethnic and racial communities. Therefore, the
7 Maternal and Child Health Branch of the State
8 Department of Health Services shall do all of the
9 following:

10 (1) Fund shelters pursuant to this section that reflect
11 the ethnic, racial, economic, cultural, and geographic
12 diversity of the state.

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

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

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

23 (1) Provide matching funds or in-kind contributions
24 equivalent to not less than 20 percent of the grant they
25 would receive. The matching funds or in-kind
26 contributions may come from other governmental or
27 private sources.

28 (2) Ensure that appropriate staff and volunteers
29 having client contact meet the definition of “domestic
30 violence counselor” as specified in subdivision (a) of
31 Section 1037.1 of the Evidence Code. The minimum
32 training specified in paragraph (2) of subdivision (a) of
33 Section 1037.1 of the Evidence Code shall be provided to
34 those staff and volunteers who do not meet the
35 requirements of paragraph (1) of subdivision (a) of
36 Section 1037.1 of the Evidence Code.

37 *SEC. 5.* Section 166 of the Penal Code is amended to
38 read:



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

4 (1) Disorderly, contemptuous, or insolent behavior
5 committed during the sitting of any court of justice, in
6 immediate view and presence of the court, and directly
7 tending to interrupt its proceedings or to impair the
8 respect due to its authority.

9 (2) Behavior as specified in paragraph (1) committed
10 in the presence of any referee, while actually engaged in
11 any trial or hearing, pursuant to the order of any court, or
12 in the presence of any jury while actually sitting for the
13 trial of a cause, or upon any inquest or other proceedings
14 authorized by law.

15 (3) Any breach of the peace, noise, or other
16 disturbance directly tending to interrupt the proceedings
17 of any court.

18 (4) Willful disobedience of any process or order
19 lawfully issued by any court.

20 (5) Willful disobedience of any court order or
21 out-of-state court order, lawfully issued by any court,
22 including orders pending trial, ~~made at the request of a~~
23 ~~party alleging domestic violence.~~

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

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

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

31 (9) Presenting to any court having power to pass
32 sentence upon any prisoner under conviction, or to any
33 member of the court, any affidavit or testimony or
34 representation of any kind, verbal or written, in
35 aggravation or mitigation of the punishment to be
36 imposed upon the prisoner, except as provided in this
37 code.

38 (b) (1) Any person who is guilty of contempt of court
39 under paragraph (4) of subdivision (a) by willfully
40 contacting a victim by phone, mail, or directly and who



1 has been previously convicted of a violation of Section
2 646.9 shall be punished by imprisonment in a county jail
3 for not more than one year, by a fine of five thousand
4 dollars (\$5,000), or by both that fine and imprisonment.

5 (2) For the purposes of sentencing under this
6 subdivision, each contact shall constitute a separate
7 violation of this subdivision.

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

11 (c) (1) Notwithstanding paragraph (4) of subdivision
12 (a), any willful and knowing violation of any protective
13 order or stay away court order issued pursuant to Section
14 136.2, in a pending criminal proceeding involving
15 domestic violence, as defined in Section 13700, or issued
16 as a condition of probation after a conviction in a criminal
17 proceeding involving domestic violence, as defined in
18 Section 13700, which is an order described in paragraph
19 (3), shall constitute contempt of court, a misdemeanor,
20 punishable by imprisonment in a county jail for not more
21 than one year, by a fine of not more than one thousand
22 dollars (\$1,000), or by both that imprisonment and ~~the~~
23 fine.

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

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

30 (A) Any order issued pursuant to Section 6320 *or* 6389
31 of the Family Code.

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

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

37 (4) A second or subsequent conviction for a violation
38 of any order described in paragraph (1) occurring within
39 seven years of a prior conviction for a violation of any of
40 those orders and involving an act of violence or “a



1 credible threat” of violence, as provided in subdivisions
2 (c) and (d) of Section 139, is punishable by imprisonment
3 in a county jail not to exceed one year, or in the state
4 prison for 16 months or two or three years.

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

8 (d) (1) If probation is granted upon conviction of a
9 violation of subdivision (c), the court shall require
10 participation in a batterer’s treatment program as a
11 condition of probation, unless, considering all of the facts
12 and circumstances, the court finds participating in a
13 batterer’s treatment program inappropriate for the
14 defendant.

15 (2) If probation is granted upon conviction of a
16 violation of subdivision (c), the conditions of probation
17 may include, in lieu of a fine, one or both of the following
18 requirements:

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

22 (B) That the defendant provide restitution to
23 reimburse the victim for reasonable costs of counseling
24 and other reasonable expenses that the court finds are the
25 direct result of the defendant’s offense.

26 (3) For any order to pay a fine, make payments to a
27 battered women’s shelter, or pay restitution as a
28 condition of probation under this subdivision or
29 subdivision (c), the court shall make a determination of
30 the defendant’s ability to pay. In no event shall any order
31 to make payments to a battered women’s shelter be made
32 if it would impair the ability of the defendant to pay direct
33 restitution to the victim or court-ordered child support.

34 (4) Where the injury to a married person is caused in
35 whole or in part by the criminal acts of his or her spouse
36 in violation of subdivision (c), the community property
37 may not be used to discharge the liability of the offending
38 spouse for restitution to the injured spouse, required by
39 Section 1203.04, as operative on or before August 2, 1995,
40 or Section 1202.4, or to a shelter for costs with regard to



1 the injured spouse and dependents, required by this
2 subdivision, until all separate property of the offending
3 spouse is exhausted.

4 (5) Any person violating any order described in
5 subdivision (c), may be punished for any substantive
6 offenses described under Section 136.1 or 646.9. No
7 finding of contempt shall be a bar to prosecution for a
8 violation of Section 136.1 or 646.9. However, any person
9 held in contempt for a violation of subdivision (c) shall be
10 entitled to credit for any punishment imposed as a result
11 of that violation against any sentence imposed upon
12 conviction of an offense described in Section 136.1 or
13 646.9. Any conviction or acquittal for any substantive
14 offense under Section 136.1 or 646.9 shall be a bar to a
15 subsequent punishment for contempt arising out of the
16 same act.

17 ~~SEC. 3.~~

18 *SEC. 6. Section 273d of the Penal Code is amended to*
19 *read:*

20 273d. (a) Any person who willfully inflicts upon a
21 child any cruel or inhuman corporal punishment or *an*
22 injury resulting in a traumatic condition is guilty of a
23 felony and shall be punished by imprisonment in the state
24 prison for two, four, or six years, or in a county jail for not
25 more than one year, by a fine of up to six thousand dollars
26 (\$6,000), or by both that imprisonment and fine.

27 (b) Any person who is found guilty of violating
28 subdivision (a) shall receive a four-year enhancement for
29 a prior conviction of that offense provided that no
30 additional term shall be imposed under this subdivision
31 for any prison term served prior to a period of 10 years in
32 which the defendant remained free of both prison
33 custody and the commission of an offense that results in
34 a felony conviction.

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

38 (1) A mandatory minimum period of probation of 36
39 months.



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

4 (3) (A) Successful completion of no less than one year
5 of a child abuser's treatment counseling program
6 approved by the probation department. The defendant
7 shall be ordered to begin participation in the program
8 immediately upon the grant of probation. The counseling
9 program shall meet the criteria specified in Section 273.1.
10 The defendant shall produce documentation of program
11 enrollment to the court within 30 days of enrollment,
12 along with quarterly progress reports.

13 (B) The terms of probation for offenders shall not be
14 lifted until all reasonable fees due to the counseling
15 program have been paid in full, but in no case shall
16 probation be extended beyond the term provided in
17 subdivision (a) of Section 1203.1. If the court finds that the
18 defendant does not have the ability to pay the fees based
19 on the defendant's changed circumstances, the court may
20 reduce or waive the fees.

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

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

30 *SEC. 7.* Section 273.5 of the Penal Code is amended to
31 read:

32 273.5. (a) Any person who willfully inflicts upon his
33 or her spouse, or any person who willfully inflicts upon
34 any person with whom he or she is cohabiting, or any
35 person who willfully inflicts upon any person who is the
36 mother or father of his or her child, corporal injury
37 resulting in a traumatic condition, is guilty of a felony, and
38 upon conviction thereof shall be punished by
39 imprisonment in the state prison for two, three, or four
40 years, or in a county jail for not more than one year, or by



1 a fine of up to six thousand dollars (\$6,000) ~~or by both, or~~
2 ~~by both that fine and imprisonment.~~

3 (b) (1) Any person who is subject to a court order that
4 meets all of the criteria specified in subparagraphs (A) to
5 (C), inclusive, who possesses any firearm or ammunition
6 or who receives any firearm or ammunition is guilty of a
7 felony.

8 (A) The court order was issued after a hearing where
9 the person subject to the order received actual notice of
10 the hearing and an opportunity to participate in the
11 hearing.

12 (B) The court order restrains the person from
13 harassing, stalking, or threatening an intimate partner of
14 that person or a child of that person or of an intimate
15 partner of that person, or from engaging in other conduct
16 that would place an intimate partner in reasonable fear
17 of bodily injury to that intimate partner or child of that
18 person or of that intimate partner.

19 (C) The court order includes a finding that the person
20 represents a credible threat to the physical safety of the
21 intimate partner or child of either the person or the
22 intimate partner, or by its terms explicitly prohibits the use,
23 attempted use, or threatened use of physical force against
24 the intimate partner or child of either the person or the
25 intimate partner that would reasonably be expected to
26 cause bodily injury.

27 (2) An “intimate partner” under this subdivision
28 means the spouse or former spouse of the person, an
29 individual who is a parent of a child of the person, or an
30 individual who cohabitates or has cohabited, or is having
31 or has had a dating or engagement relationship, with the
32 person.

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

37 (c) Holding oneself out to be the husband or wife of
38 the person with whom one is cohabiting is not necessary
39 to constitute cohabitation as the term is used in this
40 section.



1 ~~(e)~~
2 (d) As used in this section, “traumatic condition”
3 means a condition of the body, such as a wound or
4 external or internal injury, whether of a minor or serious
5 nature, caused by a physical force.

6 ~~(d)~~
7 (e) For the purpose of this section, a person shall be
8 considered the father or mother of another person’s child
9 if the alleged male parent is presumed the natural father
10 under Sections 7611 and 7612 of the Family Code.

11 ~~(e)~~
12 (f) In any case in which a person is convicted of
13 violating this section and probation is granted, the court
14 shall require participation in a batterer’s treatment
15 program as a condition of probation, as specified in
16 Section 1203.097.

17 ~~(f) If probation is granted, or the execution or~~
18 ~~imposition of a sentence is suspended, for any person~~
19 ~~convicted under subdivision (a) who previously has been~~
20 ~~convicted under subdivision (a) for an offense that~~
21 ~~occurred within seven years of the offense of the second~~
22 ~~conviction, it shall be a condition thereof that he or she~~
23 ~~be imprisoned in a county jail for not less than 96 hours~~
24 ~~and that he or she participate in, for no less than one year,~~
25 ~~and successfully complete, a batterer’s treatment~~
26 ~~program, as designated by the court pursuant to Section~~
27 ~~1203.097. However, the court, upon a showing of good~~
28 ~~cause, may find that the mandatory minimum~~
29 ~~imprisonment, as required by this subdivision, shall not be~~
30 ~~imposed and grant probation or the suspension of the~~
31 ~~execution or imposition of a sentence.~~

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



1 more offenses that occurred within seven years of a
2 violation of subdivision (a), it shall be a condition of
3 probation, in addition to the provisions contained in
4 Section 1203.097, that he or she be imprisoned in a county
5 jail for not less than 60 days. *Any person convicted of*
6 *violating Section 273.5, for acts occurring within seven*
7 *years of a previous conviction under subdivision (d) of*
8 *Section 243, or under Section 243.4, 244, 244.5, or 273.5, if*
9 *the victim of the prior offense is a person designated*
10 *under subdivision (a) of Section 273.5, shall be punished*
11 *by imprisonment in a county jail for not more than one*
12 *year, or by imprisonment in the state prison for two, four,*
13 *or five years, or by both imprisonment and a fine of up to*
14 *ten thousand dollars (\$10,000). However, the court, upon*
15 a showing of good cause, may find that the mandatory
16 minimum imprisonment, as required by this subdivision,
17 shall not be imposed *and good cause shall be stated on the*
18 *record.*

19 (h) If probation is granted upon conviction of a
20 violation of subdivision (a), the conditions of probation
21 may include, *consistent with the terms of probation*
22 *imposed pursuant to Section 1203.97, in lieu of a fine, one*
23 or both of the 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 For any order to pay a fine, make payments to a
32 battered women's shelter, or pay restitution as a
33 condition of probation under this subdivision, the court
34 shall make a determination of the defendant's ability to
35 pay. In no event shall any order to make payments to a
36 battered women's shelter be made if it would impair the
37 ability of the defendant to pay direct restitution to the
38 victim or court-ordered child support. Where the injury
39 to a married person is caused in whole or in part by the
40 criminal acts of his or her spouse in violation of this



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

9 ~~SEC. 4.~~

10 *SEC. 8.* Section 273.55 of the Penal Code is repealed.

11 ~~SEC. 5.~~

12 *SEC. 9.* Section 273.56 of the Penal Code is repealed.

13 ~~SEC. 6.~~

14 *SEC. 10.* Section 273.6 of the Penal Code is amended
15 to read:

16 273.6. (a) Any intentional and knowing violation of a
17 protective order, as defined in Section 6218 of the Family
18 Code, or of an order issued pursuant to Section 527.6 or
19 527.8 of the Code of Civil Procedure is a misdemeanor
20 punishable by a fine of not more than one thousand
21 dollars (\$1,000), or by imprisonment in a county jail for
22 not more than one year, or by both ~~the~~ *that* fine and
23 imprisonment.

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



1 the defendant has successfully completed or is making
2 progress with counseling.

3 (c) Subdivisions (a) and (b) shall apply to the
4 following court orders:

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

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

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

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

14 (d) A subsequent conviction for a violation of an order
15 described in subdivision (a), occurring within seven
16 years of a prior conviction for a violation of an order
17 described in subdivision (a) and involving an act of
18 violence or “a credible threat” of violence, as defined in
19 subdivision (c) of Section 139, is punishable by
20 imprisonment in a county jail not to exceed one year, or
21 in the state prison.

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



1 before the court, the probability of future violations, the
2 safety of the victim, and whether the defendant has
3 successfully completed or is making progress with
4 counseling.

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

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

11 (h) If probation is granted upon conviction of a
12 violation of subdivision (a), (b), or (c), the conditions of
13 probation may include, in lieu of a fine, one or both of the
14 following requirements:

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

18 (2) That the defendant reimburse the victim for
19 reasonable costs of counseling and other reasonable
20 expenses that the court finds are the direct result of the
21 defendant's offense.

22 (i) For any order to pay a fine, make payments to a
23 battered women's shelter, or pay restitution as a
24 condition of probation under subdivision (e), the court
25 shall make a determination of the defendant's ability to
26 pay. In no event shall any order to make payments to a
27 battered women's shelter be made if it would impair the
28 ability of the defendant to pay direct restitution to the
29 victim or court-ordered child support. Where the injury
30 to a married person is caused in whole or in part by the
31 criminal acts of his or her spouse in violation of this
32 section, the community property may not be used to
33 discharge the liability of the offending spouse for
34 restitution to the injured spouse, required by Section
35 1203.04, as operative on or before August 2, 1995, or
36 Section 1202.4, or to a shelter for costs with regard to the
37 injured spouse and dependents, required by this section,
38 until all separate property of the offending spouse is
39 exhausted.

40 ~~SEC. 7.~~



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

3 836. (a) A peace officer may arrest a person in
4 obedience to a warrant, or, pursuant to the authority
5 granted to him or her by Chapter 4.5 (commencing with
6 Section 830) of Title 3 of Part 2, without a warrant, may
7 arrest a person whenever any of the following
8 circumstances occur:

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

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

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

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

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



1 protective order has been registered, unless the victim
2 provides the officer with a copy of the protective order.

3 (2) The person against whom a protective order has
4 been issued shall be deemed to have notice of the order
5 if the victim presents to the officer proof of service of the
6 order, the officer confirms with the appropriate
7 authorities that a true copy of the proof of service is on
8 file, or the person against whom the protective order was
9 issued was present at the protective order hearing or was
10 informed by a peace officer of the contents of the
11 protective order.

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

29 (d) Notwithstanding paragraph (1) of subdivision (a),
30 if a suspect commits an assault or battery upon a current
31 or former spouse, fiancé, fiancée, a current or former
32 cohabitant as defined in Section 6209 of the Family Code,
33 a person with whom the suspect currently is having or has
34 previously had an engagement relationship, a person
35 with whom the suspect has parented a child, or is
36 presumed to have parented a child pursuant to the
37 Uniform Parentage Act (Part 3 (commencing with
38 Section 7600) of Division 12 of the Family Code), a child
39 of the suspect, a child whose parentage by the suspect is
40 the subject of an action under the Uniform Parentage Act,



1 a child of a person in one of the above categories, or any
2 other person related to the suspect by consanguinity or
3 affinity within the second degree, a peace officer may
4 arrest the suspect without a warrant where both of the
5 following circumstances apply:

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

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

13 (e) In addition to the authority to make an arrest
14 without a warrant pursuant to paragraphs (1) and (3) of
15 subdivision (a), a peace officer may, without a warrant,
16 arrest a person for a violation of Section 12025 when all of
17 the following apply:

18 (1) The officer has reasonable cause to believe that the
19 person to be arrested has committed the violation of
20 Section 12025.

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

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

28 *SEC. 12.* Section 1328 of the Penal Code is amended
29 to read:

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



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

17 (2) The court having jurisdiction of the case shall have
18 the power to appoint a guardian ad litem to receive
19 service of a subpoena of the child and shall have the
20 power to produce the child ordered to court under this
21 section.

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



1 immediate superior shall acknowledge receipt of the
2 subpoena by telephone or electronic means to the sender
3 of origin. If service is made upon the immediate superior
4 or agent designated by the immediate superior, the
5 immediate superior or the agent shall deliver a copy of
6 the subpoena to the peace officer as soon as possible and
7 in no event later than a time which will enable the peace
8 officer to comply with the subpoena.

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

18 (e) If the immediate superior or his or her agent is
19 tendered service of a subpoena less than five working
20 days prior to the date of hearing, and he or she is not
21 reasonably certain he or she can complete the service, he
22 or she may refuse acceptance.

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

36 (g) Notwithstanding subdivision (c), in the case of
37 peace officers employed by the California Highway
38 Patrol, if service is made upon the immediate superior or
39 upon an agent designated by the immediate superior of
40 the peace officer, the immediate superior or the agent



1 shall deliver a copy of the subpoena to the peace officer
2 on the officer's first workday following acceptance of
3 service of process. In this case, failure of the immediate
4 superior or the designated agent to deliver the subpoena
5 shall not constitute a defect in service.

6 ~~SEC. 8.~~

7 *SEC. 13.* Section 11163.3 of the Penal Code is
8 amended to read:

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

21 (b) For purposes of this section, "abuse" has the
22 meaning set forth in Section 6203 of the Family Code and
23 "domestic violence" has the meaning set forth in Section
24 6211 of the Family Code.

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

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

- 36 (1) Experts in the field of forensic pathology.
- 37 (2) Medical personnel with expertise in domestic
38 violence abuse.
- 39 (3) Coroners and medical examiners.
- 40 (4) Criminologists.



- 1 (5) District attorneys and city attorneys.
- 2 (6) Domestic violence shelter service staff and
- 3 battered women’s advocates.
- 4 (7) Law enforcement personnel.
- 5 (8) Representatives of local agencies that are involved
- 6 with domestic violence abuse reporting.
- 7 (9) County health department staff who deal with
- 8 domestic violence victims’ health issues.
- 9 (10) Representatives of local child abuse agencies.
- 10 (11) Local professional associations of persons
- 11 described in paragraphs (1) to (10), inclusive.
- 12 (e) An oral or written communication or a document
- 13 shared within or produced by a domestic violence death
- 14 review team related to a domestic violence death review
- 15 is confidential and not subject to disclosure or
- 16 discoverable by a third party. An oral or written
- 17 communication or a document provided by a third party
- 18 to a domestic violence death review team, or between a
- 19 third party and a domestic violence death review team,
- 20 is confidential and not subject to disclosure or
- 21 discoverable by a third party. Notwithstanding the
- 22 foregoing, recommendations of a domestic violence
- 23 death review team upon the completion of a review may
- 24 be disclosed at the discretion of a majority of the members
- 25 of the domestic violence death review team.
- 26 (f) Each organization represented on a domestic
- 27 violence death review team may share with other
- 28 members of the team information in its possession
- 29 concerning the victim who is the subject of the review or
- 30 any person who was in contact with the victim and any
- 31 other information deemed by the organization to be
- 32 pertinent to the review. Any information shared by an
- 33 organization with other members of a team is
- 34 confidential. This provision shall permit the disclosure to
- 35 members of the team of any information deemed
- 36 confidential, privileged, or prohibited from disclosure by
- 37 any other statute.
- 38 (g) Any member of the domestic violence death
- 39 review team, their agent or employee who, without the
- 40 prior approval of all of the members of the team, discloses



1 or causes to be disclosed to anyone or any agency not a
2 member of the team, any information obtained during
3 investigations conducted under the authority of this
4 statute, is guilty of a misdemeanor, and punishable by a
5 fine *of* up to ten thousand dollars (\$10,000) and up to one
6 year in *a* county jail.

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

14 (1) No individual or agency that has information
15 governed by this subdivision shall be required to disclose
16 information. The intent of this subdivision is to allow the
17 voluntary disclosure of information by the individual or
18 agency that has the information.

19 (2) The following information may be disclosed
20 pursuant to this subdivision:

21 (A) Notwithstanding Section 56.10 of the Civil Code,
22 medical information.

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

25 (C) Notwithstanding Section 15633.5 of the Welfare
26 and Institutions Code, information from elder abuse
27 reports and investigations, except the identity of persons
28 who have made reports, which shall not be disclosed.

29 (D) Notwithstanding Section 11167.5 of the Penal
30 Code, information from child abuse reports and
31 investigations, except the identity of persons who have
32 made reports, which shall not be disclosed.

33 (E) State summary criminal history information,
34 criminal offender record information, and local summary
35 criminal history information, as defined in Sections 11075,
36 11105, and 13300 of the Penal Code.

37 (F) Notwithstanding Section 11163.2 of the Penal
38 Code, information pertaining to reports by health
39 practitioners of persons suffering from physical injuries
40 inflicted by means of a firearm or of persons suffering



1 physical injury where the injury is a result of assaultive or
2 abusive conduct, and information relating to whether a
3 physician referred the person to local domestic violence
4 services as recommended by Section 11161 of the Penal
5 Code.

6 (G) Notwithstanding Section 827 of the Welfare and
7 Institutions Code, information in any juvenile court
8 proceeding.

9 (H) Information maintained by the Family Court,
10 including information relating to the Family Conciliation
11 Court Law pursuant to Section 1818 of the Family Code,
12 and Mediation of Custody and Visitation Issues pursuant
13 to Section 3177 of the Family Code.

14 (I) Information provided to probation officers in the
15 course of the performance of their duties, including, but
16 not limited to, the duty to prepare reports pursuant to
17 Section 1203.10 of the Penal Code, as well as the
18 information on which these reports are based.

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

22 (3) The disclosure of written and oral information
23 authorized under this subdivision shall apply
24 notwithstanding Sections 2263, 2918, 4982, and 6068 of the
25 Business and Professions Code, or the lawyer-client
26 privilege protected by Article 3 (commencing with
27 Section 950) of Chapter 4 of Division 8 of the Evidence
28 Code, the physician-patient privilege protected by
29 Article 6 (commencing with Section 990) of Chapter 4 of
30 Division 8 of the Evidence Code, the
31 psychotherapist-patient privilege protected by Article 7
32 (commencing with Section 1010) of Chapter 4 of Division
33 8 of the Evidence Code, the sexual assault
34 victim-counselor privilege protected by Article 8.5
35 (commencing with Section 1035) of Chapter 4 of Division
36 8 of the Evidence Code, and the domestic violence
37 victim-counselor privilege protected by Article 8.7
38 (commencing with Section 1037) of Chapter 4 of Division
39 8 of the Evidence Code.

40 ~~SEC. 9.~~



1 *SEC. 14.* Section 11163.6 is added to the Penal Code,
2 to read:

3 11163.6. In order to ensure consistent and uniform
4 results, data shall be collected and summarized by the
5 domestic violence death review teams to show the
6 statistical occurrence of all domestic violence deaths in
7 the team's county that occur under the following
8 circumstances:

9 (a) The deceased was a victim of a homicide
10 committed by a current or former spouse, fiancé, or
11 dating partner.

12 (b) The deceased was the victim of a suicide, was the
13 current or former spouse, fiancé, or dating partner of the
14 perpetrator and was also the victim of previous acts of
15 domestic violence.

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

19 (d) The deceased was the perpetrator of the homicide
20 of a former or current spouse, fiancé, or dating partner
21 and the perpetrator was also the victim of a homicide
22 related to the domestic homicide incident.

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

25 (f) The deceased was a current or former spouse,
26 fiancé, or dating partner of the current or former spouse,
27 fiancé, or dating partner of the perpetrator.

28 (g) The deceased was a law enforcement officer,
29 emergency medical personnel, or other agency
30 responding to a domestic violence incident.

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

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

35 (j) The deceased was a person not included in the
36 above categories and the homicide was related to
37 domestic violence.

38 ~~SEC. 10.~~

39 *SEC. 15.* Section 12028.5 of the Penal Code is
40 amended to read:



1 12028.5. (a) As used in this section, the following
2 definitions shall apply:

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

4 (A) Intentionally or recklessly to cause or attempt to
5 cause bodily injury.

6 (B) Sexual assault.

7 (C) To place a person in reasonable apprehension of
8 imminent serious bodily injury to that person or to
9 another.

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

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

14 (A) A spouse or former spouse.

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

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

19 (D) A person with whom the respondent has had a
20 child, where the presumption applies that the male
21 parent is the father of the child of the female parent
22 under the Uniform Parentage Act (Part 3 (commencing
23 with Section 7600) of Division 12 of the Family Code).

24 (E) A child of a party or a child who is the subject of
25 an action under the Uniform Parentage Act, where the
26 presumption applies that the male parent is the father of
27 the child to be protected.

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

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

33 (b) A sheriff, undersheriff, deputy sheriff, marshal,
34 deputy marshal, or police officer of a city, as defined in
35 subdivision (a) of Section 830.1, a peace officer of the
36 Department of the California Highway Patrol, as defined
37 in subdivision (a) of Section 830.2, a member of the
38 University of California Police Department, as defined in
39 subdivision (b) of Section 830.2, an officer listed in Section
40 830.6 while acting in the course and scope of his or her



1 employment as a peace officer, a member of a California
2 State University Police Department, as defined in
3 subdivision (c) of Section 830.2, a peace officer of the
4 Department of Parks and Recreation, as defined in
5 subdivision (f) of Section 830.2, a peace officer, as defined
6 in subdivision (d) of Section 830.31, and a peace officer,
7 as defined in Section 830.5, who is at the scene of a
8 domestic violence incident involving a threat to human
9 life or a physical assault, shall take temporary custody of
10 any firearm or other deadly weapon in plain sight or
11 discovered pursuant to a consensual search as necessary
12 for the protection of the peace officer or other persons
13 present. Upon taking custody of a firearm or other deadly
14 weapon, the officer shall give the owner or person who
15 possessed the firearm a receipt. The receipt shall describe
16 the firearm or other deadly weapon and list any
17 identification or serial number on the firearm. The
18 receipt shall indicate where the firearm or other deadly
19 weapon can be recovered and the date after which the
20 owner or possessor can recover the firearm or other
21 deadly weapon. No firearm or other deadly weapon shall
22 be held less than 48 hours. Except as provided in
23 subdivision (e), if a firearm or other deadly weapon is not
24 retained for use as evidence related to criminal charges
25 brought as a result of the family violence incident or is not
26 retained because it was illegally possessed, the firearm or
27 other deadly weapon shall be made available to the owner
28 or person who was in lawful possession 48 hours after the
29 seizure or as soon thereafter as possible, but no later than
30 72 hours after the seizure. In any civil action or
31 proceeding for the return of firearms or ammunition or
32 other deadly weapon seized by any state or local law
33 enforcement agency and not returned within 72 hours
34 following the initial seizure, except as provided in
35 subdivision (c), the court shall allow reasonable
36 attorney's fees to the prevailing party.

37 (c) Any firearm or other deadly weapon which has
38 been taken into custody that has been stolen shall be
39 restored to the lawful owner, as soon as its use for
40 evidence has been served, upon his or her identification



1 of the firearm or other deadly weapon and proof of
2 ownership.

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

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

30 (f) The law enforcement agency shall inform the
31 owner or person who had lawful possession of the firearm
32 or other deadly weapon, at that person's last known
33 address by registered mail, return receipt requested, that
34 he or she has 30 days from the date of receipt of the notice
35 to respond to the court clerk to confirm his or her desire
36 for a hearing, and that the failure to respond shall result
37 in a default order forfeiting the confiscated firearm or
38 other deadly weapon. For the purposes of this
39 subdivision, the person's last known address shall be
40 presumed to be the address provided to the law



1 enforcement officer by that person at the time of the
2 family violence incident. In the event the person whose
3 firearm or other deadly weapon was seized does not
4 reside at the last address provided to the agency, the
5 agency shall make a diligent, good faith effort to learn the
6 whereabouts of the person and to comply with these
7 notification requirements.

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

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

24 (i) If, at the hearing, the court does not order the
25 return of the firearm or other deadly weapon to the
26 owner or person who had lawful possession, that person
27 may petition the court for a second hearing within 12
28 months from the date of the initial hearing. If the owner
29 or person who had lawful possession does not petition the
30 court within this 12-month period for a second hearing or
31 is unsuccessful at the second hearing in gaining return of
32 the firearm or other deadly weapon, the firearm or other
33 deadly weapon may be disposed of as provided in Section
34 12028.

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

38 ~~SEC. 11. It is the intent of the Legislature to codify the~~
39 ~~provisions of the federal Violent Crime Control and Law~~
40 ~~Enforcement Act of 1994, which makes it unlawful for any~~



1 person subject to a restraining order to possess or
2 purchase a firearm or ammunition.

3 ~~SEC. 12. No reimbursement is required by this act
4 pursuant to Section 6 of Article XIII B of the California
5 Constitution because the only costs that may be incurred
6 by a local agency or school district will be incurred
7 because this act creates a new crime or infraction,
8 eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section
10 17556 of the Government Code, or changes the definition
11 of a crime within the meaning of Section 6 of Article
12 XIII B of the California Constitution.~~

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

23 *However, notwithstanding Section 17610 of the
24 Government Code, if the Commission on State Mandates
25 determines that this act contains other costs mandated by
26 the state, reimbursement to local agencies and school
27 districts for those costs shall be made pursuant to Part 7
28 (commencing with Section 17500) of Division 4 of Title
29 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million
31 dollars (\$1,000,000), reimbursement shall be made from
32 the State Mandates Claims Fund.*

