

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 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 as meeting the standards stated in a specified provision of law.

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

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

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

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

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

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

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

This bill would make technical changes.



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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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



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

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

(15) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

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

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 185 of the Code of Civil
2 Procedure is amended to read:

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

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

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

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

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

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

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

37 SEC. 3. Section 6389 of the Family Code is amended
38 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) Seven members appointed by the Governor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)~~

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

~~(d)~~

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

~~(e)~~

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

~~(f)~~

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

~~(g)~~

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

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

20 ~~(h)~~

21 (g) If probation is granted upon conviction of a
 22 violation of subdivision (a), the conditions of probation
 23 may include, consistent with the terms of probation
 24 imposed pursuant to Section 1203.97, in lieu of a fine, one
 25 or both of the following requirements:

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

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

33 For any order to pay a fine, make payments to a
 34 battered women's shelter, or pay restitution as a
 35 condition of probation under this subdivision, the court
 36 shall make a determination of the defendant's ability to
 37 pay. In no event shall any order to make payments to a
 38 battered women's shelter be made if it would impair the
 39 ability of the defendant to pay direct restitution to the
 40 victim or court-ordered child support. Where the injury

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

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

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

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

15 273.6. (a) Any intentional and knowing violation of a
16 protective order, as defined in Section 6218 of the Family
17 Code, or of an order issued pursuant to Section 527.6 or
18 527.8 of the Code of Civil Procedure is a misdemeanor
19 punishable by a fine of not more than one thousand
20 dollars (\$1,000), or by imprisonment in a county jail for
21 not more than one year, or by both that fine and
22 imprisonment.

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

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

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

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

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

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

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

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

1 successfully completed or is making progress with
2 counseling.

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

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

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

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

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

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

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



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

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

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

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

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

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

1 been registered, unless the victim provides the officer
2 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. 13. Section 11163.3 of the Penal Code is
7 amended to read:

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

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

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

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

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



1 (6) Domestic violence shelter service staff and
2 battered women's advocates.

3 (7) Law enforcement personnel.

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

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

8 (10) Representatives of local child abuse agencies.

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

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

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

37 (g) Any member of the domestic violence death
38 review team, their agent or employee who, without the
39 prior approval of all of the members of the team, discloses
40 or causes to be disclosed to anyone or any agency not a

1 member of the team, any information obtained during
2 investigations conducted under the authority of this
3 statute, is guilty of a misdemeanor, and punishable by a
4 fine of up to ten thousand dollars (\$10,000) and up to one
5 year in a county jail.

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

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

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

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

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

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

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

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

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

1 abusive conduct, and information relating to whether a
2 physician referred the person to local domestic violence
3 services as recommended by Section 11161 of the Penal
4 Code.

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

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

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

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

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

39 SEC. 14. Section 11163.6 is added to the Penal Code,
40 to read:

1 11163.6. In order to ensure consistent and uniform
2 results, data shall be collected and summarized by the
3 domestic violence death review teams to show the
4 statistical occurrence of all domestic violence deaths in
5 the team's county that occur under the following
6 circumstances:

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

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

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

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

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

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

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

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

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

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

36 SEC. 15. Section 12028.5 of the Penal Code is
37 amended to read:

38 12028.5. (a) As used in this section, the following
39 definitions shall apply:

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



1 (A) Intentionally or recklessly to cause or attempt to
2 cause bodily injury.

3 (B) Sexual assault.

4 (C) To place a person in reasonable apprehension of
5 imminent serious bodily injury to that person or to
6 another.

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

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

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

15 (A) A spouse or former spouse.

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

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

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

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

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

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

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

1 830.6 while acting in the course and scope of his or her
2 employment as a peace officer, a member of a California
3 State University Police Department, as defined in
4 subdivision (c) of Section 830.2, a peace officer of the
5 Department of Parks and Recreation, as defined in
6 subdivision (f) of Section 830.2, a peace officer, as defined
7 in subdivision (d) of Section 830.31, and a peace officer,
8 as defined in Section 830.5, who is at the scene of a
9 domestic violence incident involving a threat to human
10 life or a physical assault, shall take temporary custody of
11 any firearm or other deadly weapon in plain sight or
12 discovered pursuant to a consensual search as necessary
13 for the protection of the peace officer or other persons
14 present. Upon taking custody of a firearm or other deadly
15 weapon, the officer shall give the owner or person who
16 possessed the firearm a receipt. The receipt shall describe
17 the firearm or other deadly weapon and list any
18 identification or serial number on the firearm. The
19 receipt shall indicate where the firearm or other deadly
20 weapon can be recovered and the date after which the
21 owner or possessor can recover the firearm or other
22 deadly weapon. No firearm or other deadly weapon shall
23 be held less than 48 hours. Except as provided in
24 subdivision (e), if a firearm or other deadly weapon is not
25 retained for use as evidence related to criminal charges
26 brought as a result of the family violence incident or is not
27 retained because it was illegally possessed, the firearm or
28 other deadly weapon shall be made available to the owner
29 or person who was in lawful possession 48 hours after the
30 seizure or as soon thereafter as possible, but no later than
31 72 hours after the seizure. In any civil action or
32 proceeding for the return of firearms or ammunition or
33 other deadly weapon seized by any state or local law
34 enforcement agency and not returned within 72 hours
35 following the initial seizure, except as provided in
36 subdivision (c), the court shall allow reasonable
37 attorney's fees to the prevailing party.

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

1 evidence has been served, upon his or her identification
2 of the firearm or other deadly weapon and proof of
3 ownership.

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

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

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

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

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

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

25 (i) If, at the hearing, the court does not order the
26 return of the firearm or other deadly weapon to the
27 owner or person who had lawful possession, that person
28 may petition the court for a second hearing within 12
29 months from the date of the initial hearing. If the owner
30 or person who had lawful possession does not petition the
31 court within this 12-month period for a second hearing or
32 is unsuccessful at the second hearing in gaining return of
33 the firearm or other deadly weapon, the firearm or other
34 deadly weapon may be disposed of as provided in Section
35 12028.

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

39 SEC. 16. No reimbursement is required by this act
40 pursuant to Section 6 of Article XIII B of the California

1 Constitution for certain costs that may be incurred by a
2 local agency or school district because in that regard this
3 act creates a new crime or infraction, eliminates a crime
4 or infraction, or changes the penalty for a crime or
5 infraction, within the meaning of Section 17556 of the
6 Government Code, or changes the definition of a crime
7 within the meaning of Section 6 of Article XIII B of the
8 California Constitution.

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

