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SENATE BILL

No. 218

Introduced by Senator Solis

(Principal coauthors: Assembly Members Jackson and
Kuehl)

January 21, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Solis. Domestic violence.

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

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

in other languages, specified court orders and forms relating to domestic violence.

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

This bill would, instead, authorize the court, after notice and a hearing, to order a restrained person to participate in a batterer's treatment program that has been approved by the probation department as meeting the standards stated in a specified provision of law. The bill would also provide that the courts shall, in consultation with local domestic violence shelters and programs, develop a resource list of referrals to appropriate community domestic violence programs and services to be provided to each applicant for such an order.

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

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

(4) Existing law requires the Maternal and Child Health Branch of the State Department of Health Services to administer a comprehensive shelter-based services grant program to battered women's shelters and to consult with an advisory council that is to remain in existence until January 1, 1998. Existing law provides that the programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

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

provide that the programs may offer up to 24 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

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

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

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

This bill would make technical changes.

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

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

(8) Existing law makes it a felony for any person convicted of willfully inflicting upon his or her spouse or other specified domestic partner, a corporal injury resulting in a traumatic condition. If a person was convicted of that offense within 7

years prior to the current offense, the court is required to impose, as a condition of probation, imprisonment in a county jail for not less than 96 hours and participation in and successful completion of a batterer's treatment program.

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

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

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

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

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

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



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

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

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

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

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

(13) Existing law authorizes specified law enforcement officers who are at the scene of a family violence incident involving a threat to human life or physical assault, to take



temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search. This provision also defines the terms “abuse,” “family violence,” and “family or household member.”

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

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

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

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

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

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

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



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

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

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

14 6343. (a) After notice and a hearing, the court may
15 issue an order requiring the restrained party to
16 participate in a batterer's treatment program approved
17 by the probation department as provided in Section
18 1203.097 of the Penal Code.

19 (b) The courts shall, in consultation with local
20 domestic violence shelters and programs, develop a
21 resource list of referrals to appropriate community
22 domestic violence programs and services to be provided
23 to each applicant for an order under this section.

24 SEC. 3. Section 6389 of the Family Code is amended
25 to read:

26 6389. (a) A person subject to a protective order, as
27 defined in Section 6218, may not own or possess a firearm
28 while that protective order is in effect.

29 (b) The Judicial Council shall provide a notice on all
30 forms requesting a protective order that, at the hearing
31 for a protective order, the respondent shall be ordered to
32 relinquish possession or control of any firearms for a
33 period not to exceed the duration of the restraining order.

34 (c) If the respondent is present in court at a duly
35 noticed hearing, the court shall order the respondent to
36 relinquish any firearm in that person's immediate
37 possession or control, or subject to that person's
38 immediate possession or control, within 24 hours of the
39 order, by either surrendering the firearm to the control
40 of local law enforcement officials, or by selling the firearm

1 to a licensed gun dealer, as specified in Section 12071 of
2 the Penal Code. If the respondent is not present at the
3 hearing, the respondent shall relinquish the firearm
4 within 48 hours after being served with the order. A
5 person ordered to relinquish any firearm pursuant to this
6 subdivision shall file with the court a receipt showing the
7 firearm was surrendered to the local law enforcement
8 agency or sold to a licensed gun dealer within 72 hours
9 after receiving the order. In the event that it is necessary
10 to continue the date of any hearing due to a request for
11 a relinquishment order pursuant to this section, the court
12 shall ensure that all applicable protective orders
13 described in Section 6218 remain in effect or bifurcate the
14 issues and grant the permanent restraining order
15 pending the date of the hearing.

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

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

33 (f) The restraining order requiring a person to
34 relinquish a firearm pursuant to subdivision (c) shall state
35 on its face that the firearm shall be relinquished to the
36 local law enforcement agency for that jurisdiction or sold
37 to a licensed gun dealer, and that proof of surrender or
38 sale shall be filed with the court within a specified period
39 of receipt of the order. The order shall also state on its face
40 the expiration date for relinquishment. Nothing in this

1 section shall limit a respondent's right under existing law
2 to petition the court at a later date for modification of the
3 order.

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

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

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

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

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

19 (l) If the 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 respondent is unable
23 to gain access to that firearm while the protective order
24 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 24 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. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) A second or subsequent conviction for a violation
36 of any order described in paragraph (1) occurring within
37 seven years of a prior conviction for a violation of any of
38 those orders and involving an act of violence or “a
39 credible threat” of violence, as provided in subdivisions
40 (c) and (d) of Section 139, is punishable by imprisonment

1 in a county jail not to exceed one year, or in the state
2 prison for 16 months or two or three years.

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

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

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

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

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

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

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



1 subdivision, until all separate property of the offending
2 spouse is exhausted.

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

16 SEC. 6. Section 273d of the Penal Code is amended to
17 read:

18 273d. (a) Any person who willfully inflicts upon a
19 child any cruel or inhuman corporal punishment or an
20 injury resulting in a traumatic condition is guilty of a
21 felony and shall be punished by imprisonment in the state
22 prison for two, four, or six years, or in a county jail for not
23 more than one year, by a fine of up to six thousand dollars
24 (\$6,000), or by both that imprisonment and fine.

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

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

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

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

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

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

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

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

27 SEC. 7. Section 273.5 of the Penal Code is amended to
28 read:

29 273.5. (a) Any person who willfully inflicts upon his
30 or her spouse, or any person who willfully inflicts upon
31 any person with whom he or she is cohabiting, or any
32 person who willfully inflicts upon any person who is the
33 mother or father of his or her child, corporal injury
34 resulting in a traumatic condition, is guilty of a felony, and
35 upon conviction thereof shall be punished by
36 imprisonment in the state prison for two, three, or four
37 years, or in a county jail for not more than one year, or by
38 a fine of up to six thousand dollars (\$6,000), or by both that
39 fine and imprisonment.

(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.

(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.

(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.

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

(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. If the defendant has been previously convicted of two or more offenses that occurred within seven years of a violation of subdivision (a), 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 60 days. Any person convicted of violating Section 273.5, for acts occurring within seven years of a previous conviction under subdivision (d) of Section 243, or under Section 243.4, 244, 244.5, or 273.5, if the victim of the prior offense is a person designated under subdivision (a) of Section 273.5, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000). However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, as required by this subdivision,

1 shall not be imposed and good cause shall be stated on the
2 record.

3 (g) If probation is granted upon conviction of a
4 violation of subdivision (a), the conditions of probation
5 may include, consistent with the terms of probation
6 imposed pursuant to Section 1203.97, in lieu of a fine, one
7 or both of the following requirements:

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

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

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

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

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

35 SEC. 10. Section 273.6 of the Penal Code is amended
36 to read:

37 273.6. (a) Any intentional and knowing violation of a
38 protective order, as defined in Section 6218 of the Family
39 Code, or of an order issued pursuant to Section 527.6 or
40 527.8 of the Code of Civil Procedure is a misdemeanor

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

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

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

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

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

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

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

34 (d) A subsequent conviction for a violation of an order
35 described in subdivision (a), occurring within seven
36 years of a prior conviction for a violation of an order
37 described in subdivision (a) and involving an act of
38 violence or “a credible threat” of violence, as defined in
39 subdivision (c) of Section 139, is punishable by

1 imprisonment in a county jail not to exceed one year, or
2 in the state prison.

3 (e) In the event of a subsequent conviction for a
4 violation of an order described in subdivision (a) for an
5 act occurring within one year of a prior conviction for a
6 violation of an order described in subdivision (a) that
7 results in physical injury to a victim, the person shall be
8 punished by a fine of not more than two thousand dollars
9 (\$2,000), or by imprisonment in a county jail for not less
10 than six months nor more than one year, by both that fine
11 and imprisonment, or by imprisonment in the state
12 prison. However, if the person is imprisoned in a county
13 jail for at least 30 days, the court may, in the interests of
14 justice and for reasons stated in the record, reduce or
15 eliminate the six-month minimum imprisonment
16 required by this subdivision. In determining whether to
17 reduce or eliminate the minimum imprisonment
18 pursuant to this subdivision, the court shall consider the
19 seriousness of the facts before the court, whether there
20 are additional allegations of a violation of the order during
21 the pendency of the case before the court, the probability
22 of future violations, the safety of the victim, and whether
23 the defendant has successfully completed or is making
24 progress with counseling.

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

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

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

35 (2) That the defendant reimburse the victim for
36 reasonable costs of counseling and other reasonable
37 expenses that the court finds are the direct result of the
38 defendant's offense.

39 (h) For any order to pay a fine, make payments to a
40 battered women's shelter, or pay restitution as a

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

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

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

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

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

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

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

38 (c) (1) When a peace officer is responding to a call
39 alleging a violation of a domestic violence protective or
40 restraining order issued under the Family Code, Section

1 527.6 of the Code of Civil Procedure, Section 213.5 of the
2 Welfare and Institutions Code, Section 136.2 of this code,
3 or paragraph (2) of subdivision (a) of Section 1203.097 of
4 this code, or of a domestic violence protective or
5 restraining order issued by the court of another state,
6 tribe, or territory and the peace officer has probable
7 cause to believe that the person against whom the order
8 is issued has notice of the order and has committed an act
9 in violation of the order, the officer shall, consistent with
10 subdivision (b) of Section 13701, make a lawful arrest of
11 the person without a warrant and take that person into
12 custody whether or not the violation occurred in the
13 presence of the arresting officer. The officer shall, as soon
14 as possible after the arrest, confirm with the appropriate
15 authorities or the Domestic Violence Protection Order
16 Registry maintained pursuant to Section 6380 of the
17 Family Code that a true copy of the protective order has
18 been registered, unless the victim provides the officer
19 with a copy of the protective order.

20 (2) The person against whom a protective order has
21 been issued shall be deemed to have notice of the order
22 if the victim presents to the officer proof of service of the
23 order, the officer confirms with the appropriate
24 authorities that a true copy of the proof of service is on
25 file, or the person against whom the protective order was
26 issued was present at the protective order hearing or was
27 informed by a peace officer of the contents of the
28 protective order.

29 (3) In situations where mutual protective orders have
30 been issued under Division 10 (commencing with Section
31 6200) of the Family Code, liability for arrest under this
32 subdivision applies only to those persons who are
33 reasonably believed to have been the primary aggressor.
34 In those situations, prior to making an arrest under this
35 subdivision, the peace officer shall make reasonable
36 efforts to identify, and may arrest, the primary aggressor
37 involved in the incident. The primary aggressor is the
38 person determined to be the most significant, rather than
39 the first, aggressor. In identifying the primary aggressor,
40 an officer shall consider (A) the intent of the law to

1 protect victims of domestic violence from continuing
2 abuse, (B) the threats creating fear of physical injury, (C)
3 the history of domestic violence between the persons
4 involved, and (D) whether either person involved acted
5 in self-defense.

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

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

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

30 (e) In addition to the authority to make an arrest
31 without a warrant pursuant to paragraphs (1) and (3) of
32 subdivision (a), a peace officer may, without a warrant,
33 arrest a person for a violation of Section 12025 when all of
34 the following apply:

35 (1) The officer has reasonable cause to believe that the
36 person to be arrested has committed the violation of
37 Section 12025.

38 (2) The violation of Section 12025 occurred within an
39 airport, as defined in Section 21013 of the Public Utilities

1 Code, in an area to which access is controlled by the
2 inspection of persons and property.

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

6 SEC. 12. Section 1328 of the Penal Code is amended
7 to read:

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

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

34 (2) The court having jurisdiction of the case shall have
35 the power to appoint a guardian ad litem to receive
36 service of a subpoena of the child and shall have the
37 power to produce the child ordered to court under this
38 section.

39 (c) Whenever any peace officer designated in Section
40 830 is required as a witness before any court or magistrate

1 in any action or proceeding in connection with a matter
2 regarding an event or transaction which he or she has
3 perceived or investigated in the course of his or her
4 duties, a criminal subpoena issued pursuant to this
5 chapter requiring his or her attendance may be served
6 either by delivering a copy to the peace officer personally
7 or by delivering two copies to his or her immediate
8 superior or agent designated by his or her immediate
9 superior to receive the service; or, in those counties
10 where the local agencies have consented with the
11 marshal's office or sheriff's office, where appropriate, to
12 participate, by sending a copy by electronic means,
13 including electronic mail, computer modem, facsimile, or
14 other electronic means, to his or her immediate superior
15 or agent designated by the immediate superior to receive
16 the service. If the service is made by electronic means, the
17 immediate superior or agency designated by his or her
18 immediate superior shall acknowledge receipt of the
19 subpoena by telephone or electronic means to the sender
20 of origin. If service is made upon the immediate superior
21 or agent designated by the immediate superior, the
22 immediate superior or the agent shall deliver a copy of
23 the subpoena to the peace officer as soon as possible and
24 in no event later than a time which will enable the peace
25 officer to comply with the subpoena.

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

35 (e) If the immediate superior or his or her agent is
36 tendered service of a subpoena less than five working
37 days prior to the date of hearing, and he or she is not
38 reasonably certain he or she can complete the service, he
39 or she may refuse acceptance.



1 (f) If the immediate superior or agent upon whom
2 service has been made, subsequently determines that he
3 or she will be unable to deliver a copy of the subpoena to
4 the peace officer within a time which will allow the peace
5 officer to comply with the subpoena, the immediate
6 superior or agent shall notify the server or his or her office
7 or agent not less than 48 hours prior to the hearing date
8 indicated on the subpoena, and is thereby excused from
9 any duty, liability, or penalty arising because of his or her
10 failure to deliver a copy of the subpoena to the peace
11 officer. The server, so notified, is therewith responsible
12 for preparing the written return of service and for
13 notifying the originator of the subpoena if required.

14 (g) Notwithstanding subdivision (c), in the case of
15 peace officers employed by the California Highway
16 Patrol, if service is made upon the immediate superior or
17 upon an agent designated by the immediate superior of
18 the peace officer, the immediate superior or the agent
19 shall deliver a copy of the subpoena to the peace officer
20 on the officer's first workday following acceptance of
21 service of process. In this case, failure of the immediate
22 superior or the designated agent to deliver the subpoena
23 shall not constitute a defect in service.

24 SEC. 13. Section 11163.3 of the Penal Code is
25 amended to read:

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

38 (b) For purposes of this section, "abuse" has the
39 meaning set forth in Section 6203 of the Family Code and

1 “domestic violence” has the meaning set forth in Section
2 6211 of the Family Code.

3 (c) A county may develop a protocol that may be used
4 as a guideline to assist coroners and other persons who
5 perform autopsies on domestic violence victims in the
6 identification of domestic violence, in the determination
7 of whether domestic violence contributed to death or
8 whether domestic violence had occurred prior to death,
9 but was not the actual cause of death, and in the proper
10 written reporting procedures for domestic violence,
11 including the designation of the cause and mode of death.

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

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

15 (2) Medical personnel with expertise in domestic
16 violence abuse.

17 (3) Coroners and medical examiners.

18 (4) Criminologists.

19 (5) District attorneys and city attorneys.

20 (6) Domestic violence shelter service staff and
21 battered women’s advocates.

22 (7) Law enforcement personnel.

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

25 (9) County health department staff who deal with
26 domestic violence victims’ health issues.

27 (10) Representatives of local child abuse agencies.

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

30 (e) An oral or written communication or a document
31 shared within or produced by a domestic violence death
32 review team related to a domestic violence death review
33 is confidential and not subject to disclosure or
34 discoverable by a third party. An oral or written
35 communication or a document provided by a third party
36 to a domestic violence death review team, or between a
37 third party and a domestic violence death review team,
38 is confidential and not subject to disclosure or
39 discoverable by a third party. Notwithstanding the
40 foregoing, recommendations of a domestic violence

1 death review team upon the completion of a review may
2 be disclosed at the discretion of a majority of the members
3 of the domestic violence death review team.

4 (f) Each organization represented on a domestic
5 violence death review team may share with other
6 members of the team information in its possession
7 concerning the victim who is the subject of the review or
8 any person who was in contact with the victim and any
9 other information deemed by the organization to be
10 pertinent to the review. Any information shared by an
11 organization with other members of a team is
12 confidential. This provision shall permit the disclosure to
13 members of the team of any information deemed
14 confidential, privileged, or prohibited from disclosure by
15 any other statute.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (B) Sexual assault.

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

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

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

25 (A) A spouse or former spouse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

