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AMENDED IN ASSEMBLY JUNE 28, 1999  
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AMENDED IN SENATE APRIL 20, 1999  
AMENDED IN SENATE APRIL 12, 1999  
AMENDED IN SENATE MARCH 22, 1999

## SENATE BILL

**No. 218**

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### **Introduced by Senator Solis**

(Principal coauthors: Assembly Members Jackson and  
Kuehl)

(Coauthors: Assembly Members Aroner, Bock, Corbett,  
Knox, Steinberg, and Wiggins)

January 21, 1999

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An act to amend Section 185 of the Code of Civil Procedure, to amend Sections 6343, 6380.5, and 6389 of the Family Code, to amend ~~Section 124250~~ *Sections 124250 and 124251* of the Health and Safety Code, to amend Sections 166, 273d, 273.5, 273.6, 836, 1328, 11163.3, *12021*, 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. *A violation of a protective order issued pursuant to this provision is punishable as a misdemeanor by imprisonment in a county jail not to exceed one year, or by a fine not to exceed \$1,000 or by both that fine and imprisonment.*

*This bill would instead prohibit a person subject to a specified protective order from owning, possessing, purchasing, or receiving a firearm while the order is in effect. The bill would also 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. *Additionally, a violation of a protective order issued pursuant to the above provision instead would be punishable as either a misdemeanor or a felony. By increasing the punishment for a crime, this offense would impose a state-mandated local program.*

*(4) The Maternal and Child Health Branch of the State Department of Health Services is required to fund at least one agency to conduct a statewide evaluation of the services funded through a specified provision of law.*

*This bill would make a technical conforming change.*

~~(4)~~

(5) 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)~~

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

This bill would ~~also~~ *instead* 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)~~

(7) 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)

(8) 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 *one prior violation of that offense within a specified period of time, the court must impose as a condition of probation, imprisonment in a county jail for not less than 96 hours. If the person is convicted of that offense and has been convicted of 2 or more prior 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 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. This bill would require instead that where probation is granted to a defendant who has previously been convicted of one violation of the above offense or other specified offenses, the court must impose conditions of probation specified for crimes of domestic violence and imprisonment in a county jail for not less than 15 days; and for a defendant who has been convicted of 2 or more prior convictions of the above offense or other specified offenses, the court must impose those same conditions of probation specified for crimes of domestic violence and imprisonment 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)

(9) 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)~~

(10) 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)~~

(11) 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)~~

(12) 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)~~

(13) 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)~~

(14) 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)~~

(15) Existing law authorizes a court, upon a good cause belief that harm to, or intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur, to issue specified protective orders. Existing law also prohibits any person from purchasing or receiving, or attempting to purchase or receive a firearm knowing that he or she is subject to a protective order, as defined, in specified provisions of law, or by a temporary restraining order or injunction issued pursuant to specified provisions of law. A violation of this prohibition is punishable as a misdemeanor or a felony. However, receipt of a firearm as part of the disposition of community property is exempt from this prohibition and penalty.

This bill would include in the definition of the above offense, the above provision authorizing a protective order upon a good cause belief of harm, intimidation, or dissuasion of a victim or witness. The bill would also delete the community property exemption. By expanding the definition of a crime, this bill would impose a state-mandated local program.

This bill would also make it a misdemeanor for every person to own or possess a firearm knowing that he or she is subject to a protective order, temporary restraining order, or injunction as specified, punishable by imprisonment in a



*county jail not to exceed one year, by fine not to exceed \$1,000, or by both that fine and punishment. By creating a new crime, this bill would impose a state-mandated local program.*

(16) 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  
14 available in languages other than English, as Judicial  
15 Council deems appropriate, to all courts. The Judicial  
16 Council shall make available orders and forms pertaining



1 to protective orders issued pursuant to Sections 527.6 and  
2 527.8 of the Code of Civil Procedure, Part 1 (commencing  
3 with Section 6200) of Division 10 of the Family Code, and  
4 Section 136.2 of the Penal Code.

5 SEC. 2. Section 6343 of the Family Code is amended  
6 to read:

7 6343. (a) After notice and a hearing, the court may  
8 issue an order requiring the restrained party to  
9 participate in a batterer's—~~treatment~~ program approved  
10 by the probation department as provided in Section  
11 1203.097 of the Penal Code.

12 (b) The courts shall, in consultation with local  
13 domestic violence shelters and programs, develop a  
14 resource list of referrals to appropriate community  
15 domestic violence programs and services to be provided  
16 to each applicant for an order under this section.

17 SEC. 3. *Section 6380.5 of the Family Code is amended*  
18 *to read:*

19 6380.5. (a) An out-of-state protective or restraining  
20 order issued by a state, tribal, or territorial court related  
21 to domestic or family violence shall be deemed valid if the  
22 issuing court had jurisdiction over the parties and matter  
23 under the law of the state, tribe, or territory. There shall  
24 be a presumption of validity where an order appears  
25 authentic on its face.

26 (b) Any valid protective or restraining order related  
27 to domestic or family violence issued by a court of another  
28 state, tribe, or territory shall, upon request of the person  
29 in possession of the foreign protective order, be  
30 registered with a court of this state in order to be entered  
31 in the Domestic Violence Protective Order Registry  
32 established under this chapter. The Judicial Council shall  
33 adopt rules of court to do the following:

34 (1) Set forth the process whereby a person in  
35 possession of a valid foreign protective order may  
36 voluntarily register the order with a court of this state for  
37 entry into the Domestic Violence Protective Order  
38 Registry.

39 (2) Require the sealing of foreign protective orders  
40 and provide access only to law enforcement, the person

1 who registered the order upon written request with proof  
2 of identification, the defense after arraignment on  
3 criminal charges involving an alleged violation of the  
4 order, or upon further order of the court.

5 (c) Any valid protective or restraining order related to  
6 domestic or family violence issued by a court of another  
7 state, tribe, or territory shall be accorded full faith and  
8 credit by the courts of this state, and *the terms, as written*,  
9 shall be enforced as set forth in Section 6381, as if it had  
10 been issued in this state.

11 SEC. 4. Section 6389 of the Family Code is amended  
12 to read:

13 6389. (a) A person subject to a protective order, as  
14 defined in Section 6218, ~~may not own or possess~~ *shall not*  
15 *own, possess, purchase, or receive* a firearm while that  
16 protective order is in effect.

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

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

1 a relinquishment order pursuant to this section, the court  
2 shall ensure that all applicable protective orders  
3 described in Section 6218 remain in effect or bifurcate the  
4 issues and grant the permanent restraining order  
5 pending the date of the hearing.

6 (d) If the respondent declines to relinquish possession  
7 of any firearm based upon the assertion of the right  
8 against self-incrimination, as provided by the Fifth  
9 Amendment to the United States Constitution and  
10 Section 15 of Article I of the California Constitution, the  
11 court may grant use immunity for the act of relinquishing  
12 the firearm *required under this section*.

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

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

34 (g) The restraining order requiring a person to  
35 relinquish a firearm pursuant to subdivision (c) shall  
36 prohibit the person from possessing or controlling any  
37 firearm for the duration of the order. At the expiration of  
38 the order, the local law enforcement agency shall return  
39 possession of any surrendered firearm to the respondent,  
40 within five days after the expiration of the

1 relinquishment order, unless the local law enforcement  
2 agency determines that (1) the firearm has been stolen,  
3 (2) the respondent is prohibited from possessing a  
4 firearm because the respondent is in any prohibited class  
5 for the possession of firearms, as defined in Sections 12021  
6 and 12021.1 of the Penal Code and Sections 8100 and 8103  
7 of the Welfare and Institutions Code, or (3) another  
8 successive restraining order is used against the  
9 respondent under this section. If the local law  
10 enforcement agency determines that the respondent is  
11 the legal owner of any firearm deposited with the local  
12 law enforcement agency and is prohibited from  
13 possessing any firearm, the respondent shall be entitled  
14 to sell or transfer the firearm to a licensed dealer as  
15 defined in Section 12071 of the Penal Code. If the firearm  
16 has been stolen, the firearm shall be restored to the lawful  
17 owner upon his or her identification of the firearm and  
18 proof of ownership.

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

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

1 five days of presenting the local law enforcement agency  
2 with a bill of sale.

3 (j) The disposition of any unclaimed property under  
4 this section shall be made pursuant to Section 1413 of the  
5 Penal Code.

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

9 (l) If the respondent notifies the court that he or she  
10 owns a firearm that is not in his or her immediate  
11 possession, the court may limit the order to exclude that  
12 firearm if the judge is satisfied the respondent is unable  
13 to gain access to that firearm while the protective order  
14 is in effect.

15 (m) Any respondent to a protective order who violates  
16 any order issued pursuant to this section ~~is guilty of a~~  
17 ~~misdemeanor, which shall be punishable by~~  
18 ~~imprisonment in a county jail not exceeding one year, by~~  
19 ~~a fine not exceeding one thousand dollars (\$1,000), or by~~  
20 ~~both that imprisonment and fine.~~ *shall be punished under*  
21 *the provisions of subdivision (g) of Section 12021 of the*  
22 *Penal Code.*

23 ~~SEC. 4.~~

24 SEC. 5. Section 124250 of the Health and Safety Code  
25 is amended to read:

26 124250. (a) The following definitions shall apply for  
27 purposes of this section:

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

35 (2) "Shelter based" means an established system of  
36 services where battered women and their children may  
37 be provided safe or confidential emergency housing on a  
38 24-hour basis, including, but not limited to, hotel or motel  
39 arrangements, haven, and safe houses.

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

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

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

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

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

25 (3) Legal and other types of advocacy and  
26 representation to help women and their children pursue  
27 the appropriate legal options.

28 (4) Other support services for battered women and  
29 their children.

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

35 (1) Seven members appointed by the Governor.

36 (2) Three members appointed by the Speaker of the  
37 Assembly.

38 (3) Three members appointed by the Senate  
39 Committee on Rules.

1 (4) Two nonvoting ex officio members who shall be  
 2 Members of the Legislature, one appointed by the  
 3 Speaker of the Assembly and one appointed by the Senate  
 4 Committee on Rules. Any Member of the Legislature  
 5 appointed to the council shall meet with, and participate  
 6 in the activities of, the council to the extent that  
 7 participation is not incompatible with his or her position  
 8 as a Member of the Legislature.

9 The membership of the council shall consist of domestic  
 10 violence advocates, battered women service providers,  
 11 and representatives of women's organizations, law  
 12 enforcement, and other groups involved with domestic  
 13 violence. At least one-half of the council membership  
 14 shall consist of domestic violence advocates or battered  
 15 women service providers from organizations such as the  
 16 California Alliance Against Domestic Violence.

17 It is the intent of the Legislature that the council  
 18 membership reflect the ethnic, racial, cultural, and  
 19 geographic diversity of the state.

20 (e) The department shall collaborate closely with the  
 21 council in the development of funding priorities, the  
 22 framing of the Request for Proposals, and the solicitation  
 23 of proposals.

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

34 (2) For purposes of this subdivision, "agency" means  
 35 a state agency, a local government, a community-based  
 36 organization, or a nonprofit organization.

37 (g) It is the intent of the Legislature that services  
 38 funded by this program include services in underserved  
 39 and ethnic and racial communities. Therefore, the  
 40 Maternal and Child Health Branch of the State

1 Department of Health Services shall do all of the  
2 following:

3 (1) Fund shelters pursuant to this section that reflect  
4 the ethnic, racial, economic, cultural, and geographic  
5 diversity of the state.

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

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

13 (i) As a condition of receiving funding pursuant to this  
14 section, battered women's shelters shall do all of the  
15 following:

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

21 (2) Ensure that appropriate staff and volunteers  
22 having client contact meet the definition of "domestic  
23 violence counselor" as specified in subdivision (a) of  
24 Section 1037.1 of the Evidence Code. The minimum  
25 training specified in paragraph (2) of subdivision (a) of  
26 Section 1037.1 of the Evidence Code shall be provided to  
27 those staff and volunteers who do not meet the  
28 requirements of paragraph (1) of subdivision (a) of  
29 Section 1037.1 of the Evidence Code.

30 ~~SEC. 5.~~

31 *SEC. 6. Section 124251 of the Health and Safety Code*  
32 *is amended to read:*

33 124251. (a) The Maternal and Child Health Branch  
34 of the State Department of Health Services shall fund,  
35 through a competitive selection process determined by  
36 the director, at least one agency to provide expert  
37 technical assistance and training on domestic violence  
38 issues and building agency capacity in order to obtain  
39 other funding for services for battered women and their

1 children, including, but not limited to, grant writing and  
2 building coalitions.

3 (b) The Maternal and Child Health Branch of the  
4 State Department of Health Services shall fund at least  
5 one agency to conduct a statewide evaluation of the  
6 services funded through Section ~~123277~~ 124250.

7 (c) For purposes of subdivision (a), “agency” means a  
8 state agency, local government, a community-based  
9 organization, or a nonprofit agency.

10 (d) Contracts awarded pursuant to this section are  
11 exempt from the competitive bidding requirements of  
12 the Public Contract Code.

13 SEC. 7. Section 166 of the Penal Code is amended to  
14 read:

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

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

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

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

32 ~~(4) Willful disobedience of any process or order~~  
33 ~~lawfully issued by any court.~~

34 ~~(5) Willful disobedience of any court order or~~

35 *(4) Willful disobedience of the terms as written of any*  
36 *process or court order or out-of-state court order, lawfully*  
37 *issued by any court, including orders pending trial.*

38 ~~(6)~~

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

1 ~~(7)~~

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

5 ~~(8)~~

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

8 ~~(9)~~

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

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

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

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

29 (c) (1) Notwithstanding paragraph (4) of subdivision  
30 (a), any willful and knowing violation of any protective  
31 order or stay away court order issued pursuant to Section  
32 136.2, in a pending criminal proceeding involving  
33 domestic violence, as defined in Section 13700, or issued  
34 as a condition of probation after a conviction in a criminal  
35 proceeding involving domestic violence, as defined in  
36 Section 13700, which is an order described in paragraph  
37 (3), shall constitute contempt of court, a misdemeanor,  
38 punishable by imprisonment in a county jail for not more  
39 than one year, by a fine of not more than one thousand  
40 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 at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

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

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

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

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

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

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

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

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

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

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling

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

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

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

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

34 ~~SEC. 6.~~

35 *SEC. 8.* Section 273d of the Penal Code is amended to  
36 read:

37 273d. (a) Any person who willfully inflicts upon a  
38 child any cruel or inhuman corporal punishment or an  
39 injury resulting in a traumatic condition is guilty of a  
40 felony and shall be punished by imprisonment in the state

1 prison for two, four, or six years, or in a county jail for not  
2 more than one year, by a fine of up to six thousand dollars  
3 (\$6,000), or by both that imprisonment and fine.

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

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

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

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

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

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

37 (4) If the offense was committed while the defendant  
38 was under the influence of drugs or alcohol, the  
39 defendant shall abstain from the use of drugs or alcohol

1 during the period of probation and shall be subject to  
2 random drug testing by his or her probation officer.

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

7 ~~SEC. 7.~~

8 SEC. 9. Section 273.5 of the Penal Code is amended to  
9 read:

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

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

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

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

33 ~~(e) If probation is granted, the court shall sentence the~~  
34 ~~defendant consistent with the provisions of Section~~  
35 ~~1203.097.~~

36 ~~(f) If probation is granted, or the execution or~~  
37 ~~imposition of a sentence is suspended, for any person~~  
38 ~~convicted under subdivision (a) who previously has been~~  
39 ~~convicted of a violation of subdivision (a) for an offense~~  
40 ~~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, shall not be imposed and good cause shall be stated on the record.~~

~~(g)~~

*(e) Any person convicted of violating this section, for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, 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).*

*(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.*

*(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:*

1 (1) If the defendant has suffered one prior conviction  
2 within the previous seven years for a violation of any  
3 offense specified in subdivision (e), it shall be a condition  
4 of 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 15 days.

7 (2) If the defendant has suffered two or more prior  
8 convictions within the previous seven years for a violation  
9 of any offense specified in subdivision (e), it shall be a  
10 condition of probation, in addition to the provisions  
11 contained in Section 1203.097, that he or she be  
12 imprisoned in a county jail for not less than 60 days.

13 (3) The court, upon a showing of good cause, may find  
14 that the mandatory imprisonment required by this  
15 subdivision shall not be imposed and shall state on the  
16 record its reasons for finding good cause.

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

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

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

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



1 restitution to the injured spouse, required by Section  
2 1203.04, as operative on or before August 2, 1995, or  
3 Section 1202.4, or to a shelter for costs with regard to the  
4 injured spouse and dependents, required by this section,  
5 until all separate property of the offending spouse is  
6 exhausted.

7 ~~SEC. 8.~~

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

9 ~~SEC. 9.~~

10 *SEC. 11.* Section 273.56 of the Penal Code is repealed.

11 ~~SEC. 10.~~

12 *SEC. 12.* Section 273.6 of the Penal Code is amended  
13 to read:

14 273.6. (a) Any intentional and knowing violation of a  
15 protective order, as defined in Section 6218 of the Family  
16 Code, or of an order issued pursuant to Section 527.6 or  
17 527.8 of the Code of Civil Procedure is a misdemeanor  
18 punishable by a fine of not more than one thousand  
19 dollars (\$1,000), or by imprisonment in a county jail for  
20 not more than one year, or by both that fine and  
21 imprisonment.

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

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

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

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

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

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

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

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

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

3 (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) If probation is granted upon conviction of a  
7 violation of subdivision (a), (b), ~~or (e)~~ (c), (d), or (e), the  
8 conditions of probation may include, in lieu of a fine, one  
9 or both of the following requirements:

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

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

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

35 ~~SEC. 11.~~

36 *SEC. 13.* Section 836 of the Penal Code is amended to  
37 read:

38 836. (a) A peace officer may arrest a person in  
39 obedience to a warrant, or, pursuant to the authority  
40 granted to him or her by Chapter 4.5 (commencing with

1 Section 830) of Title 3 of Part 2, without a warrant, may  
2 arrest a person whenever any of the following  
3 circumstances occur:

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

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

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

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

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

39 (2) The person against whom a protective order has  
40 been issued shall be deemed to have notice of the order

1 if the victim presents to the officer proof of service of the  
2 order, the officer confirms with the appropriate  
3 authorities that a true copy of the proof of service is on  
4 file, or the person against whom the protective order was  
5 issued was present at the protective order hearing or was  
6 informed by a peace officer of the contents of the  
7 protective order.

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

25 (d) Notwithstanding paragraph (1) of subdivision (a),  
26 if a suspect commits an assault or battery upon a current  
27 or former spouse, fiancé, fiancée, a current or former  
28 cohabitant as defined in Section 6209 of the Family Code,  
29 a person with whom the suspect currently is having or has  
30 previously had an engagement relationship, a person  
31 with whom the suspect has parented a child, or is  
32 presumed to have parented a child pursuant to the  
33 Uniform Parentage Act (Part 3 (commencing with  
34 Section 7600) of Division 12 of the Family Code), a child  
35 of the suspect, a child whose parentage by the suspect is  
36 the subject of an action under the Uniform Parentage Act,  
37 a child of a person in one of the above categories, or any  
38 other person related to the suspect by consanguinity or  
39 affinity within the second degree, a peace officer may



1 arrest the suspect without a warrant where both of the  
2 following circumstances apply:

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

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

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

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

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

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

25 ~~SEC. 12.~~

26 SEC. 14. Section 1328 of the Penal Code is amended  
27 to read:

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

38 (b) (1) When service is to be made on a minor, service  
39 shall be made on the minor's parent, guardian,  
40 conservator, or similar fiduciary, or if one of them cannot



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

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

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

1 or agent designated by the immediate superior, the  
2 immediate superior or the agent shall deliver a copy of  
3 the subpoena to the peace officer as soon as possible and  
4 in no event later than a time which will enable the peace  
5 officer to comply with the subpoena.

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

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

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

33 (g) Notwithstanding subdivision (c), in the case of  
34 peace officers employed by the California Highway  
35 Patrol, if service is made upon the immediate superior or  
36 upon an agent designated by the immediate superior of  
37 the peace officer, the immediate superior or the agent  
38 shall deliver a copy of the subpoena to the peace officer  
39 on the officer's first workday following acceptance of  
40 service of process. In this case, failure of the immediate

1 superior or the designated agent to deliver the subpoena  
2 shall not constitute a defect in service.

3 ~~SEC. 13.~~

4 SEC. 15. Section 11163.3 of the Penal Code is  
5 amended to read:

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

18 (b) For purposes of this section, “abuse” has the  
19 meaning set forth in Section 6203 of the Family Code and  
20 “domestic violence” has the meaning set forth in Section  
21 6211 of the Family Code.

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

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

- 33 (1) Experts in the field of forensic pathology.  
34 (2) Medical personnel with expertise in domestic  
35 violence abuse.  
36 (3) Coroners and medical examiners.  
37 (4) Criminologists.  
38 (5) District attorneys and city attorneys.  
39 (6) Domestic violence shelter service staff and  
40 battered women’s advocates.

1 (7) Law enforcement personnel.

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

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

6 (10) Representatives of local child abuse agencies.

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

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

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

35 (g) Written and oral information may be disclosed to  
36 a domestic violence death review team established  
37 pursuant to this section. The team may make a request in  
38 writing for the information sought and any person with  
39 information of the kind described in paragraph (2) of this



1 subdivision may rely on the request in determining  
2 whether information may be disclosed to the team.

3 (1) No individual or agency that has information  
4 governed by this subdivision shall be required to disclose  
5 information. The intent of this subdivision is to allow the  
6 voluntary disclosure of information by the individual or  
7 agency that has the information.

8 (2) The following information may be disclosed  
9 pursuant to this subdivision:

10 (A) Notwithstanding Section 56.10 of the Civil Code,  
11 medical information.

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

14 (C) Notwithstanding Section 15633.5 of the Welfare  
15 and Institutions Code, information from elder abuse  
16 reports and investigations, except the identity of persons  
17 who have made reports, which shall not be disclosed.

18 (D) Notwithstanding Section 11167.5 of the Penal  
19 Code, information from child abuse reports and  
20 investigations, except the identity of persons who have  
21 made reports, which shall not be disclosed.

22 (E) State summary criminal history information,  
23 criminal offender record information, and local summary  
24 criminal history information, as defined in Sections 11075,  
25 11105, and 13300 of the Penal Code.

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

35 (G) Notwithstanding Section 827 of the Welfare and  
36 Institutions Code, information in any juvenile court  
37 proceeding.

38 (H) Information maintained by the Family Court,  
39 including information relating to the Family Conciliation  
40 Court Law pursuant to Section 1818 of the Family Code,

1 and Mediation of Custody and Visitation Issues pursuant  
2 to Section 3177 of the Family Code.

3 (I) Information provided to probation officers in the  
4 course of the performance of their duties, including, but  
5 not limited to, the duty to prepare reports pursuant to  
6 Section 1203.10 of the Penal Code, as well as the  
7 information on which these reports are based.

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

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

29 ~~SEC. 14.~~

30 *SEC. 16.* Section 11163.6 is added to the Penal Code,  
31 to read:

32 11163.6. In order to ensure consistent and uniform  
33 results, data may be collected and summarized by the  
34 domestic violence death review teams to show the  
35 statistical occurrence of domestic violence deaths in the  
36 team's county that occur under the following  
37 circumstances:

38 (a) The deceased was a victim of a homicide  
39 committed by a current or former spouse, fiancé, or  
40 dating partner.

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

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

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

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

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

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

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

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

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

~~SEC. 15.~~

*SEC. 17. Section 12021 of the Penal Code is amended to read:*

12021. (a) (1) Any person who has been convicted of a felony under the laws of the United States, of the State of California, or any other state, government, or country, or of an offense enumerated in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted to the use of any narcotic drug, who owns or has in his or her possession or under his or her custody or control any firearm is guilty of a felony.

(2) Any person who has two or more convictions for violating paragraph (2) of subdivision (a) of Section 417

1 and who owns or has in his or her possession or under his  
2 or her custody or control any firearm is guilty of a felony.

3 (b) Notwithstanding subdivision (a), any person who  
4 has been convicted of a felony or of an offense  
5 enumerated in Section 12001.6, when that conviction  
6 results from certification by the juvenile court for  
7 prosecution as an adult in an adult court under Section  
8 707 of the Welfare and Institutions Code, who owns or has  
9 in his or her possession or under his or her custody or  
10 control any firearm is guilty of a felony.

11 (c) (1) Except as provided in subdivision (a) or  
12 paragraph (2) of this subdivision, any person who has  
13 been convicted of a misdemeanor violation of Section 71,  
14 76, 136.5, or 140, subdivision (d) of Section 148, Section  
15 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,  
16 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,  
17 646.9, 12023, or 12024, subdivision (b) or (d) of Section  
18 12034, Section 12040, subdivision (b) of Section 12072,  
19 subdivision (a) of former Section 12100, Section 12220,  
20 12320, or 12590, or Section 8100, 8101, or 8103 of the  
21 Welfare and Institutions Code, any firearm-related  
22 offense pursuant to Sections 871.5 and 1001.5 of the  
23 Welfare and Institutions Code, or of the conduct  
24 punished in paragraph (3) of subdivision (g) of Section  
25 12072, and who, within 10 years of the conviction, owns,  
26 or has in his or her possession or under his or her custody  
27 or control, any firearm is guilty of a public offense, which  
28 shall be punishable by imprisonment in a county jail not  
29 exceeding one year or in the state prison, by a fine not  
30 exceeding one thousand dollars (\$1,000), or by both that  
31 imprisonment and fine. The court, on forms prescribed  
32 by the Department of Justice, shall notify the department  
33 of persons subject to this subdivision. However, the  
34 prohibition in this paragraph may be reduced,  
35 eliminated, or conditioned as provided in paragraph (2)  
36 or (3).

37 (2) Any person employed as a peace officer described  
38 in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5  
39 whose employment or livelihood is dependent on the  
40 ability to legally possess a firearm, who is subject to the

1 prohibition imposed by this subdivision because of a  
2 conviction under Section 273.5, 273.6, or 646.9, may  
3 petition the court only once for relief from this  
4 prohibition. The petition shall be filed with the court in  
5 which the petitioner was sentenced. If possible, the  
6 matter shall be heard before the same judge that  
7 sentenced the petitioner. Upon filing the petition, the  
8 clerk of the court shall set the hearing date and shall  
9 notify the petitioner and the prosecuting attorney of the  
10 date of the hearing. Upon making each of the following  
11 findings, the court may reduce or eliminate the  
12 prohibition, impose conditions on reduction or  
13 elimination of the prohibition, or otherwise grant relief  
14 from the prohibition as the court deems appropriate:

15 (A) Finds by a preponderance of the evidence that the  
16 petitioner is likely to use a firearm in a safe and lawful  
17 manner.

18 (B) Finds that the petitioner is not within a prohibited  
19 class as specified in subdivision (a), (b), (d), (e), or (g)  
20 or Section 12021.1, and the court is not presented with any  
21 credible evidence that the petitioner is a person  
22 described in Section 8100 or 8103 of the Welfare and  
23 Institutions Code.

24 (C) Finds that the petitioner does not have a previous  
25 conviction under this subdivision no matter when the  
26 prior conviction occurred.

27 In making its decision, the court shall consider the  
28 petitioner's continued employment, the interest of  
29 justice, any relevant evidence, and the totality of the  
30 circumstances. The court shall require, as a condition of  
31 granting relief from the prohibition under this section,  
32 that the petitioner agree to participate in counseling as  
33 deemed appropriate by the court. Relief from the  
34 prohibition shall not relieve any other person or entity  
35 from any liability that might otherwise be imposed. It is  
36 the intent of the Legislature that courts exercise broad  
37 discretion in fashioning appropriate relief under this  
38 paragraph in cases in which relief is warranted. However,  
39 nothing in this paragraph shall be construed to require  
40 courts to grant relief to any particular petitioner. It is the

1 intent of the Legislature to permit persons who were  
2 convicted of an offense specified in Section 273.5, 273.6,  
3 or 646.9 to seek relief from the prohibition imposed by this  
4 subdivision.

5 (3) Any person who is subject to the prohibition  
6 imposed by this subdivision because of a conviction of an  
7 offense prior to that offense being added to paragraph  
8 (1), may petition the court only once for relief from this  
9 prohibition. The petition shall be filed with the court in  
10 which the petitioner was sentenced. If possible, the  
11 matter shall be heard before the same judge that  
12 sentenced the petitioner. Upon filing the petition, the  
13 clerk of the court shall set the hearing date and notify the  
14 petitioner and the prosecuting attorney of the date of the  
15 hearing. Upon making each of the following findings, the  
16 court may reduce or eliminate the prohibition, impose  
17 conditions on reduction or elimination of the prohibition,  
18 or otherwise grant relief from the prohibition as the court  
19 deems appropriate:

20 (A) Finds by a preponderance of the evidence that the  
21 petitioner is likely to use a firearm in a safe and lawful  
22 manner.

23 (B) Finds that the petitioner is not within a prohibited  
24 class as specified in subdivision (a), (b), (d), (e), or (g)  
25 or Section 12021.1, and the court is not presented with any  
26 credible evidence that the petitioner is a person  
27 described in Section 8100 or 8103 of the Welfare and  
28 Institutions Code.

29 (C) Finds that the petitioner does not have a previous  
30 conviction under this subdivision, no matter when the  
31 prior conviction occurred.

32 In making its decision, the court may consider the  
33 interest of justice, any relevant evidence, and the totality  
34 of the circumstances. It is the intent of the Legislature  
35 that courts exercise broad discretion in fashioning  
36 appropriate relief under this paragraph in cases in which  
37 relief is warranted. However, nothing in this paragraph  
38 shall be construed to require courts to grant relief to any  
39 particular petitioner.

1 (4) Law enforcement officials who enforce the  
2 prohibition specified in this subdivision against a person  
3 who has been granted relief pursuant to paragraph (2) or  
4 (3), shall be immune from any liability for false arrest  
5 arising from the enforcement of this subdivision unless  
6 the person has in his or her possession a certified copy of  
7 the court order that granted the person relief from the  
8 prohibition. This immunity from liability shall not relieve  
9 any person or entity from any other liability that might  
10 otherwise be imposed.

11 (d) Any person who, as an express condition of  
12 probation, is prohibited or restricted from owning,  
13 possessing, controlling, receiving, or purchasing a firearm  
14 and who owns, or has in his or her possession or under his  
15 or her custody or control, any firearm but who is not  
16 subject to subdivision (a) or (c) is guilty of a public  
17 offense, which shall be punishable by imprisonment in a  
18 county jail not exceeding one year or in the state prison,  
19 by a fine not exceeding one thousand dollars (\$1,000), or  
20 by both that imprisonment and fine. The court, on forms  
21 provided by the Department of Justice, shall notify the  
22 department of persons subject to this subdivision. The  
23 notice shall include a copy of the order of probation and  
24 a copy of any minute order or abstract reflecting the  
25 order and conditions of probation.

26 (e) Any person who (1) is alleged to have committed  
27 an offense listed in subdivision (b) of Section 707 of the  
28 Welfare and Institutions Code, an offense described in  
29 subdivision (b) of Section 1203.073, or any offense  
30 enumerated in paragraph (1) of subdivision (c), and (2)  
31 is subsequently adjudged a ward of the juvenile court  
32 within the meaning of Section 602 of the Welfare and  
33 Institutions Code because the person committed an  
34 offense listed in subdivision (b) of Section 707 of the  
35 Welfare and Institutions Code, an offense described in  
36 subdivision (b) of Section 1203.073, or any offense  
37 enumerated in paragraph (1) of subdivision (c) shall not  
38 own, or have in his or her possession or under his or her  
39 custody or control, any firearm until the age of 30 years.  
40 A violation of this subdivision shall be punishable by

1 imprisonment in a county jail not exceeding one year or  
2 in the state prison, by a fine not exceeding one thousand  
3 dollars (\$1,000), or by both that imprisonment and fine.  
4 The juvenile court, on forms prescribed by the  
5 Department of Justice, shall notify the department of  
6 persons subject to this subdivision. Notwithstanding any  
7 other law, the forms required to be submitted to the  
8 department pursuant to this subdivision may be used to  
9 determine eligibility to acquire a firearm.

10 (f) Subdivision (a) shall not apply to a person who has  
11 been convicted of a felony under the laws of the United  
12 States unless either of the following criteria is satisfied:

13 (1) Conviction of a like offense under California law  
14 can only result in imposition of felony punishment.

15 (2) The defendant was sentenced to a federal  
16 correctional facility for more than 30 days, or received a  
17 fine of more than one thousand dollars (\$1,000), or  
18 received both punishments.

19 (g) (1) Every person who purchases or receives, or  
20 attempts to purchase or receive, a firearm knowing that  
21 he or she is subject to a protective order as defined in  
22 Section 6218 of the Family Code, *Section 136.2*, or a  
23 temporary restraining order or injunction issued  
24 pursuant to Section 527.6 or 527.8 of the Code of Civil  
25 Procedure, is guilty of a public offense, which shall be  
26 punishable by imprisonment in a county jail not  
27 exceeding one year or in the state prison, by a fine not  
28 exceeding one thousand dollars (\$1,000), or by both that  
29 imprisonment and fine. This subdivision does not apply  
30 unless the copy of the restraining order personally served  
31 on the person against whom the restraining order is  
32 issued contains a notice in bold print stating (1) that the  
33 person is prohibited from purchasing or receiving or  
34 attempting to purchase or receive a firearm and (2)  
35 specifying the penalties for violating this subdivision, or  
36 a court has provided actual verbal notice of the firearm  
37 prohibition and penalty as provided in Section 6304 of the  
38 Family Code. ~~However, this subdivision does not apply if~~  
39 ~~the firearm is received as part of the disposition of~~

~~community property pursuant to Division 7  
(commencing with Section 2500) of the Family Code.~~

(2) Every person who owns or possesses a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, 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. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is justifiable where all of the following conditions are met:

(A) The person found the firearm or took the firearm from a person who was committing a crime against him or her.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the firearm to a law enforcement agency for that agency's disposition according to law.

(C) If the firearm was transported to a law enforcement agency, it was transported in accordance with paragraph (18) of subdivision (a) of Section 12026.2.

(D) If the firearm is being transported to a law enforcement agency, the person transporting the firearm has given prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency for disposition according to law.

(2) Upon the trial for violating subdivision (a), (b), (c), (d), or (e), the trier of fact shall determine whether the defendant was acting within the provisions of the exemption created by this subdivision.

(3) The defendant has the burden of proving by a preponderance of the evidence that he or she comes within the provisions of the exemption created by this subdivision.

*SEC. 18.* Section 12028.5 of the Penal Code is amended to read:

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

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

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

(B) Sexual assault.

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

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

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

(A) A spouse or former spouse.

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

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

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

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

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

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

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2, a peace officer, as defined in subdivision (d) of Section 830.31, and a peace officer, as defined in Section 830.5, who is at the scene of a domestic violence incident involving a threat to human life or a physical assault, shall take temporary custody of any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual search as necessary for the protection of the peace officer or other persons present. Upon taking custody of a firearm or other deadly weapon, the officer shall give the owner or person who possessed the firearm a receipt. The receipt shall describe the firearm or other deadly weapon and list any identification or serial number on the firearm. The receipt shall indicate where the firearm or other deadly weapon can be recovered and the date after which the owner or possessor can recover the firearm or other deadly weapon. No firearm or other deadly weapon shall be held less than 48 hours. Except as provided in subdivision (e), if a firearm or other deadly weapon is not retained for use as evidence related to criminal charges brought as a result of the domestic violence incident or is not retained because it was illegally possessed, the firearm or other deadly weapon shall be made available

1 to the owner or person who was in lawful possession 48  
2 hours after the seizure or as soon thereafter as possible,  
3 but no later than 72 hours after the seizure. In any civil  
4 action or proceeding for the return of firearms or  
5 ammunition or other deadly weapon seized by any state  
6 or local law enforcement agency and not returned within  
7 72 hours following the initial seizure, except as provided  
8 in subdivision (c), the court shall allow reasonable  
9 attorney's fees to the prevailing party.

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

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

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

1 seizure, initiate a petition in superior court to determine  
2 if the firearm or other deadly weapon should be returned.

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

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

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

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

1 months from the date of the initial hearing. If the owner  
2 or person who had lawful possession does not petition the  
3 court within this 12-month period for a second hearing or  
4 is unsuccessful at the second hearing in gaining return of  
5 the firearm or other deadly weapon, the firearm or other  
6 deadly weapon may be disposed of as provided in Section  
7 12028.

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

11 ~~SEC. 16.~~

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

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

