

AMENDED IN ASSEMBLY AUGUST 19, 1999

AMENDED IN ASSEMBLY JULY 6, 1999

AMENDED IN ASSEMBLY JUNE 28, 1999

AMENDED IN ASSEMBLY JUNE 17, 1999

AMENDED IN SENATE APRIL 20, 1999

AMENDED IN SENATE APRIL 12, 1999

AMENDED IN SENATE MARCH 22, 1999

SENATE BILL

No. 218

Introduced by Senator Solis

(Principal coauthors: Assembly Members Jackson and
Kuehl)

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

January 21, 1999

An act to amend Section 185 of the Code of Civil Procedure, to amend Sections 6304, 6343, 6380.5, and 6389 of the Family Code, to amend 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 provides that when a court makes a protective order and both parties are present in court, the court shall inform both the petitioner and the respondent of the terms of the order, including notice that the respondent is prohibited from purchasing or receiving or attempting to purchase or receive a firearm, and including notice of the penalty for a violation.*

This bill would provide that, in addition, the court would be required to inform the respondent that the respondent is prohibited from owning, possessing, or attempting to own or possess a firearm.

(3) 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 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)~~

(4) 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 *and that the order shall so state on its face*. 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)

(5) 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.

(5)

(6) 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.

~~(6)~~

~~(7) Existing law punishes as a contempt of court the willful disobedience of any process or lawfully issued court order.~~

~~This bill would 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. Existing law punishes certain kinds of contempt of court as misdemeanors, among them the willful disobedience of any process or lawfully issued court order. Existing law also provides a higher level of punishment for certain other types of contempt.~~

This bill would expand the list of kinds of contempt of court punishable as a misdemeanor to include willful disobedience of lawfully issued out-of-state court orders and orders pending trial that are made at the request of a party alleging domestic violence. This bill would also add provisions defining as contempt of court knowingly owning, possessing, purchasing, or receiving a firearm in violation of certain protective orders, except as noted, and provide for punishment of this kind of contempt of court consistent with other provisions of the Penal Code. By expanding the definition of a crime, this bill would impose a state-mandated local program.

~~(7)~~

~~(8) 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.

~~(8)~~

~~(9) 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. ~~This~~

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.

(9)

(10) 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.

(10)

(11) 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. *This bill would also amend this provision by defining the punishment for knowingly owning, possessing, purchasing, or receiving a firearm in violation of a protective order or other order, except as provided.* By expanding the definition of a crime, this bill imposes a state-mandated local program.

~~(11)~~

(12) 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.

~~(12)~~

(13) 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.

~~(13)~~

(14) 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.

~~(14)~~

(15) 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.

~~(15)~~

(16) 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. *This bill would further provide that when a court grants probation for a firearms violation of a protective order as described above, probation shall be consistent with provisions of the Penal Code regarding probation for domestic violence.* By creating a new crime, this bill would impose a state-mandated local program.

This bill would also require the Judicial Council to provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, or receiving a firearm while the order is in effect, in addition to other information.

~~(16)~~

(17) 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~~ *providing* an unofficial
8 translation of a court order ~~or document issued pursuant~~
9 ~~to Part 1 (commencing with Section 6200) of Division 10~~
10 ~~of the Family Code or Section 136.2 of the Penal Code in~~
11 ~~a language other than English.~~ *issued pursuant to Section*
12 *527.6 or 527.8 of the Code of Civil Procedure, or Part 1*
13 *(commencing with Section 6200) of Division 10 of the*
14 *Family Code, or Section 136.2 of the Penal Code, in a*
15 *language other than English.*
16 (b) The Judicial Council shall, by July 1, 2001, make ~~the~~
17 ~~court orders and forms specified in this subdivision~~
18 ~~available in languages other than English, as Judicial~~
19 ~~Council deems appropriate, to all courts. The Judicial~~
20 ~~Council shall make available orders and forms pertaining~~
21 ~~to protective orders issued pursuant to Sections 527.6 and~~
22 *available to all courts, translations of domestic violence*

1 *protective order forms in languages other than English,*
2 *as the Judicial Council deems appropriate, for protective*
3 *orders issued pursuant to Section 527.6 or 527.8 of the*
4 *Code of Civil Procedure, or Part 1 (commencing with*
5 *Section 6200) of Division 10 of the Family Code,—and or*
6 *Section 136.2 of the Penal Code.*

7 SEC. 2. *Section 6304 of the Family Code is amended*
8 *to read:*

9 6304. When making a protective order, as defined in
10 Section 6218, where both parties are present in court, the
11 court shall inform both the petitioner and the respondent
12 of the terms of the order, including notice that the
13 respondent is prohibited from *owning, possessing,*
14 *purchasing or receiving or attempting to own, possess,*
15 *purchase or receive a firearm, and including notice of the*
16 *penalty for violation.*

17 SEC. 3. Section 6343 of the Family Code is amended
18 to read:

19 6343. (a) After notice and a hearing, the court may
20 issue an order requiring the restrained party to
21 participate in a batterer's program approved by the
22 probation department as provided in Section 1203.097 of
23 the Penal Code.

24 (b) The courts shall, in consultation with local
25 domestic violence shelters and programs, develop a
26 resource list of referrals to appropriate community
27 domestic violence programs and services to be provided
28 to each applicant for an order under this section.

29 ~~SEC. 3.~~

30 SEC. 4. Section 6380.5 of the Family Code is amended
31 to read:

32 6380.5. (a) An out-of-state protective or restraining
33 order issued by a state, tribal, or territorial court related
34 to domestic or family violence shall be deemed valid if the
35 issuing court had jurisdiction over the parties and matter
36 under the law of the state, tribe, or territory. There shall
37 be a presumption of validity where an order appears
38 authentic on its face.

39 (b) Any valid protective or restraining order related
40 to domestic or family violence issued by a court of another

1 state, tribe, or territory shall, upon request of the person
2 in possession of the foreign protective order, be
3 registered with a court of this state in order to be entered
4 in the Domestic Violence Protective Order Registry
5 established under this chapter. The Judicial Council shall
6 adopt rules of court to do the following:

7 (1) Set forth the process whereby a person in
8 possession of a valid foreign protective order may
9 voluntarily register the order with a court of this state for
10 entry into the Domestic Violence Protective Order
11 Registry.

12 (2) Require the sealing of foreign protective orders
13 and provide access only to law enforcement, the person
14 who registered the order upon written request with proof
15 of identification, the defense after arraignment on
16 criminal charges involving an alleged violation of the
17 order, or upon further order of the court.

18 (c) Any valid protective or restraining order related to
19 domestic or family violence issued by a court of another
20 state, tribe, or territory shall be accorded full faith and
21 credit by the courts of this state, and the terms, as written,
22 shall be enforced as set forth in Section 6381, as if it had
23 been issued in this state.

24 ~~SEC. 4.~~

25 SEC. 5. Section 6389 of the Family Code is amended
26 to read:

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

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

38 (c) If the respondent is present in court at a duly
39 noticed hearing, the court shall order the respondent to
40 relinquish any firearm in that person's immediate

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

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

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

37 (f) The restraining order requiring a person to
38 relinquish a firearm pursuant to subdivision (c) shall state
39 on its face *that the respondent is prohibited from owning,*
40 *possessing, purchasing, or receiving a firearm while the*

1 *protective order is in effect and* that the firearm shall be
 2 relinquished to the local law enforcement agency for that
 3 jurisdiction or sold to a licensed gun dealer, and that proof
 4 of surrender or sale shall be filed with the court within a
 5 specified period of receipt of the order. The order shall
 6 also state on its face the expiration date for
 7 relinquishment. Nothing in this section shall limit a
 8 respondent's right under existing law to petition the court
 9 at a later date for modification of the order.

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

35 (h) The court may, as part of the relinquishment
 36 order, grant an exemption from the relinquishment
 37 requirements of this section for a particular firearm if the
 38 respondent can show that a particular firearm is
 39 necessary as a condition of continued employment and
 40 that the current employer is unable to reassign the

1 respondent to another position where a firearm is
2 unnecessary. If an exemption is granted pursuant to this
3 subdivision, the order shall provide that the firearm shall
4 be in the physical possession of the respondent only
5 during scheduled work hours and during travel to and
6 from his or her place of employment.

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

19 (j) The disposition of any unclaimed property under
20 this section shall be made pursuant to Section 1413 of the
21 Penal Code.

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

25 (l) If the respondent notifies the court that he or she
26 owns a firearm that is not in his or her immediate
27 possession, the court may limit the order to exclude that
28 firearm if the judge is satisfied the respondent is unable
29 to gain access to that firearm while the protective order
30 is in effect.

31 (m) Any respondent to a protective order who violates
32 any order issued pursuant to this section shall be punished
33 under the provisions of subdivision (g) of Section 12021
34 of the Penal Code.

35 ~~SEC. 5.~~

36 SEC. 6. Section 124250 of the Health and Safety Code
37 is amended to read:

38 124250. (a) The following definitions shall apply for
39 purposes of this section:



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

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

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

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

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

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

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. 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.

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

1 (4) Other support services for battered women and
2 their children.

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

8 (1) Seven members appointed by the Governor.

9 (2) Three members appointed by the Speaker of the
10 Assembly.

11 (3) Three members appointed by the Senate
12 Committee on Rules.

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

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

29 It is the intent of the Legislature that the council
30 membership reflect the ethnic, racial, cultural, and
31 geographic diversity of the state.

32 (e) The department shall collaborate closely with the
33 council in the development of funding priorities, the
34 framing of the Request for Proposals, and the solicitation
35 of proposals.

36 (f) (1) The Maternal and Child Health Branch of the
37 State Department of Health Services shall administer
38 grants, awarded as the result of a request for application
39 process, to agencies to conduct demonstration projects to
40 serve battered women, including, but not limited to,

1 creative and innovative service approaches, such as
2 community response teams and pilot projects to develop
3 new interventions emphasizing prevention and
4 education, and other support projects identified by the
5 advisory council.

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

9 (g) It is the intent of the Legislature that services
10 funded by this program include services in underserved
11 and ethnic and racial communities. Therefore, the
12 Maternal and Child Health Branch of the State
13 Department of Health Services shall do all of the
14 following:

15 (1) Fund shelters pursuant to this section that reflect
16 the ethnic, racial, economic, cultural, and geographic
17 diversity of the state.

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

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

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

28 (1) Provide matching funds or in-kind contributions
29 equivalent to not less than 20 percent of the grant they
30 would receive. The matching funds or in-kind
31 contributions may come from other governmental or
32 private sources.

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

1 requirements of paragraph (1) of subdivision (a) of
2 Section 1037.1 of the Evidence Code.

3 ~~SEC. 6.~~

4 *SEC. 7.* Section 124251 of the Health and Safety Code
5 is amended to read:

6 124251. (a) The Maternal and Child Health Branch
7 of the State Department of Health Services shall fund,
8 through a competitive selection process determined by
9 the director, at least one agency to provide expert
10 technical assistance and training on domestic violence
11 issues and building agency capacity in order to obtain
12 other funding for services for battered women and their
13 children, including, but not limited to, grant writing and
14 building coalitions.

15 (b) The Maternal and Child Health Branch of the
16 State Department of Health Services shall fund at least
17 one agency to conduct a statewide evaluation of the
18 services funded through Section 124250.

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

22 (d) Contracts awarded pursuant to this section are
23 exempt from the competitive bidding requirements of
24 the Public Contract Code.

25 ~~SEC. 7.~~

26 *SEC. 8.* Section 166 of the Penal Code is amended to
27 read:

28 166. (a) Except as provided in subdivisions (b)—~~and~~,
29 (c), *and* (d), every person guilty of any contempt of
30 court, of any of the following kinds, is guilty of a
31 misdemeanor:

32 (1) Disorderly, contemptuous, or insolent behavior
33 committed during the sitting of any court of justice, in
34 immediate view and presence of the court, and directly
35 tending to interrupt its proceedings or to impair the
36 respect due to its authority.

37 (2) Behavior as specified in paragraph (1) committed
38 in the presence of any referee, while actually engaged in
39 any trial or hearing, pursuant to the order of any court, or
40 in the presence of any jury while actually sitting for the

1 trial of a cause, or upon any inquest or other proceedings
2 authorized by law.

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

6 (4) Willful disobedience of the terms as written of any
7 process or court order or out-of-state court order, lawfully
8 issued by any court, including orders pending trial.

9 (5) Resistance willfully offered by any person to the
10 lawful order or process of any court.

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

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

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

23 (b) (1) Any person who is guilty of contempt of court
24 under paragraph (4) of subdivision (a) by willfully
25 contacting a victim by phone, mail, or directly and who
26 has been previously convicted of a violation of Section
27 646.9 shall be punished by imprisonment in a county jail
28 for not more than one year, by a fine of five thousand
29 dollars (\$5,000), or by both that fine and imprisonment.

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

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

36 (c) (1) Notwithstanding paragraph (4) of subdivision
37 (a), any willful and knowing violation of any protective
38 order or stay away court order issued pursuant to Section
39 136.2, in a pending criminal proceeding involving
40 domestic violence, as defined in Section 13700, or issued

1 as a condition of probation after a conviction in a criminal
2 proceeding involving domestic violence, as defined in
3 Section 13700, which is an order described in paragraph
4 (3), shall constitute contempt of court, a misdemeanor,
5 punishable by imprisonment in a county jail for not more
6 than one year, by a fine of not more than one thousand
7 dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

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

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

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

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

32 (d) (1) *Every person who owns, possesses, purchases,*
33 *or receives a firearm knowing he or she is prohibited from*
34 *doing so by the provisions of a protective order as defined*
35 *in Section 136.2 of this code, Section 6218 of the Family*
36 *Code, or Sections 527.6 or 527.8 of the Code of Civil*
37 *Procedure, shall be punished under the provisions of*
38 *subdivision (g) of Section 12021.*

39 (2) *Every person subject to a protective order*
40 *described in paragraph (1) shall not be prosecuted under*

1 this section for owning, possessing, purchasing, or
2 receiving a firearm to the extent that firearm is granted
3 an exemption pursuant to subdivision (h) of Section 6389
4 of the Family Code.

5 (e) (1) If probation is granted upon conviction of a
6 violation of subdivision (c), the court shall ~~require~~
7 ~~participation in a batterer's treatment program as a~~
8 ~~condition of probation, unless, considering all of the facts~~
9 ~~and circumstances, the court finds participating in a~~
10 ~~batterer's treatment program inappropriate for the~~
11 ~~defendant.~~ impose probation consistent with the
12 provisions of Section 1203.097 of the Penal Code.

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

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

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

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

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

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

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

16 ~~SEC. 8.~~

17 *SEC. 9.* Section 273d of the Penal Code is amended to
18 read:

19 273d. (a) Any person who willfully inflicts upon a
20 child any cruel or inhuman corporal punishment or an
21 injury resulting in a traumatic condition is guilty of a
22 felony and shall be punished by imprisonment in the state
23 prison for two, four, or six years, or in a county jail for not
24 more than one year, by a fine of up to six thousand dollars
25 (\$6,000), or by both that imprisonment and fine.

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

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

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

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

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

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

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

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

~~SEC. 9.~~

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

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person with whom he or she is cohabiting, or any person who willfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four

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

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

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

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

16 (e) Any person convicted of violating this section, for
17 acts occurring within seven years of a previous conviction
18 under subdivision (a), or subdivision (d) of Section 243,
19 or Section 243.4, 244, 244.5, or 245, shall be punished by
20 imprisonment in a county jail for not more than one year,
21 or by imprisonment in the state prison for two, four, or
22 five years, or by both imprisonment and a fine of up to ten
23 thousand dollars (\$10,000).

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

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

32 (1) If the defendant has suffered one prior conviction
33 within the previous seven years for a violation of any
34 offense specified in subdivision (e), it shall be a condition
35 of probation, in addition to the provisions contained in
36 Section 1203.097, that he or she be imprisoned in a county
37 jail for not less than 15 days.

38 (2) If the defendant has suffered two or more prior
39 convictions within the previous seven years for a violation
40 of any offense specified in subdivision (e), 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.

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

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

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

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

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

~~SEC. 10.~~

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

~~SEC. 11.~~

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

2 ~~*SEC. 12.*~~

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

5 273.6. (a) Any intentional and knowing violation of a
6 protective order, as defined in Section 6218 of the Family
7 Code, or of an order issued pursuant to Section 527.6 or
8 527.8 of the Code of Civil Procedure is a misdemeanor
9 punishable by a fine of not more than one thousand
10 dollars (\$1,000), or by imprisonment in a county jail for
11 not more than one year, or by both that fine and
12 imprisonment.

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

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

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

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

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

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

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

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

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

36 (g) *(1) Every person who owns, possesses, purchases,*
37 *or receives a firearm knowing he or she is prohibited from*
38 *doing so by the provisions of a protective order as defined*
39 *in Section 136.2 of this code, Section 6218 of the Family*
40 *Code, or Sections 527.6 or 527.8 of the Code of Civil*

1 *Procedure, shall be punished under the provisions of*
2 *subdivision (g) of Section 12021.*

3 (2) Every person subject to a protective order
4 described in paragraph (1) shall not be prosecuted under
5 this section for owning, possessing, purchasing, or
6 receiving a firearm to the extent that firearm is granted
7 an exemption pursuant to subdivision (h) of Section 6389
8 of the Family Code.

9 (h) If probation is granted upon conviction of a
10 violation of subdivision (a), (b), (c), (d), or (e), the court
11 shall impose probation consistent with the provisions of
12 Section 1203.097, and the conditions of probation may
13 include, in lieu of a fine, one or both of the following
14 requirements:

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

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

22 ~~(h)~~

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

~~SEC. 13.~~

SEC. 14. Section 836 of the Penal Code is amended to read:

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

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

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

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

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

(c) (1) When a peace officer is responding to a call alleging a violation of a domestic violence protective or restraining order issued under the Family Code, Section 527.6 of the Code of Civil Procedure, Section 213.5 of the Welfare and Institutions Code, Section 136.2 of this code, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, or of a domestic violence protective or restraining order issued by the court of another state, tribe, or territory and the peace officer has probable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order, the officer shall, consistent with subdivision (b) of Section 13701, make a lawful arrest of the person without a warrant and take that person into custody whether or not the violation occurred in the presence of the arresting officer. The officer shall, as soon as possible after the arrest, confirm with the appropriate authorities or the Domestic Violence Protection Order

1 Registry maintained pursuant to Section 6380 of the
2 Family Code that a true copy of the protective order has
3 been registered, unless the victim provides the officer
4 with a copy of the protective order.

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

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

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

1 of the suspect, a child whose parentage by the suspect is
2 the subject of an action under the Uniform Parentage Act,
3 a child of a person in one of the above categories, or any
4 other person related to the suspect by consanguinity or
5 affinity within the second degree, a peace officer may
6 arrest the suspect without a warrant where both of the
7 following circumstances apply:

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

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

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

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

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

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

30 ~~SEC. 14.~~

31 *SEC. 15.* Section 1328 of the Penal Code is amended
32 to read:

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

1 is made by delivering a copy of the subpoena to the
2 witness personally.

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

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

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

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

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

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

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

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

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

8 ~~SEC. 15.~~

9 *SEC. 16.* Section 11163.3 of the Penal Code is
10 amended to read:

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

23 (b) For purposes of this section, "abuse" has the
24 meaning set forth in Section 6203 of the Family Code and
25 "domestic violence" has the meaning set forth in Section
26 6211 of the Family Code.

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

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

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

39 (2) Medical personnel with expertise in domestic
40 violence abuse.

1 (3) Coroners and medical examiners.

2 (4) Criminologists.

3 (5) District attorneys and city attorneys.

4 (6) Domestic violence shelter service staff and
5 battered women's advocates.

6 (7) Law enforcement personnel.

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

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

11 (10) Representatives of local child abuse agencies.

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

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

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

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

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

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

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

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

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

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

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

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

1 (G) Notwithstanding Section 827 of the Welfare and
2 Institutions Code, information in any juvenile court
3 proceeding.

4 (H) Information maintained by the Family Court,
5 including information relating to the Family Conciliation
6 Court Law pursuant to Section 1818 of the Family Code,
7 and Mediation of Custody and Visitation Issues pursuant
8 to Section 3177 of the Family Code.

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

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

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

35 ~~SEC. 16.~~

36 *SEC. 17.* Section 11163.6 is added to the Penal Code,
37 to read:

38 11163.6. In order to ensure consistent and uniform
39 results, data may be collected and summarized by the
40 domestic violence death review teams to show the

1 statistical occurrence of domestic violence deaths in the
2 team's county that occur under the following
3 circumstances:

4 (a) The deceased was a victim of a homicide
5 committed by a current or former spouse, fiancé, or
6 dating partner.

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

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

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

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

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

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

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

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

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

33 ~~SEC. 17.~~

34 *SEC. 18.* Section 12021 of the Penal Code is amended
35 to read:

36 12021. (a) (1) Any person who has been convicted
37 of a felony under the laws of the United States, of the State
38 of California, or any other state, government, or country,
39 or of an offense enumerated in subdivision (a), (b), or (d)
40 of Section 12001.6, or who is addicted to the use of any

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

4 (2) Any person who has two or more convictions for
5 violating paragraph (2) of subdivision (a) of Section 417
6 and who owns or has in his or her possession or under his
7 or her custody or control any firearm is guilty of a felony.

8 (b) Notwithstanding subdivision (a), any person who
9 has been convicted of a felony or of an offense
10 enumerated in Section 12001.6, when that conviction
11 results from certification by the juvenile court for
12 prosecution as an adult in an adult court under Section
13 707 of the Welfare and Institutions Code, who owns or has
14 in his or her possession or under his or her custody or
15 control any firearm is guilty of a felony.

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

1 eliminated, or conditioned as provided in paragraph (2)
2 or (3).

3 (2) Any person employed as a peace officer described
4 in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5
5 whose employment or livelihood is dependent on the
6 ability to legally possess a firearm, who is subject to the
7 prohibition imposed by this subdivision because of a
8 conviction under Section 273.5, 273.6, or 646.9, may
9 petition the court only once for relief from this
10 prohibition. The petition shall be filed with the court in
11 which the petitioner was sentenced. If possible, the
12 matter shall be heard before the same judge that
13 sentenced the petitioner. Upon filing the petition, the
14 clerk of the court shall set the hearing date and shall
15 notify the petitioner and the prosecuting attorney of the
16 date of the hearing. Upon making each of the following
17 findings, the court may reduce or eliminate the
18 prohibition, impose conditions on reduction or
19 elimination of the prohibition, or otherwise grant relief
20 from the prohibition as the court deems appropriate:

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

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

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

33 In making its decision, the court shall consider the
34 petitioner's continued employment, the interest of
35 justice, any relevant evidence, and the totality of the
36 circumstances. The court shall require, as a condition of
37 granting relief from the prohibition under this section,
38 that the petitioner agree to participate in counseling as
39 deemed appropriate by the court. Relief from the
40 prohibition shall not relieve any other person or entity

1 from any liability that might otherwise be imposed. It is
2 the intent of the Legislature that courts exercise broad
3 discretion in fashioning appropriate relief under this
4 paragraph in cases in which relief is warranted. However,
5 nothing in this paragraph shall be construed to require
6 courts to grant relief to any particular petitioner. It is the
7 intent of the Legislature to permit persons who were
8 convicted of an offense specified in Section 273.5, 273.6,
9 or 646.9 to seek relief from the prohibition imposed by this
10 subdivision.

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

26 (A) Finds by a preponderance of the evidence that the
27 petitioner is likely to use a firearm in a safe and lawful
28 manner.

29 (B) Finds that the petitioner is not within a prohibited
30 class as specified in subdivision (a), (b), (d), (e), or (g)
31 or Section 12021.1, and the court is not presented with any
32 credible evidence that the petitioner is a person
33 described in Section 8100 or 8103 of the Welfare and
34 Institutions Code.

35 (C) Finds that the petitioner does not have a previous
36 conviction under this subdivision, no matter when the
37 prior conviction occurred.

38 In making its decision, the court may consider the
39 interest of justice, any relevant evidence, and the totality
40 of the circumstances. It is the intent of the Legislature

1 that courts exercise broad discretion in fashioning
2 appropriate relief under this paragraph in cases in which
3 relief is warranted. However, nothing in this paragraph
4 shall be construed to require courts to grant relief to any
5 particular petitioner.

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

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

31 (e) Any person who (1) is alleged to have committed
32 an offense listed in subdivision (b) of Section 707 of the
33 Welfare and Institutions Code, an offense described in
34 subdivision (b) of Section 1203.073, or any offense
35 enumerated in paragraph (1) of subdivision (c), and (2)
36 is subsequently adjudged a ward of the juvenile court
37 within the meaning of Section 602 of the Welfare and
38 Institutions Code because the person committed an
39 offense listed in subdivision (b) of Section 707 of the
40 Welfare and Institutions Code, an offense described in

1 subdivision (b) of Section 1203.073, or any offense
2 enumerated in paragraph (1) of subdivision (c) shall not
3 own, or have in his or her possession or under his or her
4 custody or control, any firearm until the age of 30 years.
5 A violation of this subdivision shall be punishable by
6 imprisonment in a county jail not exceeding one year or
7 in the state prison, by a fine not exceeding one thousand
8 dollars (\$1,000), or by both that imprisonment and fine.
9 The juvenile court, on forms prescribed by the
10 Department of Justice, shall notify the department of
11 persons subject to this subdivision. Notwithstanding any
12 other law, the forms required to be submitted to the
13 department pursuant to this subdivision may be used to
14 determine eligibility to acquire a firearm.

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

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

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

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

1 a court has provided actual verbal notice of the firearm
2 prohibition and penalty as provided in Section 6304 of the
3 Family Code.

4 (2) Every person who owns or possesses a firearm
5 knowing that he or she is ~~subject to~~ *prohibited from*
6 *owning or possessing a firearm by the provisions of a*
7 *protective order as defined in Section 6218 of the Family*
8 *Code, Section 136.2 of the Penal Code, or a temporary*
9 *restraining order or injunction issued pursuant to Section*
10 *527.6 or 527.8 of the Code of Civil Procedure, is guilty of*
11 *a public offense, which shall be punishable by*
12 *imprisonment in a county jail not exceeding one year, by*
13 *a fine not exceeding one thousand dollars (\$1,000), or by*
14 *both that imprisonment and fine. This subdivision does*
15 *not apply unless a court has provided actual verbal notice*
16 *to the person against whom the restraining order is issued*
17 *of the firearm prohibition and penalty, pursuant to*
18 *Section 6304 of the Family Code, or the copy of the*
19 *restraining order personally served on the person against*
20 *whom the restraining order is issued contains a notice in*
21 *bold print stating (1) that the person is prohibited from*
22 ~~*purchasing or receiving owning or possessing or*~~
23 ~~*attempting to purchase or receive own or possess a*~~
24 ~~*firearm and (2) specifying the penalties for violating this*~~
25 ~~*subdivision, or a court has provided actual verbal notice*~~
26 ~~*of the firearm prohibition and penalty as provided in*~~
27 ~~*Section 6304 of the Family Code.*~~

28 (3) *Judicial Council shall provide notice on all*
29 *protective orders that the respondent is prohibited from*
30 *owning, possessing, purchasing, or receiving a firearm*
31 *while the protective order is in effect and that the firearm*
32 *shall be relinquished to the local law enforcement agency*
33 *for that jurisdiction or sold to a licensed gun dealer, and*
34 *that proof of surrender or sale shall be filed within a*
35 *specified time of receipt of the order. The order shall also*
36 *state on its face the expiration date for relinquishment.*

37 (4) *If probation is granted upon conviction of a*
38 *violation of this subdivision, the court shall impose*
39 *probation consistent with the provisions of Section*
40 *1203.097.*

(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.~~

SEC. 19. 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

1 protective order issued pursuant to Part 4 (commencing
2 with Section 6300) of Division 10 of the Family Code.

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

5 (A) A spouse or former spouse.

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

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

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

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

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

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

24 (b) A sheriff, undersheriff, deputy sheriff, marshal,
25 deputy marshal, or police officer of a city, as defined in
26 subdivision (a) of Section 830.1, a peace officer of the
27 Department of the California Highway Patrol, as defined
28 in subdivision (a) of Section 830.2, a member of the
29 University of California Police Department, as defined in
30 subdivision (b) of Section 830.2, an officer listed in Section
31 830.6 while acting in the course and scope of his or her
32 employment as a peace officer, a member of a California
33 State University Police Department, as defined in
34 subdivision (c) of Section 830.2, a peace officer of the
35 Department of Parks and Recreation, as defined in
36 subdivision (f) of Section 830.2, a peace officer, as defined
37 in subdivision (d) of Section 830.31, and a peace officer,
38 as defined in Section 830.5, who is at the scene of a
39 domestic violence incident involving a threat to human
40 life or a physical assault, shall take temporary custody of

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

28 (c) Any firearm or other deadly weapon which has
29 been taken into custody that has been stolen shall be
30 restored to the lawful owner, as soon as its use for
31 evidence has been served, upon his or her identification
32 of the firearm or other deadly weapon and proof of
33 ownership.

34 (d) Any firearm or other deadly weapon taken into
35 custody and held by a police, university police, or sheriff's
36 department or by a marshal's office, by a peace officer of
37 the Department of the California Highway Patrol, as
38 defined in subdivision (a) of Section 830.2, by a peace
39 officer of the Department of Parks and Recreation, as
40 defined in subdivision (f) of Section 830.2, by a peace

1 officer, as defined in subdivision (d) of Section 830.31, or
2 by a peace officer, as defined in Section 830.5, for longer
3 than 12 months and not recovered by the owner or person
4 who has lawful possession at the time it was taken into
5 custody, shall be considered a nuisance and sold or
6 destroyed as provided in subdivision (c) of Section 12028.
7 Firearms or other deadly weapons not recovered within
8 12 months due to an extended hearing process as
9 provided in subdivision (i), are not subject to destruction
10 until the court issues a decision, and then only if the court
11 does not order the return of the firearm or other deadly
12 weapon to the owner.

13 (e) In those cases where a law enforcement agency has
14 reasonable cause to believe that the return of a firearm
15 or other deadly weapon would be likely to result in
16 endangering the victim or the person reporting the
17 assault or threat, the agency shall advise the owner of the
18 firearm or other deadly weapon, and within 10 days of the
19 seizure, initiate a petition in superior court to determine
20 if the firearm or other deadly weapon should be returned.

21 (f) The law enforcement agency shall inform the
22 owner or person who had lawful possession of the firearm
23 or other deadly weapon, at that person's last known
24 address by registered mail, return receipt requested, that
25 he or she has 30 days from the date of receipt of the notice
26 to respond to the court clerk to confirm his or her desire
27 for a hearing, and that the failure to respond shall result
28 in a default order forfeiting the confiscated firearm or
29 other deadly weapon. For the purposes of this
30 subdivision, the person's last known address shall be
31 presumed to be the address provided to the law
32 enforcement officer by that person at the time of the
33 family violence incident. In the event the person whose
34 firearm or other deadly weapon was seized does not
35 reside at the last address provided to the agency, the
36 agency shall make a diligent, good faith effort to learn the
37 whereabouts of the person and to comply with these
38 notification requirements.

39 (g) If the person requests a hearing, the court clerk
40 shall set a hearing no later than 30 days from receipt of

1 that request. The court clerk shall notify the person, the
2 law enforcement agency involved, and the district
3 attorney of the date, time, and place of the hearing.
4 Unless it is shown by clear and convincing evidence that
5 the return of the firearm or other deadly weapon would
6 result in endangering the victim or the person reporting
7 the assault or threat, the court shall order the return of the
8 firearm or other deadly weapon and shall award
9 reasonable attorney's fees to the prevailing party.

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

15 (i) If, at the hearing, the court does not order the
16 return of the firearm or other deadly weapon to the
17 owner or person who had lawful possession, that person
18 may petition the court for a second hearing within 12
19 months from the date of the initial hearing. If the owner
20 or person who had lawful possession does not petition the
21 court within this 12-month period for a second hearing or
22 is unsuccessful at the second hearing in gaining return of
23 the firearm or other deadly weapon, the firearm or other
24 deadly weapon may be disposed of as provided in Section
25 12028.

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

29 ~~SEC. 19.~~

30 *SEC. 20.* No reimbursement is required by this act
31 pursuant to Section 6 of Article XIII B of the California
32 Constitution for certain costs that may be incurred by a
33 local agency or school district because in that regard this
34 act creates a new crime or infraction, eliminates a crime
35 or infraction, or changes the penalty for a crime or
36 infraction, within the meaning of Section 17556 of the
37 Government Code, or changes the definition of a crime
38 within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

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13 Text — Pages 12 and 13.

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