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SENATE BILL

No. 218

Introduced by Senator Solis

(Principal coauthors: Assembly Members Jackson and
Kuehl)

(Coauthors: Assembly Members Aroner, Bock, Corbett,
Knox, *Shelley*, 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~~ Section 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 in a language other than English. It would also require the Judicial Council, by July 1, 2001, to make available in other languages, specified 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.

(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.

(5) *Existing law authorizes a court to grant an exemption from the firearm relinquishment provisions of a restraining order if the firearm is required by the restrained person's employment.*

This bill would authorize the court to allow a peace officer to continue to carry a firearm, either on or off duty, if his employment and personal safety depends on the ability to carry a firearm, and the court finds by a preponderance of the evidence that the officer does not pose a threat of harm. This bill would require that prior to making that finding, the court shall require a psychological evaluation of the peace officer.

(6) 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.

~~(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.~~

(7) 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.

(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.

(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 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.

(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.

(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.

(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.

(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.

(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.

(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.

(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 a fine not to exceed \$1,000, or by both that fine and ~~punishment~~ imprisonment. 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.

(17) The bill would incorporate additional changes to Section 6380.5 of the Family Code made by this bill and AB 825, to take effect only if this bill and AB 825 are both enacted and this bill is enacted last.

(18) The bill would incorporate additional changes to Section 273.5 of the Penal Code, made by this bill and SB 563, to take effect only if this bill and SB 563 are both enacted and this bill is enacted last.

(19) The bill would incorporate additional changes to Section 273.6 of the Penal Code made by this bill and AB 59,



to take effect only if this bill and AB 59 are both enacted and this bill is enacted last.

(20) The bill would incorporate additional changes to Section 12028.5 of the Penal Code, made by this bill and SB 355, to take effect only if this bill and SB 355 are both enacted and this bill is enacted last.

(21) 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 providing an unofficial translation
8 of a court order issued pursuant to Section 527.6 or 527.8
9 of the Code of Civil Procedure, or Part 1 (commencing
10 with Section 6200) of Division 10 of the Family Code, or
11 Section 136.2 of the Penal Code, in a language other than
12 English.

1 (b) The Judicial Council shall, by July 1, 2001, make
2 available to all courts, translations of domestic violence
3 protective order forms in languages other than English,
4 as the Judicial Council deems appropriate, for protective
5 orders issued pursuant to Section 527.6 or 527.8 of the
6 Code of Civil Procedure, or Part 1 (commencing with
7 Section 6200) of Division 10 of the Family Code, or
8 Section 136.2 of the Penal Code.

9 SEC. 2. Section 6304 of the Family Code is amended
10 to read:

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

19 SEC. 3. Section 6343 of the Family Code is amended
20 to read:

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

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

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

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



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

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

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

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

SEC. 4.5. *Section 6380.5 of the Family Code is amended to read:*

6380.5. (a) ~~An out-of-state~~ A protective or restraining order ~~issued by a state, tribal, or territorial court~~ related to domestic or family violence *issued by a court of another state, as defined in Section 145, a tribe, or a military tribunal*, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, or tribe, or ~~territory~~ *under the law applicable to the military tribunal*. There shall be a presumption of validity where an order appears authentic on its face.

(b) Any valid protective or restraining order related to domestic or family violence issued by a court of another state, *as defined in Section 145, a tribe, or* ~~territory~~ *a*

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

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

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

19 (c) Any valid protective or restraining order related to
20 domestic or family violence issued by a court of another
21 state, *as defined in Section 145, a tribe, or—territory a*
22 *military tribunal*, shall be accorded full faith and credit by
23 the courts of this state, and *the terms, as written*, shall be
24 enforced as set forth in Section 6381, as if it had been
25 issued in this state.

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

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

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

39 (c) If the respondent is present in court at a duly
40 noticed hearing, the court shall order the respondent to

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

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

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

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

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

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

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



1 that the current employer is unable to reassign the
 2 respondent to another position where a firearm is
 3 unnecessary. If an exemption is granted pursuant to this
 4 subdivision, the order shall provide that the firearm shall
 5 be in the physical possession of the respondent only
 6 during scheduled work hours and during travel to and
 7 from his or her place of employment. *In any case*
 8 *involving a peace officer who as a condition of*
 9 *employment and whose personal safety depends on the*
 10 *ability to carry a firearm, a court may allow the peace*
 11 *officer to continue to carry a firearm, either on duty or off*
 12 *duty, if the court finds by a preponderance of the*
 13 *evidence that the officer does not pose a threat of harm.*
 14 *Prior to making this finding, the court shall require a*
 15 *mandatory psychological evaluation of the peace officer*
 16 *and may require the peace officer to enter into*
 17 *counseling or other remedial treatment program to deal*
 18 *with any propensity for domestic violence.*

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

31 (j) The disposition of any unclaimed property under
 32 this section shall be made pursuant to Section 1413 of the
 33 Penal Code.

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

37 (l) If the respondent notifies the court that he or she
 38 owns a firearm that is not in his or her immediate
 39 possession, the court may limit the order to exclude that
 40 firearm if the judge is satisfied the respondent is unable

1 to gain access to that firearm while the protective order
2 is in effect.

3 (m) Any respondent to a protective order who violates
4 any order issued pursuant to this section shall be punished
5 under the provisions of subdivision (g) of Section 12021
6 of the Penal Code.

7 ~~SEC. 6. Section 124250 of the Health and Safety Code~~
8 ~~is amended to read:~~

9 ~~124250. (a) The following definitions shall apply for~~
10 ~~purposes of this section:~~

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

18 ~~(2) “Shelter based” means an established system of~~
19 ~~services where battered women and their children may~~
20 ~~be provided safe or confidential emergency housing on a~~
21 ~~24-hour basis, including, but not limited to, hotel or motel~~
22 ~~arrangements, haven, and safe houses.~~

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

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

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

38 ~~(1) Emergency shelter to women and their children~~
39 ~~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.~~

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

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

~~(1) Seven members appointed by the Governor.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 7.~~

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

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

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

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

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

~~SEC. 8.~~

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

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

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

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

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

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

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

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

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

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

35 (b) (1) Any person who is guilty of contempt of court
36 under paragraph (4) of subdivision (a) by willfully
37 contacting a victim by phone, mail, or directly and who
38 has been previously convicted of a violation of Section
39 646.9 shall be punished by imprisonment in a county jail

1 for not more than one year, by a fine of five thousand
2 dollars (\$5,000), or by both that fine and imprisonment.

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

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

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

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

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

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

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

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

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

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

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

6 (d) (1) Every person who owns, possesses, purchases,
7 or receives a firearm knowing he or she is prohibited from
8 doing so by the provisions of a protective order as defined
9 in Section 136.2 of this code, Section 6218 of the Family
10 Code, or Sections 527.6 or 527.8 of the Code of Civil
11 Procedure, shall be punished under the provisions of
12 subdivision (g) of Section 12021.

13 (2) Every person subject to a protective order
14 described in paragraph (1) shall not be prosecuted under
15 this section for owning, possessing, purchasing, or
16 receiving a firearm to the extent that firearm is granted
17 an exemption pursuant to subdivision (h) of Section 6389
18 of the Family Code.

19 (e) (1) If probation is granted upon conviction of a
20 violation of subdivision (c), the court shall impose
21 probation consistent with the provisions of Section
22 1203.097 of the Penal Code.

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

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

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

34 (3) For any order to pay a fine, make payments to a
35 battered women's shelter, or pay restitution as a
36 condition of probation under this subdivision or
37 subdivision (c), the court shall make a determination of
38 the defendant's ability to pay. In no event shall any order
39 to make payments to a battered women's shelter be made

1 if it would impair the ability of the defendant to pay direct
2 restitution to the victim or court-ordered child support.

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

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

26 ~~SEC. 9.~~

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

29 273d. (a) Any person who willfully inflicts upon a
30 child any cruel or inhuman corporal punishment or an
31 injury resulting in a traumatic condition is guilty of a
32 felony and shall be punished by imprisonment in the state
33 prison for two, four, or six years, or in a county jail for not
34 more than one year, by a fine of up to six thousand dollars
35 (\$6,000), or by both that imprisonment and fine.

36 (b) Any person who is found guilty of violating
37 subdivision (a) shall receive a four-year enhancement for
38 a prior conviction of that offense provided that no
39 additional term shall be imposed under this subdivision
40 for any prison term served prior to a period of 10 years in

1 which the defendant remained free of both prison
2 custody and the commission of an offense that results in
3 a felony conviction.

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

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

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

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

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

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

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

38 ~~SEC. 10.~~

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

1 273.5. (a) Any person who willfully inflicts upon his
2 or her spouse, or any person who willfully inflicts upon
3 any person with whom he or she is cohabiting, or any
4 person who willfully inflicts upon any person who is the
5 mother or father of his or her child, corporal injury
6 resulting in a traumatic condition, is guilty of a felony, and
7 upon conviction thereof shall be punished by
8 imprisonment in the state prison for two, three, or four
9 years, or in a county jail for not more than one year, or by
10 a fine of up to six thousand dollars (\$6,000), or by both that
11 fine and imprisonment.

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

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

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

24 (e) Any person convicted of violating this section, for
25 acts occurring within seven years of a previous conviction
26 under subdivision (a), or subdivision (d) of Section 243,
27 or Section 243.4, 244, 244.5, or 245, shall be punished by
28 imprisonment in a county jail for not more than one year,
29 or by imprisonment in the state prison for two, four, or
30 five years, or by both imprisonment and a fine of up to ten
31 thousand dollars (\$10,000).

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

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

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

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

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

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

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

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

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

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

7 ~~SEC. 11.~~

8 SEC. 9.5. Section 273.5 of the Penal Code is amended
9 to read:

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

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

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

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

34 (e) ~~In any case in which a person is convicted of~~
35 ~~violating this section and probation is granted, the court~~
36 ~~shall require participation in a batterer’s treatment~~
37 ~~program as a condition of probation, as specified in~~
38 ~~Section 1203.097. Any person convicted of violating this~~
39 ~~section for acts occurring within seven years of a previous~~
40 ~~conviction under subdivision (a), or subdivision (d) of~~

1 Section 243, or Section 243.4, 244, 244.5, or 245, shall be
2 punished by imprisonment in a county jail for not more
3 than one year, or by imprisonment in the state prison for
4 two, four, or five years, or by both imprisonment and a
5 fine of up to ten thousand dollars (\$10,000).

6 (f) If probation is granted, ~~or the execution or~~
7 ~~imposition of a sentence is suspended, for to any person~~
8 convicted under subdivision (a) ~~who previously has been~~
9 ~~convicted under subdivision (a) for an offense that~~
10 ~~occurred within seven years of the offense of the second~~
11 ~~conviction, it shall be a condition thereof that he or she~~
12 ~~be imprisoned in a county jail for not less than 96 hours~~
13 ~~and that he or she participate in, for no less than one year,~~
14 ~~and successfully complete, a batterer's treatment~~
15 ~~program, as designated by the court pursuant to Section~~
16 ~~1203.097. However, the court, upon a showing of good~~
17 ~~cause, may find that the mandatory minimum~~
18 ~~imprisonment, as required by this subdivision, shall not be~~
19 ~~imposed and grant probation or the suspension of the~~
20 ~~execution or imposition of a sentence, the court shall~~
21 ~~impose probation consistent with the provisions of~~
22 ~~Section 1203.097.~~

23 (g) If probation is granted, or the execution or
24 imposition of a sentence is suspended, for any ~~person~~
25 ~~defendant~~ convicted under subdivision (a) who
26 ~~previously~~ has been convicted of ~~two or more violations~~
27 ~~of subdivision (a) for offenses that occurred within seven~~
28 ~~years of the most recent conviction, any prior offense~~
29 ~~specified in subdivision (e), the court shall impose one of~~
30 ~~the following conditions of probation:~~

31 (1) If the defendant has suffered one prior conviction
32 within the previous seven years for a violation of any
33 offense specified in subdivision (e), it shall be a condition
34 thereof, in addition to the provisions contained in Section
35 1203.097, that he or she be imprisoned in a county jail for
36 not less than ~~30 days and that he or she participate in for~~
37 ~~no less than one year, and successfully complete, a~~
38 ~~batterer's treatment program as designated by the court~~
39 ~~pursuant to Section 1203.097. However, the 15 days.~~

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

7 (3) The court, upon a showing of good cause, may find
8 that the mandatory ~~minimum imprisonment, as~~
9 imprisonment required by this subdivision, shall not be
10 imposed and ~~grant probation or the suspension of the~~
11 ~~execution or imposition of a sentence shall state on the~~
12 ~~record its reasons for finding good cause.~~

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

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

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

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

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

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

4 ~~*SEC. 12.*~~

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

6 ~~*SEC. 13.*~~

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

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

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

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

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

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



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

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

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

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

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

(g) (1) Every person who owns, possesses, purchases, or receives a firearm knowing he or she is prohibited from

1 doing so by the provisions of a protective order as defined
2 in Section 136.2 of this code, Section 6218 of the Family
3 Code, or Sections 527.6 or 527.8 of the Code of Civil
4 Procedure, shall be punished under the provisions of
5 subdivision (g) of Section 12021.

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

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

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

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

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

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

3 ~~SEC. 14.~~

4 *SEC. 12.5. Section 273.6 of the Penal Code is amended*
5 *to read:*

6 273.6. (a) Any intentional and knowing violation of a
7 protective order, as defined in Section 6218 of the Family
8 Code, or of an order issued pursuant to Section 527.6 or
9 527.8 of the Code of Civil Procedure, *or Section 15657.03*
10 *of the Welfare and Institutions Code*, is a misdemeanor
11 punishable by a fine of not more than one thousand
12 dollars (\$1,000), or by imprisonment in a county jail for
13 not more than one year, or by both—~~the~~ *that* fine and
14 imprisonment.

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

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

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

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

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

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

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

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

37 (f) The prosecuting agency of each county shall have
38 the primary responsibility for the enforcement of orders
39 ~~issued pursuant to~~ described in subdivisions (a), (b), (d),
40 and (e).

1 ~~(g) The court may order a person convicted under this~~
2 ~~section to undergo counseling, and, if appropriate, to~~
3 ~~complete a batterer's treatment program.~~ (1) Every
4 person who owns, possesses, purchases, or receives a
5 firearm knowing he or she is prohibited from doing so by
6 the provisions of a protective order as defined in Section
7 136.2 of this code, Section 6218 of the Family Code, or
8 Sections 527.6 or 527.8 of the Code of Civil Procedure,
9 shall be punished under the provisions of subdivision (g)
10 of Section 12021.

11 (2) Every person subject to a protective order
12 described in paragraph (1) shall not be prosecuted under
13 this section for owning, possessing, purchasing, or
14 receiving a firearm to the extent that firearm is granted
15 an exemption pursuant to subdivision (h) of Section 6389
16 of the Family Code.

17 (h) If probation is granted upon conviction of a
18 violation of subdivision (a), (b), ~~or~~ (c), (d), or (e), the
19 court shall impose probation consistent with the
20 provisions of Section 1203.097, and the conditions of
21 probation may include, in lieu of a fine, one or both of the
22 following requirements:

23 (1) That the defendant make payments to a battered
24 women's shelter or to a shelter for abused elder persons
25 or dependent adults, up to a maximum of five thousand
26 dollars (\$5,000), pursuant to Section 1203.097.

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

31 (i) For any order to pay a fine, make payments to a
32 battered women's shelter, or pay restitution as a
33 condition of probation under subdivision (e), the court
34 shall make a determination of the defendant's ability to
35 pay. In no event shall any order to make payments to a
36 battered women's shelter be made if it would impair the
37 ability of the defendant to pay direct restitution to the
38 victim or court-ordered child support. Where the injury
39 to a married person is caused in whole or in part by the
40 criminal acts of his or her spouse in violation of this

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

9 *SEC. 13.* Section 836 of the Penal Code is amended to
10 read:

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

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

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

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

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

30 (c) (1) When a peace officer is responding to a call
31 alleging a violation of a domestic violence protective or
32 restraining order issued under the Family Code, Section
33 527.6 of the Code of Civil Procedure, Section 213.5 of the
34 Welfare and Institutions Code, Section 136.2 of this code,
35 or paragraph (2) of subdivision (a) of Section 1203.097 of
36 this code, or of a domestic violence protective or
37 restraining order issued by the court of another state,
38 tribe, or territory and the peace officer has probable
39 cause to believe that the person against whom the order
40 is issued has notice of the order and has committed an act

1 in violation of the order, the officer shall, consistent with
2 subdivision (b) of Section 13701, make a lawful arrest of
3 the person without a warrant and take that person into
4 custody whether or not the violation occurred in the
5 presence of the arresting officer. The officer shall, as soon
6 as possible after the arrest, confirm with the appropriate
7 authorities or the Domestic Violence Protection Order
8 Registry maintained pursuant to Section 6380 of the
9 Family Code that a true copy of the protective order has
10 been registered, unless the victim provides the officer
11 with a copy of the protective order.

12 (2) The person against whom a protective order has
13 been issued shall be deemed to have notice of the order
14 if the victim presents to the officer proof of service of the
15 order, the officer confirms with the appropriate
16 authorities that a true copy of the proof of service is on
17 file, or the person against whom the protective order was
18 issued was present at the protective order hearing or was
19 informed by a peace officer of the contents of the
20 protective order.

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

38 (d) Notwithstanding paragraph (1) of subdivision (a),
39 if a suspect commits an assault or battery upon a current
40 or former spouse, fiancé, fiancée, a current or former

1 cohabitant as defined in Section 6209 of the Family Code,
2 a person with whom the suspect currently is having or has
3 previously had an engagement relationship, a person
4 with whom the suspect has parented a child, or is
5 presumed to have parented a child pursuant to the
6 Uniform Parentage Act (Part 3 (commencing with
7 Section 7600) of Division 12 of the Family Code), a child
8 of the suspect, a child whose parentage by the suspect is
9 the subject of an action under the Uniform Parentage Act,
10 a child of a person in one of the above categories, or any
11 other person related to the suspect by consanguinity or
12 affinity within the second degree, a peace officer may
13 arrest the suspect without a warrant where both of the
14 following circumstances apply:

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

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

22 (e) In addition to the authority to make an arrest
23 without a warrant pursuant to paragraphs (1) and (3) of
24 subdivision (a), a peace officer may, without a warrant,
25 arrest a person for a violation of Section 12025 when all of
26 the following apply:

27 (1) The officer has reasonable cause to believe that the
28 person to be arrested has committed the violation of
29 Section 12025.

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

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

37 ~~SEC. 15.~~

38 SEC. 14. Section 1328 of the Penal Code is amended
39 to read:



1 1328. (a) A subpoena may be served by any person,
2 except that the defendant may not serve a subpoena in
3 the criminal action to which he or she is a party, but a
4 peace officer shall serve in his or her county any subpoena
5 delivered to him or her for service, either on the part of
6 the people or of the defendant, and shall, without delay,
7 make a written return of the service, subscribed by him
8 or her, stating the time and place of service. The service
9 is made by delivering a copy of the subpoena to the
10 witness personally.

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

27 (2) The court having jurisdiction of the case shall have
28 the power to appoint a guardian ad litem to receive
29 service of a subpoena of the child and shall have the
30 power to produce the child ordered to court under this
31 section.

32 (c) Whenever any peace officer designated in Section
33 830 is required as a witness before any court or magistrate
34 in any action or proceeding in connection with a matter
35 regarding an event or transaction which he or she has
36 perceived or investigated in the course of his or her
37 duties, a criminal subpoena issued pursuant to this
38 chapter requiring his or her attendance may be served
39 either by delivering a copy to the peace officer personally
40 or by delivering two copies to his or her immediate

1 superior or agent designated by his or her immediate
2 superior to receive the service; or, in those counties
3 where the local agencies have consented with the
4 marshal's office or sheriff's office, where appropriate, to
5 participate, by sending a copy by electronic means,
6 including electronic mail, computer modem, facsimile, or
7 other electronic means, to his or her immediate superior
8 or agent designated by the immediate superior to receive
9 the service. If the service is made by electronic means, the
10 immediate superior or agency designated by his or her
11 immediate superior shall acknowledge receipt of the
12 subpoena by telephone or electronic means to the sender
13 of origin. If service is made upon the immediate superior
14 or agent designated by the immediate superior, the
15 immediate superior or the agent shall deliver a copy of
16 the subpoena to the peace officer as soon as possible and
17 in no event later than a time which will enable the peace
18 officer to comply with the subpoena.

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

28 (e) If the immediate superior or his or her agent is
29 tendered service of a subpoena less than five working
30 days prior to the date of hearing, and he or she is not
31 reasonably certain he or she can complete the service, he
32 or she may refuse acceptance.

33 (f) If the immediate superior or agent upon whom
34 service has been made, subsequently determines that he
35 or she will be unable to deliver a copy of the subpoena to
36 the peace officer within a time which will allow the peace
37 officer to comply with the subpoena, the immediate
38 superior or agent shall notify the server or his or her office
39 or agent not less than 48 hours prior to the hearing date
40 indicated on the subpoena, and is thereby excused from

1 any duty, liability, or penalty arising because of his or her
2 failure to deliver a copy of the subpoena to the peace
3 officer. The server, so notified, is therewith responsible
4 for preparing the written return of service and for
5 notifying the originator of the subpoena if required.

6 (g) Notwithstanding subdivision (c), in the case of
7 peace officers employed by the California Highway
8 Patrol, if service is made upon the immediate superior or
9 upon an agent designated by the immediate superior of
10 the peace officer, the immediate superior or the agent
11 shall deliver a copy of the subpoena to the peace officer
12 on the officer's first workday following acceptance of
13 service of process. In this case, failure of the immediate
14 superior or the designated agent to deliver the subpoena
15 shall not constitute a defect in service.

16 ~~SEC. 16.~~

17 *SEC. 15.* Section 11163.3 of the Penal Code is
18 amended to read:

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

31 (b) For purposes of this section, "abuse" has the
32 meaning set forth in Section 6203 of the Family Code and
33 "domestic violence" has the meaning set forth in Section
34 6211 of the Family Code.

35 (c) A county may develop a protocol that may be used
36 as a guideline to assist coroners and other persons who
37 perform autopsies on domestic violence victims in the
38 identification of domestic violence, in the determination
39 of whether domestic violence contributed to death or
40 whether domestic violence had occurred prior to death,

1 but was not the actual cause of death, and in the proper
2 written reporting procedures for domestic violence,
3 including the designation of the cause and mode of death.

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

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

7 (2) Medical personnel with expertise in domestic
8 violence abuse.

9 (3) Coroners and medical examiners.

10 (4) Criminologists.

11 (5) District attorneys and city attorneys.

12 (6) Domestic violence shelter service staff and
13 battered women's advocates.

14 (7) Law enforcement personnel.

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

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

19 (10) Representatives of local child abuse agencies.

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

22 (e) An oral or written communication or a document
23 shared within or produced by a domestic violence death
24 review team related to a domestic violence death review
25 is confidential and not subject to disclosure or
26 discoverable by a third party. An oral or written
27 communication or a document provided by a third party
28 to a domestic violence death review team, or between a
29 third party and a domestic violence death review team,
30 is confidential and not subject to disclosure or
31 discoverable by a third party. Notwithstanding the
32 foregoing, recommendations of a domestic violence
33 death review team upon the completion of a review may
34 be disclosed at the discretion of a majority of the members
35 of the domestic violence death review team.

36 (f) Each organization represented on a domestic
37 violence death review team may share with other
38 members of the team information in its possession
39 concerning the victim who is the subject of the review or
40 any person who was in contact with the victim and any

1 other information deemed by the organization to be
2 pertinent to the review. Any information shared by an
3 organization with other members of a team is
4 confidential. This provision shall permit the disclosure to
5 members of the team of any information deemed
6 confidential, privileged, or prohibited from disclosure by
7 any other statute.

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

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

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

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

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

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

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

34 (E) State summary criminal history information,
35 criminal offender record information, and local summary
36 criminal history information, as defined in Sections 11075,
37 11105, and 13300 of the Penal Code.

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

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

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

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

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

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

23 (3) The disclosure of written and oral information
24 authorized under this subdivision shall apply
25 notwithstanding Sections 2263, 2918, 4982, and 6068 of the
26 Business and Professions Code, or the lawyer-client
27 privilege protected by Article 3 (commencing with
28 Section 950) of Chapter 4 of Division 8 of the Evidence
29 Code, the physician-patient privilege protected by
30 Article 6 (commencing with Section 990) of Chapter 4 of
31 Division 8 of the Evidence Code, the
32 psychotherapist-patient privilege protected by Article 7
33 (commencing with Section 1010) of Chapter 4 of Division
34 8 of the Evidence Code, the sexual assault
35 victim-counselor privilege protected by Article 8.5
36 (commencing with Section 1035) of Chapter 4 of Division
37 8 of the Evidence Code, and the domestic violence
38 victim-counselor privilege protected by Article 8.7
39 (commencing with Section 1037) of Chapter 4 of Division
40 8 of the Evidence Code.



~~SEC. 17.~~

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

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 18.~~

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

3 12021. (a) (1) Any person who has been convicted
4 of a felony under the laws of the United States, of the State
5 of California, or any other state, government, or country,
6 or of an offense enumerated in subdivision (a), (b), or (d)
7 of Section 12001.6, or who is addicted to the use of any
8 narcotic drug, who owns or has in his or her possession or
9 under his or her custody or control any firearm is guilty
10 of a felony.

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

15 (b) Notwithstanding subdivision (a), any person who
16 has been convicted of a felony or of an offense
17 enumerated in Section 12001.6, when that conviction
18 results from certification by the juvenile court for
19 prosecution as an adult in an adult court under Section
20 707 of the Welfare and Institutions Code, who owns or has
21 in his or her possession or under his or her custody or
22 control any firearm is guilty of a felony.

23 (c) (1) Except as provided in subdivision (a) or
24 paragraph (2) of this subdivision, any person who has
25 been convicted of a misdemeanor violation of Section 71,
26 76, 136.5, or 140, subdivision (d) of Section 148, Section
27 171b, 171c, 171d, 186.28, 240, 241, 242, 243, 244.5, 245, 245.5,
28 246, 246.3, 247, 273.5, 273.6, 417, 417.1, 417.2, 417.6, 626.9,
29 646.9, 12023, or 12024, subdivision (b) or (d) of Section
30 12034, Section 12040, subdivision (b) of Section 12072,
31 subdivision (a) of former Section 12100, Section 12220,
32 12320, or 12590, or Section 8100, 8101, or 8103 of the
33 Welfare and Institutions Code, any firearm-related
34 offense pursuant to Sections 871.5 and 1001.5 of the
35 Welfare and Institutions Code, or of the conduct
36 punished in paragraph (3) of subdivision (g) of Section
37 12072, and who, within 10 years of the conviction, owns,
38 or has in his or her possession or under his or her custody
39 or control, any firearm is guilty of a public offense, which
40 shall be punishable by imprisonment in a county jail not

1 exceeding one year or in the state prison, by a fine not
2 exceeding one thousand dollars (\$1,000), or by both that
3 imprisonment and fine. The court, on forms prescribed
4 by the Department of Justice, shall notify the department
5 of persons subject to this subdivision. However, the
6 prohibition in this paragraph may be reduced,
7 eliminated, or conditioned as provided in paragraph (2)
8 or (3).

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

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

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

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

39 In making its decision, the court shall consider the
40 petitioner's continued employment, the interest of

1 justice, any relevant evidence, and the totality of the
2 circumstances. The court shall require, as a condition of
3 granting relief from the prohibition under this section,
4 that the petitioner agree to participate in counseling as
5 deemed appropriate by the court. Relief from the
6 prohibition shall not relieve any other person or entity
7 from any liability that might otherwise be imposed. It is
8 the intent of the Legislature that courts exercise broad
9 discretion in fashioning appropriate relief under this
10 paragraph in cases in which relief is warranted. However,
11 nothing in this paragraph shall be construed to require
12 courts to grant relief to any particular petitioner. It is the
13 intent of the Legislature to permit persons who were
14 convicted of an offense specified in Section 273.5, 273.6,
15 or 646.9 to seek relief from the prohibition imposed by this
16 subdivision.

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

32 (A) Finds by a preponderance of the evidence that the
33 petitioner is likely to use a firearm in a safe and lawful
34 manner.

35 (B) Finds that the petitioner is not within a prohibited
36 class as specified in subdivision (a), (b), (d), (e), or (g)
37 or Section 12021.1, and the court is not presented with any
38 credible evidence that the petitioner is a person
39 described in Section 8100 or 8103 of the Welfare and
40 Institutions Code.

1 (C) Finds that the petitioner does not have a previous
2 conviction under this subdivision, no matter when the
3 prior conviction occurred.

4 In making its decision, the court may consider the
5 interest of justice, any relevant evidence, and the totality
6 of the circumstances. It is the intent of the Legislature
7 that courts exercise broad discretion in fashioning
8 appropriate relief under this paragraph in cases in which
9 relief is warranted. However, nothing in this paragraph
10 shall be construed to require courts to grant relief to any
11 particular petitioner.

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

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

37 (e) Any person who (1) is alleged to have committed
38 an offense listed in subdivision (b) of Section 707 of the
39 Welfare and Institutions Code, an offense described in
40 subdivision (b) of Section 1203.073, or any offense

1 enumerated in paragraph (1) of subdivision (c), and (2)
2 is subsequently adjudged a ward of the juvenile court
3 within the meaning of Section 602 of the Welfare and
4 Institutions Code because the person committed an
5 offense listed in subdivision (b) of Section 707 of the
6 Welfare and Institutions Code, an offense described in
7 subdivision (b) of Section 1203.073, or any offense
8 enumerated in paragraph (1) of subdivision (c) shall not
9 own, or have in his or her possession or under his or her
10 custody or control, any firearm until the age of 30 years.
11 A violation of this subdivision shall be punishable by
12 imprisonment in a county jail not exceeding one year or
13 in the state prison, by a fine not exceeding one thousand
14 dollars (\$1,000), or by both that imprisonment and fine.
15 The juvenile court, on forms prescribed by the
16 Department of Justice, shall notify the department of
17 persons subject to this subdivision. Notwithstanding any
18 other law, the forms required to be submitted to the
19 department pursuant to this subdivision may be used to
20 determine eligibility to acquire a firearm.

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

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

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

30 (g) (1) Every person who purchases or receives, or
31 attempts to purchase or receive, a firearm knowing that
32 he or she is subject to a protective order as defined in
33 Section 6218 of the Family Code, Section 136.2, or a
34 temporary restraining order or injunction issued
35 pursuant to Section 527.6 or 527.8 of the Code of Civil
36 Procedure, is guilty of a public offense, which shall be
37 punishable by imprisonment in a county jail not
38 exceeding one year or in the state prison, by a fine not
39 exceeding one thousand dollars (\$1,000), or by both that
40 imprisonment and fine. This subdivision does not apply

1 unless the copy of the restraining order personally served
2 on the person against whom the restraining order is
3 issued contains a notice in bold print stating (1) that the
4 person is prohibited from purchasing or receiving or
5 attempting to purchase or receive a firearm and (2)
6 specifying the penalties for violating this subdivision, or
7 a court has provided actual verbal notice of the firearm
8 prohibition and penalty as provided in Section 6304 of the
9 Family Code.

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

34 (3) Judicial Council shall provide notice on all
35 protective orders that the respondent is prohibited from
36 owning, possessing, purchasing, or receiving a firearm
37 while the protective order is in effect and that the firearm
38 shall be relinquished to the local law enforcement agency
39 for that jurisdiction or sold to a licensed gun dealer, and
40 that proof of surrender or sale shall be filed within a

1 specified time of receipt of the order. The order shall also
2 state on its face the expiration date for relinquishment.

3 (4) If probation is granted upon conviction of a
4 violation of this subdivision, the court shall impose
5 probation consistent with the provisions of Section
6 1203.097.

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

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

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

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

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

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

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

33 ~~SEC. 19.~~

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

36 12028.5. (a) As used in this section, the following
37 definitions shall apply:

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

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



(B) Sexual assault.

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

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

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

(A) A spouse or former spouse.

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

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

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

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

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

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

(b) A sheriff, undersheriff, deputy sheriff, marshal, deputy marshal, or police officer of a city, as defined in subdivision (a) of Section 830.1, a peace officer of the Department of the California Highway Patrol, as defined in subdivision (a) of Section 830.2, a member of the University of California Police Department, as defined in subdivision (b) of Section 830.2, an officer listed in Section 830.6 while acting in the course and scope of his or her employment as a peace officer, a member of a California State University Police Department, as defined in subdivision (c) of Section 830.2, a peace officer of the

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

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

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

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

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

1 firearm or other deadly weapon was seized does not
2 reside at the last address provided to the agency, the
3 agency shall make a diligent, good faith effort to learn the
4 whereabouts of the person and to comply with these
5 notification requirements.

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

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

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

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

36 ~~SEC. 20.~~

37 *SEC. 18.5. Section 12028.5 of the Penal Code is*
38 *amended to read:*

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

(1) “Abuse” means ~~intentionally or recklessly causing or attempting to cause bodily injury, or placing another 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 ~~himself, herself, or another,~~ that person or to another.*

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

(2) ~~“Family violence” has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any “Domestic violence” means abuse perpetrated against a family or household member.~~
any of the following persons:

(A) *A spouse or former spouse.*

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

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

~~(3) “Family or household member” means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.~~

~~The~~

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

~~(4)~~

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

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

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

6 (b) A sheriff, undersheriff, deputy sheriff, marshal,
7 deputy marshal, or police officer of a city, as defined in
8 subdivision (a) of Section 830.1, a peace officer of the
9 Department of the California Highway Patrol, as defined
10 in subdivision (a) of Section 830.2, a member of the
11 University of California Police Department, as defined in
12 subdivision (b) of Section 830.2, an officer listed in Section
13 830.6 while acting in the course and scope of his or her
14 employment as a peace officer, a member of a California
15 State University Police Department, as defined in
16 subdivision (c) of Section 830.2, a peace officer of the
17 Department of Parks and Recreation, as defined in
18 subdivision (f) of Section 830.2, a peace officer, as defined
19 in subdivision (d) of Section 830.31, *a peace officer as*
20 *defined in subdivisions (a) and (b) of Section 830.32*, and
21 a peace officer, as defined in Section 830.5, who is at the
22 scene of a ~~family~~ domestic violence incident involving a
23 threat to human life or a physical assault, ~~may~~ *shall* take
24 temporary custody of any firearm or other deadly
25 weapon in plain sight or discovered pursuant to a
26 consensual search as necessary for the protection of the
27 peace officer or other persons present. Upon taking
28 custody of a firearm or other deadly weapon, the officer
29 shall give the owner or person who possessed the firearm
30 a receipt. The receipt shall describe the firearm or other
31 deadly weapon and list any identification or serial
32 number on the firearm. The receipt shall indicate where
33 the firearm or other deadly weapon can be recovered and
34 the date after which the owner or possessor can recover
35 the firearm or other deadly weapon. No firearm or other
36 deadly weapon shall be held less than 48 hours. Except as
37 provided in subdivision (e), if a firearm or other deadly
38 weapon is not retained for use as evidence related to
39 criminal charges brought as a result of the ~~family~~
40 *domestic* violence incident or is not retained because it

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

11 *(c) Any peace officer, as defined in subdivisions (a)*
12 *and (b) of Section 830.32, who takes custody of a firearm*
13 *or deadly weapon pursuant to this section shall deliver the*
14 *firearm within 24 hours to the city police department or*
15 *county sheriff's office in the jurisdiction where the*
16 *college or school is located.*

17 *(d) Any firearm or other deadly weapon which has*
18 *been taken into custody that has been stolen shall be*
19 *restored to the lawful owner, as soon as its use for*
20 *evidence has been served, upon his or her identification*
21 *of the firearm or other deadly weapon and proof of*
22 *ownership.*

23 ~~(d)~~

24 *(e) Any firearm or other deadly weapon taken into*
25 *custody and held by a police, university police, or sheriff's*
26 *department or by a marshal's office, by a peace officer of*
27 *the Department of the California Highway Patrol, as*
28 *defined in subdivision (a) of Section 830.2, by a peace*
29 *officer of the Department of Parks and Recreation, as*
30 *defined in subdivision (f) of Section 830.2, by a peace*
31 *officer, as defined in subdivision (d) of Section 830.31, or*
32 *by a peace officer, as defined in Section 830.5, for longer*
33 *than 12 months and not recovered by the owner or person*
34 *who has lawful possession at the time it was taken into*
35 *custody, shall be considered a nuisance and sold or*
36 *destroyed as provided in subdivision (c) of Section 12028.*
37 *Firearms or other deadly weapons not recovered within*
38 *12 months due to an extended hearing process as*
39 *provided in subdivision (i) (j), are not subject to*
40 *destruction until the court issues a decision, and then only*

1 if the court does not order the return of the firearm or
2 other deadly weapon to the owner.

3 ~~(e)~~

4 (f) In those cases where a law enforcement agency has
5 reasonable cause to believe that the return of a firearm
6 or other deadly weapon would be likely to result in
7 endangering the victim or the person reporting the
8 assault or threat, the agency shall advise the owner of the
9 firearm or other deadly weapon, and within 10 days of the
10 seizure, initiate a petition in superior court to determine
11 if the firearm or other deadly weapon should be returned.

12 ~~(f)~~

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

31 ~~(g)~~

32 (h) If the person requests a hearing, the court clerk
33 shall set a hearing no later than 30 days from receipt of
34 that request. The court clerk shall notify the person, the
35 law enforcement agency involved, and the district
36 attorney of the date, time, and place of the hearing.
37 Unless it is shown by clear and convincing evidence that
38 the return of the firearm or other deadly weapon would
39 result in endangering the victim or the person reporting
40 the assault or threat, the court shall order the return of the

1 firearm or other deadly weapon and shall award
2 reasonable attorney's fees to the prevailing party.

3 ~~(h)~~

4 (i) If the person does not request a hearing or does not
5 otherwise respond within 30 days of the receipt of the
6 notice, the law enforcement agency may file a petition for
7 an order of default and may dispose of the firearm or
8 other deadly weapon as provided in Section 12028.

9 ~~(i)~~

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

21 ~~(j)~~

22 (k) The law enforcement agency, or the individual law
23 enforcement officer, shall not be liable for any act in the
24 good faith exercise of this section.

25 *SEC. 19. Section 4.5 of this bill incorporates*
26 *amendments to Section 6380.5 of the Family Code*
27 *proposed by both this bill and AB 825. It shall only become*
28 *operative if (1) both bills are enacted and become*
29 *effective on or before January 1, 2000, (2) each bill*
30 *amends Section 6380.5 of the Family Code, and (3) this*
31 *bill is enacted after AB 825, in which case Section 4 of this*
32 *bill shall not become operative.*

33 *SEC. 20. Section 9.5 of this bill incorporates*
34 *amendments to Section 273.5 of the Penal Code proposed*
35 *by both this bill and SB 563. It shall only become operative*
36 *if (1) both bills are enacted and become effective on or*
37 *before January 1, 2000, (2) each bill amends Section 273.5*
38 *of the Penal Code, and (3) this bill is enacted after SB 563,*
39 *in which case Section 9 of this bill shall not become*
40 *operative.*

1 SEC. 21. Section 12.5 of this bill incorporates
2 amendments to Section 273.6 of the Penal Code proposed
3 by both this bill and AB 59. It shall only become operative
4 if (1) both bills are enacted and become effective on or
5 before January 1, 2000, (2) each bill amends Section 273.6
6 of the Penal Code, and (3) this bill is enacted after AB 59,
7 in which case Section 12 of this bill shall not become
8 operative.

9 SEC. 22. Section 18.5 of this bill incorporates
10 amendments to Section 12028.5 of the Penal Code
11 proposed by both this bill and SB 355. It shall only become
12 operative if (1) both bills are enacted and become
13 effective on or before January 1, 2000, (2) each bill
14 amends Section 12028.5 of the Penal Code, and (3) this
15 bill is enacted after SB 355, in which case Section 18 of this
16 bill shall not become operative.

17 SEC. 23. No reimbursement is required by this act
18 pursuant to Section 6 of Article XIII B of the California
19 Constitution for certain costs that may be incurred by a
20 local agency or school district because in that regard this
21 act creates a new crime or infraction, eliminates a crime
22 or infraction, or changes the penalty for a crime or
23 infraction, within the meaning of Section 17556 of the
24 Government Code, or changes the definition of a crime
25 within the meaning of Section 6 of Article XIII B of the
26 California Constitution.

27 However, notwithstanding Section 17610 of the
28 Government Code, if the Commission on State Mandates
29 determines that this act contains other costs mandated by
30 the state, reimbursement to local agencies and school
31 districts for those costs shall be made pursuant to Part 7
32 (commencing with Section 17500) of Division 4 of Title
33 2 of the Government Code. If the statewide cost of the
34 claim for reimbursement does not exceed one million
35 dollars (\$1,000,000), reimbursement shall be made from
36 the State Mandates Claims Fund.

