

Introduced by Senator Ochoa Bogh
(Coauthors: Senators Alvarado-Gil, Arreguín, Choi, Dahle,
Hurtado, Niello, Seyarto, Umberg, Valladares, and Wahab)
(Coauthors: Assembly Members Chen and Essayli)

January 23, 2025

An act to amend Section 646.9 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as amended, Ochoa Bogh. Crimes: stalking.

Existing law makes a person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for the person's safety, or the safety of the person's immediate family, guilty of the crime of stalking, punishable as a misdemeanor or a felony.

~~This bill would also make a person guilty of stalking if the person willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for the safety of~~ *that expand the meaning of "credible threat" to include threats to a* person's pet, service animal, emotional support animal, or horse. By changing the definition of a crime, this bill would impose a state-mandated local program.

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.

This bill would provide that no reimbursement is required by this act for a specified reason.

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 646.9 of the Penal Code is amended to
2 read:
3 646.9. (a) Any person who willfully, maliciously, and
4 repeatedly follows or willfully and maliciously harasses another
5 person and who makes a credible threat with the intent to place
6 that person in reasonable fear for their safety, or the safety of ~~that~~
7 ~~person's pet, service animal, emotional support animal, or horse,~~
8 ~~or the safety of their immediate family~~ *their immediate family*, is
9 guilty of the crime of stalking, punishable by imprisonment in a
10 county jail for not more than one year, or by a fine of not more
11 than one thousand dollars (\$1,000), or by both that fine and
12 imprisonment, or by imprisonment in the state prison.
13 (b) Any person who violates subdivision (a) when there is a
14 temporary restraining order, injunction, or any other court order
15 in effect prohibiting the behavior described in subdivision (a)
16 against the same party, shall be punished by imprisonment in the
17 state prison for two, three, or four years.
18 (c) (1) Every person who, after having been convicted of a
19 felony under Section 273.5, 273.6, or 422, commits a violation of
20 subdivision (a) shall be punished by imprisonment in a county jail
21 for not more than one year, or by a fine of not more than one
22 thousand dollars (\$1,000), or by both that fine and imprisonment,
23 or by imprisonment in the state prison for two, three, or five years.
24 (2) Every person who, after having been convicted of a felony
25 under subdivision (a), commits a violation of this section shall be
26 punished by imprisonment in the state prison for two, three, or
27 five years.
28 (d) In addition to the penalties provided in this section, the
29 sentencing court may order a person convicted of a felony under
30 this section to register as a sex offender pursuant to Section
31 290.006.
32 (e) For the purposes of this section, "harass" means engages in
33 a knowing and willful course of conduct directed at a specific

1 person that seriously alarms, annoys, torments, or terrorizes the
2 person, and that serves no legitimate purpose.

3 (f) For the purposes of this section, “course of conduct” means
4 two or more acts occurring over a period of time, however short,
5 evidencing a continuity of purpose. Constitutionally protected
6 activity is not included within the meaning of “course of conduct.”

7 (g) For the purposes of this section, “credible threat” means a
8 verbal or written threat, including ~~that a threat~~ performed through
9 the use of an electronic communication device, or a threat implied
10 by a pattern of conduct or a combination of verbal, written, or
11 electronically communicated statements and conduct, *including*
12 *threats to a person’s pet, service animal, emotional support animal,*
13 *or horse*, made with the intent to place the person that is the target
14 of the threat in reasonable fear for their safety, or the safety of
15 their family, and made with the apparent ability to carry out the
16 threat so as to cause the person who is the target of the threat to
17 reasonably fear for their safety or the safety of their family. It is
18 not necessary to prove that the defendant had the intent to actually
19 carry out the threat. The present incarceration of a person making
20 the threat shall not be a bar to prosecution under this section.
21 Constitutionally protected activity is not included within the
22 meaning of “credible threat.”

23 (h) For purposes of this section, the term “electronic
24 communication device” includes, but is not limited to, telephones,
25 cellular phones, computers, video recorders, fax machines, or
26 pagers. “Electronic communication” has the same meaning as the
27 term defined in Subsection 12 of Section 2510 of Title 18 of the
28 United States Code.

29 (i) This section shall not apply to conduct that occurs during
30 labor picketing.

31 (j) If probation is granted, or the execution or imposition of a
32 sentence is suspended, for any person convicted under this section,
33 it shall be a condition of probation that the person participate in
34 counseling, as designated by the court. However, the court, upon
35 a showing of good cause, may find that the counseling requirement
36 shall not be imposed.

37 (k) (1) The sentencing court also shall consider issuing an order
38 restraining the defendant from any contact with the victim, that
39 may be valid for up to 10 years, as determined by the court. It is
40 the intent of the Legislature that the length of any restraining order

1 be based upon the seriousness of the facts before the court, the
2 probability of future violations, the safety of the victim and their
3 immediate family, and the information provided to the court
4 pursuant to Section 273.75.

5 (2) This protective order may be issued by the court whether
6 the defendant is sentenced to state prison, county jail, or if
7 imposition of sentence is suspended and the defendant is placed
8 on probation.

9 (l) For purposes of this section, “immediate family” means any
10 spouse, parent, child, any person related by consanguinity or
11 affinity within the second degree, or any other person who regularly
12 resides in the household, or who, within the prior six months,
13 regularly resided in the household.

14 (m) The court shall consider whether the defendant would
15 benefit from treatment pursuant to Section 2684. If it is determined
16 to be appropriate, the court shall recommend that the Department
17 of Corrections and Rehabilitation make a certification as provided
18 in Section 2684. Upon the certification, the defendant shall be
19 evaluated and transferred to the appropriate hospital for treatment
20 pursuant to Section 2684.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.