

Introduced by Senator Ochoa Bogh
(Coauthors: Senators Alvarado-Gil, Arreguín, Choi, Dahle,
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January 23, 2025

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

LEGISLATIVE COUNSEL'S DIGEST

SB 221, as introduced, 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 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:

SECTION 1. Section 646.9 of the Penal Code is amended to read:

646.9. (a) Any 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 their safety, or the safety of ~~their immediate family~~, *that person's pet, service animal, emotional support animal, or horse, or the safety of their immediate family* is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, ~~“harasses”~~ “harass” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short,

1 evidencing a continuity of purpose. Constitutionally protected
2 activity is not included within the meaning of “course of conduct.”

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

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

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

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

32 (k) (1) The sentencing court also shall consider issuing an order
33 restraining the defendant from any contact with the victim, that
34 may be valid for up to 10 years, as determined by the court. It is
35 the intent of the Legislature that the length of any restraining order
36 be based upon the seriousness of the facts before the court, the
37 probability of future violations, the safety of the victim and their
38 immediate family, and the information provided to the court
39 pursuant to Section 273.75.

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

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

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

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