

**ASSEMBLY BILL**

**No. 2563**

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**Introduced by Assembly Member Vargas**

February 21, 2002

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An act to amend Sections 1203.3 and 1269b of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2563, as introduced, Vargas. Domestic violence.

Existing law authorizes a person who has suffered harassment to seek a temporary restraining order and an injunction prohibiting harassment from a court. Existing law authorizes a judicial officer to issue an ex parte emergency protective order where a peace officer, as defined, asserts reasonable grounds to believe that a person is stalking another person. Existing law authorizes a judicial officer to issue an ex parte emergency protective order, as specified, to prevent the occurrence or recurrence of domestic violence, child abuse, or child abduction.

This bill would require the agency discharging a person who posts bail on charges of domestic violence to serve that person with a specified order, without court involvement but enforceable as a court order, prohibiting contact with the alleged victim until the end of the 5th court day, or until the 7th calendar day, whichever is earliest.

By imposing duties on the discharging agency and by expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law gives the court authority, as specified, to revoke or terminate probation, or to modify conditions of probation. Under existing law, a court cannot modify, revoke, or change court orders of probation without written notice to the proper probation officer, and

cannot modify a probation order without providing a 2-day written notice to the prosecutor, and an opportunity to be heard on the matter.

This bill would provide that a protective order that is a term or condition of probation in a domestic violence case may not be modified without a 5-day written notice being provided to the prosecuting attorney. This bill would require a court limiting or terminating a protective order as a condition of probation in a domestic violence case to find that the defendant no longer poses a threat of harm to, or intimidation or dissuasion of, any subject of the protective order, and to find good cause to make the change on the record. This bill would require a court deciding whether to limit or terminate a protective order condition of probation to consider if there has been any material change in circumstances since the crime for which the order was issued, including specified considerations.

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 1203.3 of the Penal Code is amended to
- 2 read:
- 3 1203.3. (a) The court shall have authority at any time during
- 4 the term of probation to revoke, modify, or change its order of
- 5 suspension of imposition or execution of sentence. The court may
- 6 at any time when the ends of justice will be subserved thereby, and
- 7 when the good conduct and reform of the person so held on



1 probation shall warrant it, terminate the period of probation, and  
2 discharge the person so held.

3 (b) The exercise of the court's authority in subdivision (a) to  
4 revoke, modify, change, or terminate probation is subject to the  
5 following:

6 (1) Before any sentence or term or condition of probation is  
7 modified, a hearing shall be held in open court before the judge.  
8 The prosecuting attorney shall be given a two-day written notice  
9 and an opportunity to be heard on the matter, *except that, as to*  
10 *modifying or terminating a protective order in a case involving*  
11 *domestic violence, as defined in Section 6211 of the Family Code,*  
12 *the prosecuting attorney shall be given a five-day written notice*  
13 *and an opportunity to be heard.*

14 (A) If the sentence or term or condition of probation is  
15 modified pursuant to this section, the judge shall state the reasons  
16 for that modification on the record.

17 (B) As used in this section, modification of sentence shall  
18 include reducing a felony to a misdemeanor.

19 (2) No order shall be made without written notice first given by  
20 the court or the clerk thereof to the proper probation officer of the  
21 intention to revoke, modify, or change its order.

22 (3) In all cases, if the court has not seen fit to revoke the order  
23 of probation and impose sentence or pronounce judgment, the  
24 defendant shall at the end of the term of probation or any extension  
25 thereof, be by the court discharged subject to the provisions of  
26 these sections.

27 (4) The court may modify the time and manner of the term of  
28 probation for purposes of measuring the timely payment of  
29 restitution obligations or the good conduct and reform of the  
30 defendant while on probation. The court shall not modify the  
31 dollar amount of the restitution obligations due to the good  
32 conduct and reform of the defendant, absent compelling and  
33 extraordinary reasons, nor shall the court limit the ability of payees  
34 to enforce the obligations in the manner of judgments in civil  
35 actions.

36 (5) Nothing in this section shall be construed to prohibit the  
37 court from modifying the dollar amount of a restitution order  
38 pursuant to subdivision (f) of Section 1202.4 at any time during the  
39 term of the probation.



1 (6) Before limiting or terminating a protective order that is a  
2 condition of probation in a case involving domestic violence, as  
3 defined in Section 6211 of the Family Code, a court shall be  
4 required to find that the defendant no longer poses a threat of harm  
5 to, or intimidation or dissuasion of, any subject of the protective  
6 order, and shall find good cause to make the change on the record.  
7 Before making this finding, the court shall consider if there has  
8 been any material change in circumstances since the crime for  
9 which the order was issued, and any issue that relates to whether  
10 there exists good cause for the change, including, but not limited  
11 to consideration of all of the following:

12 (A) Whether the probationer has accepted responsibility for the  
13 abusive behavior perpetrated against the victim.

14 (B) Whether the probationer is currently attending and actively  
15 participating in counseling sessions.

16 (C) Whether the probationer has completed parenting  
17 counseling, or attended alcoholics or narcotics counseling.

18 (D) Whether the probationer has moved from the state, or is  
19 incarcerated.

20 (E) Whether the probationer is still cohabitating, or intends to  
21 cohabit, with any subject of the order.

22 (F) Whether the defendant has performed well on probation,  
23 including consideration of any progress reports.

24 (G) Whether the victim desires the change, and is so, the  
25 victim's reasons, whether the victim has consulted a victim  
26 advocate, and whether the victim has prepared a safety plan and  
27 has access to local resources.

28 (H) Whether the change will impact any children involved,  
29 including consideration of any Child Protective Services  
30 information.

31 (I) Whether the ends of justice would be served by limiting or  
32 terminating the order.

33 (c) If a probationer is ordered to serve time in jail, and the  
34 probationer escapes while serving that time, the probation is  
35 revoked as a matter of law on the day of the escape.

36 (d) If probation is revoked pursuant to subdivision (c), upon  
37 taking the probationer into custody, the probationer shall be  
38 accorded a hearing or hearings consistent with the holding in the  
39 case of *People v. Vickers* (1972) 8 Cal.3d 451. The purpose of that  
40 hearing or hearings is not to revoke probation, as the revocation



1 has occurred as a matter of law in accordance with subdivision (c),  
2 but rather to afford the defendant an opportunity to require the  
3 prosecution to establish that the alleged violation did in fact occur  
4 and to justify the revocation.

5 (e) This section does not apply to cases covered by Section  
6 1203.2.

7 SEC. 2. Section 1269b of the Penal Code is amended to read:

8 1269b. (a) The officer in charge of a jail where an arrested  
9 person is held in custody, an officer of a sheriff's department or  
10 police department of a city who is in charge of a jail or is employed  
11 at a fixed police or sheriff's facility and is acting under an  
12 agreement with the agency that keeps the jail wherein an arrested  
13 person is held in custody, an employee of a sheriff's department or  
14 police department of a city who is assigned by the department to  
15 collect bail, the clerk of the municipal court of the judicial district  
16 in which the offense was alleged to have been committed, and the  
17 clerk of the superior court in which the case against the defendant  
18 is pending may approve and accept bail in the amount fixed by the  
19 warrant of arrest, schedule of bail, or order admitting to bail in cash  
20 or surety bond executed by a certified, admitted surety insurer as  
21 provided in the Insurance Code, to issue and sign an order for the  
22 release of the arrested person, and to set a time and place for the  
23 appearance of the arrested person before the appropriate court and  
24 give notice thereof.

25 (b) If a defendant has appeared before a judge of the court on  
26 the charge contained in the complaint, indictment, or information,  
27 the bail shall be in the amount fixed by the judge at the time of the  
28 appearance; if that appearance has not been made, the bail shall be  
29 in the amount fixed in the warrant of arrest or, if no warrant of  
30 arrest has been issued, the amount of bail shall be pursuant to the  
31 uniform countywide schedule of bail for the county in which the  
32 defendant is required to appear, previously fixed and approved as  
33 provided in subdivisions (c) and (d).

34 (c) It is the duty of the superior and municipal court judges in  
35 each county to prepare, adopt, and annually revise, by a majority  
36 vote, at a meeting called by the presiding judge of the superior  
37 court of the county, a uniform countywide schedule of bail for all  
38 bailable felony offenses.

39 In adopting a uniform countywide schedule of bail for all  
40 bailable offenses the judges shall consider the seriousness of the



1 offense charged. In considering the seriousness of the offense  
2 charged the judges shall assign an additional amount of required  
3 bail for each aggravating or enhancing factor chargeable in the  
4 complaint, including, but not limited to, additional bail for charges  
5 alleging facts that would bring a person within any of the following  
6 sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9,  
7 667.10, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5,  
8 12022.53, 12022.6, 12022.7, 12022.8, or 12022.9, or Section  
9 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

10 In considering offenses wherein a violation of Chapter 6  
11 (commencing with Section 11350) of Division 10 of the Health  
12 and Safety Code is alleged, the judge shall assign an additional  
13 amount of required bail for offenses involving large quantities of  
14 controlled substances.

15 (d) The municipal court judges in each county, at a meeting  
16 called by the presiding judge of the municipal court at each county  
17 seat, or the superior court judges in each county in which there is  
18 no municipal court, at a meeting called by the presiding judge of  
19 the superior court, shall prepare, adopt, and annually revise, by a  
20 majority vote, a uniform, countywide schedule of bail for all  
21 misdemeanor and infraction offenses except Vehicle Code  
22 infractions. The penalty schedule for infraction violations of the  
23 Vehicle Code shall be established by the Judicial Council in  
24 accordance with Section 40310 of the Vehicle Code.

25 (e) Each countywide bail schedule shall contain a list of the  
26 offenses and the amounts of bail applicable thereto as the judges  
27 determine to be appropriate. If the schedules do not list all offenses  
28 specifically, they shall contain a general clause for designated  
29 amounts of bail as the judges of the county determine to be  
30 appropriate for all the offenses not specifically listed in the  
31 schedules. A copy of the countywide bail schedule shall be sent to  
32 the officer in charge of the county jail, to the officer in charge of  
33 each city jail within the county, to each superior and municipal  
34 court judge and commissioner in the county, and to the Judicial  
35 Council.

36 (f) Upon posting bail, the defendant or arrested person shall be  
37 discharged from custody as to the offense on which the bail is  
38 posted, *except as provided in subdivision (h)*.

39 All money and surety bonds so deposited with an officer  
40 authorized to receive bail shall be transmitted immediately to the



1 judge or clerk of the court by which the order was made or warrant  
2 issued or bail schedule fixed. If, in the case of felonies, an  
3 indictment is filed, the judge or clerk of the court shall transmit all  
4 of the money and surety bonds to the clerk of the court.

5 (g) If a defendant or arrested person so released fails to appear  
6 at the time and in the court so ordered upon his or her release from  
7 custody, Sections 1305 and 1306 apply.

8 (h) (1) *Prior to the discharge of any person arrested or*  
9 *pending disposition on charges related to an incident of domestic*  
10 *violence, as defined in Section 6211 of the Family Code, each*  
11 *agency with responsibility for discharging persons from custody*  
12 *upon posting of bail, when giving notice of the time and place of*  
13 *required court appearance as provided in subdivision (a), shall*  
14 *serve an emergency protective order which shall prohibit that*  
15 *person from having any contact with the alleged victim.*

16 (2) *This emergency protective order shall include all of the*  
17 *following:*

18 (A) *A statement that the reason for the order is the arrest for, or*  
19 *case concerning a domestic violence incident.*

20 (2) *The date and time the order expires.*

21 (3) *The address of the superior court for the district or county*  
22 *in which the protected party resides.*

23 (4) *The following statements, which shall be printed in English*  
24 *and Spanish:*

25 (A) *“To the protected person: This order will last until the date*  
26 *and time noted above. If you wish to seek continuing protection,*  
27 *you will have to apply for an order from the court at the address*  
28 *noted above. You may seek the advice of an attorney as to any*  
29 *matter connected with your application for any future court orders.*  
30 *The attorney should be consulted promptly so that the attorney may*  
31 *assist you in making your application.”*

32 (B) *“To the restrained person: This order will last until the date*  
33 *and time noted above. The protected party may, however, obtain*  
34 *a more permanent restraining order from the court. You may seek*  
35 *the advice of an attorney as to any matter connected with the*  
36 *application. The attorney should be consulted promptly so that the*  
37 *attorney may assist you in responding to the application.”*

38 (3) *The protective order shall be issued without prejudice to any*  
39 *person.*



1 (4) This protective order shall expire at the earlier of the  
2 following times:

3 (A) The close of judicial business on the fifth court day  
4 following the day of its issuance.

5 (B) The seventh calendar day following the day of its issuance.

6 (5) The agency serving the protective order on the person  
7 posting bail shall do the following:

8 (A) Endeavor to give a copy of the order to the protected  
9 person, or, if the protected person is a minor child, to a parent or  
10 guardian of the protected child if the parent or guardian can  
11 reasonably be located, or to a person having temporary custody of  
12 the child.

13 (B) File a copy of the order with the court as soon as  
14 practicable after issuance.

15 (6) A peace officer shall use every reasonable means to enforce  
16 this protective order.

17 (7) A peace officer who acts in good faith to enforce an  
18 emergency protective order is not civilly or criminally liable.

19 (8) Any intentional disobedience of a protective order issued  
20 under this section is punishable as if it were a court order pursuant  
21 to Section 166.

22 (9) Nothing in this subdivision shall be construed to prevent  
23 punishment under any other law which is separately pled and  
24 proven.

25 SEC. 3. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution for  
27 certain costs that may be incurred by a local agency or school  
28 district because in that regard this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

34 However, notwithstanding Section 17610 of the Government  
35 Code, if the Commission on State Mandates determines that this  
36 act contains other costs mandated by the state, reimbursement to  
37 local agencies and school districts for those costs shall be made  
38 pursuant to Part 7 (commencing with Section 17500) of Division  
39 4 of Title 2 of the Government Code. If the statewide cost of the  
40 claim for reimbursement does not exceed one million dollars



- 1 (\$1,000,000), reimbursement shall be made from the State
- 2 Mandates Claims Fund.

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