

AMENDED IN SENATE JANUARY 17, 2008

AMENDED IN SENATE MARCH 15, 2007

SENATE BILL

No. 129

Introduced by Senator Kuehl

January 24, 2007

An act to amend Section 653m of the Penal Code, relating to criminal communications.

LEGISLATIVE COUNSEL'S DIGEST

SB 129, as amended, Kuehl. Criminal communications.

Existing law makes it a misdemeanor punishable by a maximum of 6 months in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device with the intent to annoy another person at his or her residence. Existing law additionally makes it a misdemeanor punishable by a maximum of one year in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device with the intent to annoy another person at his or her place of work *if one of 2 specified circumstances exist*.

This bill would, instead, make it a misdemeanor punishable by a maximum of 6 months in the county jail or a \$1,000 fine or both for a person to make telephone calls or contact with an electronic communication device, as defined, with the intent to annoy another person at any place. ~~However, if the call or contact occurs when there is a specified protective order in effect prohibiting the call or contact, or if the person making the call or contact has or had a specified relationship with the person to whom the call or contact is directed, then the conduct is punishable by a maximum of one year in the county jail or a \$1,000 fine or both.~~

This bill would also provide that a person is subject to the described penalties if the person knowingly permits any telephone or electronic communication device under the person's control to be used for the prohibited purpose.

Because this bill would expand the scope of a crime, it 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 653m of the Penal Code is amended to
2 read:

3 653m. (a) Every person who, with intent to annoy, telephones
4 or makes contact by means of an electronic communication device
5 with another and addresses to or about the other person any obscene
6 language or addresses to the other person any threat to inflict injury
7 to the person or property of the person addressed or any member
8 of his or her family, is guilty of a misdemeanor. Nothing in this
9 subdivision shall apply to telephone calls or electronic contacts
10 made in good faith.

11 (b) Every person who, with intent to annoy or harass, makes
12 repeated telephone calls or makes repeated contact by means of
13 an electronic communication device, or makes any combination
14 of calls or contact, to another person is, whether or not conversation
15 ensues from making the telephone call or contact by means of an
16 electronic communication device, guilty of a misdemeanor.
17 Nothing in this subdivision shall apply to telephone calls or
18 electronic contacts made in good faith or during the ordinary course
19 and scope of business.

20 ~~(c) If the conduct described in subdivision (a) or (b) occurs~~
21 ~~when either of the following circumstances exist, the person~~
22 ~~making the telephone call or calls, or contact by means of an~~
23 ~~electronic communication device or devices, or any combination~~
24 ~~thereof, is guilty of a misdemeanor punishable by a fine of not~~

1 more than one thousand dollars (\$1,000), or by imprisonment in
2 a county jail for not more than one year, or by both that fine and
3 imprisonment:

4 ~~(1) There is an emergency protective order, a temporary~~
5 ~~restraining order, an injunction, or any other court order, or any~~
6 ~~combination of these court orders, in effect, which prohibits the~~
7 ~~behavior described in these subdivisions.~~

8 ~~(2) The person making the telephone call or calls, or contact by~~
9 ~~means of an electronic communications device or devices, is a~~
10 ~~spouse, former spouse, cohabitant, former cohabitant or person~~
11 ~~with whom the person has a child or has had a dating or~~
12 ~~engagement relationship or is having a dating or engagement~~
13 ~~relationship with the person to whom the call, calls, or contact is~~
14 ~~intended.~~

15 ~~(d)~~

16 (c) Any offense committed by use of a telephone may be deemed
17 to have been committed when and where the telephone call or calls
18 were made or received. Any offense committed by use of an
19 electronic communication device or medium, including the Internet,
20 may be deemed to have been committed when and where the
21 electronic communication or communications were originally sent
22 or first viewed by the recipient.

23 ~~(e)~~

24 (d) Subdivision (a) or (b) is violated when the person acting
25 with intent to annoy makes a telephone call or contact by means
26 of an electronic communication device requesting a return call and
27 performs the acts prohibited under subdivision (a) or (b) upon
28 receiving the return call.

29 ~~(f)~~

30 (e) Subdivision (a) or (b) is violated when a person knowingly
31 permits any telephone or electronic communication under the
32 person's control to be used for the purposes prohibited by those
33 subdivisions.

34 ~~(g)~~

35 (f) If probation is granted, or the execution or imposition of
36 sentence is suspended, for any person convicted under this section,
37 the court may order as a condition of probation that the person
38 participate in counseling.

39 ~~(h)~~

1 (g) For purposes of this section, the term “electronic
2 communication device” includes, but is not limited to, telephones,
3 cellular phones, computers, video recorders, facsimile machines,
4 pagers, personal digital assistants, smartphones, and any other
5 device that transfers signs, signals, writing, images, sounds, or
6 data. “Electronic communication device” also includes, but is not
7 limited to, videophones, TTY/TDD devices, and all other devices
8 used to aid or assist communication to or from deaf or disabled
9 persons. “Electronic communication” has the same meaning as
10 the term defined in Subsection 12 of Section 2510 of Title 18 of
11 the United States Code.

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