

Senate Bill No. 129

Passed the Senate January 30, 2008

Secretary of the Senate

Passed the Assembly June 26, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 129, 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.

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.

The people of the State of California do enact as follows:

SECTION 1. Section 653m of the Penal Code is amended to read:

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

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

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

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

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

(f) If probation is granted, or the execution or imposition of sentence is suspended, for any person convicted under this section,

the court may order as a condition of probation that the person participate in counseling.

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

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

Approved _____, 2008

Governor