

**Assembly Bill No. 350**

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Passed the Assembly    May 29, 1997

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*Chief Clerk of the Assembly*

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Passed the Senate    July 18, 1997

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_ day  
of \_\_\_\_\_, 1997, at \_\_\_\_ o'clock \_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*



## CHAPTER \_\_\_\_

An act to add Section 6274 to the Family Code, and to add Section 646.91 to the Penal Code, relating to stalking.

## LEGISLATIVE COUNSEL'S DIGEST

AB 350, Firestone. Stalking: emergency protective order.

Existing law makes any person who willfully, maliciously, and repeatedly follows or harasses another person and who makes a credible threat with the intent to place that person in reasonable fear of his or her safety or the safety of his or her family guilty of the crime of stalking. Existing law authorizes a person who has suffered harassment to seek a temporary restraining order and an injunction prohibiting harassment. 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 authorize 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. The bill would specify the procedures for issuance of an ex parte emergency protective order under the bill which would be similar to the procedures used for issuance of those orders under the law relating to prevention of domestic violence. The bill would require the Judicial Council to adopt forms, instructions, and rules for carrying out the bill. The bill would create a crime by making any intentional disobedience of any emergency protective order authorized by the bill punishable as a contempt of court, but would provide, in lieu of that punishment, for a violation to be punishable as felony stalking under specified circumstances.

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 6274 is added to the Family Code, to read:

6274. A peace officer, as defined in Section 830.1 or 830.2 of the Penal Code, may seek an emergency protective order relating to stalking under Section 646.91 of the Penal Code if the requirements of that section are complied with.

SEC. 2. Section 646.91 is added to the Penal Code, to read:

646.91. (a) Notwithstanding any other law, a judicial officer may issue an ex parte emergency protective order where a peace officer, as defined in Section 830.1 or 830.2, asserts reasonable ground to believe that a person is in immediate and present danger of stalking based upon the person's allegation that he or she has been willfully, maliciously, and repeatedly followed or harassed by another person who has made a credible threat with the intent of placing the person who is the target of the threat in reasonable fear for his or her safety, or the safety of his or her immediate family, within the meaning of Section 646.9.

(b) A peace officer who requests an emergency protective order shall reduce the order to writing and sign it.

(c) An emergency protective order shall include all of the following:

(1) A statement of the grounds asserted for the order.

(2) The date and time the order expires.

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

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



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

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

(c) An emergency protective order may be issued under this section only if the judicial officer finds both of the following:

(1) That reasonable grounds have been asserted to believe that an immediate and present danger of stalking, as defined in Section 646.9, exists.

(2) That an emergency protective order is necessary to prevent the occurrence or reoccurrence of the stalking activity.

(d) An emergency protective order may include either of the following specific orders as appropriate:

(1) A harassment protective order as described in Section 527.6 of the Code of Civil Procedure.

(2) A workplace violence protective order as described in Section 527.8 of the Code of Civil Procedure.

(e) An emergency protective order shall be issued without prejudice to any person.

(f) An emergency protective order expires at the earlier of the following times:

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

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

(g) A peace officer who requests an emergency protective order shall do all of the following:



(1) Serve the order on the restrained person, if the restrained person can reasonably be located.

(2) Give a copy of the order to the protected person, or, if the protected person is a minor child, to a parent or guardian of the protected child if the parent or guardian can reasonably be located, or to a person having temporary custody of the child.

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

(h) A peace officer shall use every reasonable means to enforce an emergency protective order.

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

(j) A peace officer who requests an emergency protective order under this section shall carry copies of the order while on duty.

(k) “Judicial officer” as used in this section, means a judge, commissioner, or referee.

(l) Nothing in this section shall be construed to permit a court to issue an emergency protective order prohibiting speech or other activities that are constitutionally protected or protected by the laws of this state or by the United States or activities occurring during a labor dispute, as defined by Section 527.3 of the Code of Civil Procedure, including but not limited to, picketing and hand billing.

(m) The Judicial Council shall develop forms, instructions, and rules for the scheduling of hearings and other procedures established pursuant to this section.

(n) Any intentional disobedience of any emergency protective order granted under this section is punishable pursuant to Section 166. Nothing in this subdivision shall be construed to prevent punishment under Section 646.9, in lieu of punishment under this section, if a violation of Section 646.9 is also pled and proven.

SEC. 3. 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.



Approved \_\_\_\_\_, 1997

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*Governor*

