

CONCURRENCE IN SENATE AMENDMENTS

AB 764 (Cervantes)

As Amended July 15, 2021

Majority vote

SUMMARY

Increases the maximum punishment for the misdemeanor offense of contempt of court that applies when a person who has previously been convicted of stalking, willfully contacts a victim by social media, electronic communication, or electronic communication device, from six months in jail to one year in jail.

Senate Amendments

Specify that a fine imposed for contempt of court for willfully contacting a victim following a conviction for stalking may be no more than \$5,000.

COMMENTS

As Passed by the Assembly, this bill:

- 1) Provided that unlawful contact with a victim in violation of a court order for purposes of the one-year misdemeanor include social media, electronic communication, or electronic communication device, instead of being limited to direct contact, telephone, or mail.
- 2) Defined terms for the purposes of this bill as follows:
 - a) "Social media" means an electronic service or account, or electronic content, including, but not limited to, videos or still photographs, blogs, video blogs, podcasts, instant and text messages, email, online services or accounts, or Internet Web site profiles or locations;
 - b) "Electronic communication device" includes, but is not limited to, telephones, cellular telephones, computers, video recorders, fax machines, or pagers; and,
 - c) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include any wire or oral communication; any communication made through a tone-only paging device, any communication from a tracking device, as specified, or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

According to the Author

"Existing law provides only incomplete protection to survivors to whom the courts have provided a protective order against a convicted perpetrator of stalking. As currently written, the law only punishes violations of such a protective order that are made in person, over the telephone, or using physical mail. This loophole clearly does not reflect the reality of the 21st Century. Prohibited contacts are now also attempted using social media, text messaging, email, or other electronic means. This loophole has only become more apparent during the COVID-19 pandemic, as public health mitigation measures such as stay-at-home orders and physical

distancing have only made harassment of survivors over social media and other electronic means more prevalent.

"Assembly Bill 764 will close this loophole by adding social media and other electronic means of communication to the statutory list of prohibited forms of contact. This will provide survivors of stalking who have a court-ordered protective order with the security they both need and deserve."

Arguments in Support

According to the *San Diego County District Attorney's Office*: "California law provides for various protections for victims who have been subjected to the crime of stalking. These crimes are some of the most emotionally and psychologically damaging, resulting in lasting impacts long after the actual crime has been committed. Penal Code Section 166(b)(1) provides protections for stalking victims after a court order has been issued protecting a victim from further contact by the perpetrator. However, the language related to contacts using "telephone and mail" are rather outdated. AB 764 simply updates the language of the statute to include "social media, electronic communication, or electronic communication devices."

"Stalking, by its very nature, involves repeated behavior of unwanted contacts that are threatening to the victim's safety and that the perpetrator intentionally knows is threatening to that person. These dangerous fixations can lead to unwanted and often escalating contact, even after a protective order has been put in place to protect the stalking victim. Often times the contacts, violations, or threats are made via social messaging and social media platforms, such as through Facebook, Instagram, Snapchat, other similar applications, or text messages or email. While Penal Code section 166(b)(1) specifically addresses behaviors that are violations of the court order, the use of the terms: contacting a victim "by telephone or mail" does not reflect current society. This legislation will clarify and reflect the more current means of communication in order to better protect stalking victims from further contact and harassment from their stalkers."

Arguments in Opposition

None submitted.

FISCAL COMMENTS

According to the Senate Appropriations Committee:

Unknown, potentially significant workload cost pressures to the courts to adjudicate charges brought against individuals who are subjected to a restraining order after a stalking conviction who are alleged to have contacted victims electronically or through social media. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

VOTES:**ASM PUBLIC SAFETY: 8-0-0**

YES: Jones-Sawyer, Lackey, Bauer-Kahan, Quirk, Santiago, Seyarto, Wicks, Lee

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Bloom, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Kalra, Levine, Nazarian, Quirk, Robert Rivas

ASSEMBLY FLOOR: 76-0-2

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

ABS, ABST OR NV: Gallagher, Mullin

SENATE FLOOR: 37-0-3

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Dahle, Limón, Stern

UPDATED

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