
THIRD READING

Bill No: AB 764
Author: Cervantes (D)
Amended: 7/15/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-0, 7/13/21
AYES: Bradford, Ochoa Bogh, Durazo, Kamlager, Skinner

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/26/21
AYES: Portantino, Bates, Bradford, Jones, Kamlager, Laird, McGuire

ASSEMBLY FLOOR: 76-0, 5/6/21 - See last page for vote

SUBJECT: Contempt of court: victim intimidation

SOURCE: San Diego County District Attorney's Office

DIGEST: This bill specifies that a person who is the subject of a restraining order who has previously been convicted of stalking, may be punished for contempt of court punishable by a maximum of one year in jail, for willfully contacting a victim by social media, electronic communication, or by electronic device.

ANALYSIS:

Existing law:

- 1) Provides that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking. This crime is punishable by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison. (Pen. Code, § 646.9, subd. (a).)

- 2) Defines “harasses” for purposes of stalking to mean engages in a knowing and willful course of conduct directed at a specific person and seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose. (Pen. Code, § 646.9, subd. (e).)
- 3) Defines “course of conduct” as two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.” (Pen. Code, § 646.9, subd. (f).)
- 4) Defines “electronic communication device” for purposes of “credible threats” under stalking as including, but not being limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “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, except as specified. (Pen. Code, § 646.9, subd. (h).)
- 5) Provides that the sentencing court may order a person convicted of felony stalking to register as a sex offender and shall consider issuing a restraining order protecting the victim that is valid for up to 10 years. (Pen. Code, § 646.9, subds. (d) & (k).)
- 6) Authorizes the trial court in a criminal case to issue protective orders when there is a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.2, subd. (a).)
- 7) Provides that a person violating a protective order may be punished for any substantive offense described in provisions of law related to intimidation of witnesses or victims, or for contempt of court. (Pen. Code, § 136.2, subd. (b).)
- 8) States that a person who is guilty of contempt of court by willfully contacting a victim by telephone or mail, or directly, when a protective order is in place, and who has been previously convicted of stalking, is punishable by imprisonment in the county jail for not more than one year, by a fine of \$5000, or by both the fine and imprisonment. (Pen. Code, § 166, subd. (b)(1).)

This bill:

- 1) Adds social media, electronic communication, or electronic communication device as additional prohibited means of contacting the victim when a

protective order is in place and the subject of the order has previously been convicted of stalking.

2) Provides the following definitions:

- 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” includes, but is not limited to, “telephones, cellular phones, computers, video recorders, fax machines, or pagers.”
- c) “Electronic communication device” 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.”

Comments

According to the author’s office:

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 746 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

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

SUPPORT: (Verified 8/26/21)

San Diego County District Attorney's Office (source)

Arcadia Police Officers' Association

Burbank Police Officers Association

California Coalition of School Safety Professionals

California District Attorneys Association

California State Sheriffs' Association

Claremont Police Officers Association

Corona Police Officers Association

Culver City Police Officers Association

Fullerton Police Officers' Association

Inglewood Police Officers Association

Los Angeles School Police Officers Association

Newport Beach Police Association

Palos Verdes Police Officers Association

Placer County Deputy Sheriffs' Association

Pomona Police Officers' Association

Riverside Police Officers Association

Riverside Sheriffs' Association

Santa Ana Police Officers Association

Upland Police Officers Association

OPPOSITION: (Verified 8/26/21)

JVP Action Greater Los Angeles

ASSEMBLY FLOOR: 76-0, 5/6/21

AYES: 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
NO VOTE RECORDED: Gallagher, Mullin

Prepared by: Stella Choe / PUB. S. /
8/28/21 11:14:23

**** END ****