

ASSEMBLY BILL

No. 499

Introduced by Assembly Member Ting

February 20, 2013

An act to amend Section 527.6 of the Code of Civil Procedure, relating to judicial proceedings.

LEGISLATIVE COUNSEL'S DIGEST

AB 499, as introduced, Ting. Judicial proceedings: injunctions prohibiting harassment.

Existing law provides that a person who has suffered harassment, as defined, may seek a temporary restraining order and an injunction prohibiting harassment. If issued, the injunction shall be in effect for a period of up to 3 years and may be renewed for another period of up to 3 years. If the form does not establish an expiration date for the injunction, existing law establishes a default duration of 3 years.

This bill would provide that the injunction shall remain in effect, subject to termination or modification by further order of the court, for up to 10 years and would repeal the order renewal provisions. The bill would establish a default order period of five years if no expiration date is provided on the form.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 527.6 of the Code of Civil Procedure is
2 amended to read:

1 527.6. (a) (1) A person who has suffered harassment as
2 defined in subdivision (b) may seek a temporary restraining order
3 and an injunction prohibiting harassment as provided in this
4 section.

5 (2) A minor, under 12 years of age, accompanied by a duly
6 appointed and acting guardian ad litem, shall be permitted to appear
7 in court without counsel for the limited purpose of requesting or
8 opposing a request for a temporary restraining order or injunction,
9 or both, under this section as provided in Section 374.

10 (b) For the purposes of this section:

11 (1) “Course of conduct” is a pattern of conduct composed of a
12 series of acts over a period of time, however short, evidencing a
13 continuity of purpose, including following or stalking an individual,
14 making harassing telephone calls to an individual, or sending
15 harassing correspondence to an individual by any means, including,
16 but not limited to, the use of public or private mails, interoffice
17 mail, facsimile, or computer email. Constitutionally protected
18 activity is not included within the meaning of “course of conduct.”

19 (2) “Credible threat of violence” is a knowing and willful
20 statement or course of conduct that would place a reasonable person
21 in fear for his or her safety, or the safety of his or her immediate
22 family, and that serves no legitimate purpose.

23 (3) “Harassment” is unlawful violence, a credible threat of
24 violence, or a knowing and willful course of conduct directed at
25 a specific person that seriously alarms, annoys, or harasses the
26 person, and that serves no legitimate purpose. The course of
27 conduct must be such as would cause a reasonable person to suffer
28 substantial emotional distress, and must actually cause substantial
29 emotional distress to the petitioner.

30 (4) “Petitioner” means the person to be protected by the
31 temporary restraining order and injunction and, if the court grants
32 the petition, the protected person.

33 (5) “Respondent” means the person against whom the temporary
34 restraining order and injunction are sought and, if the petition is
35 granted, the restrained person.

36 (6) “Temporary restraining order” and “injunction” mean orders
37 that include any of the following restraining orders, whether issued
38 ex parte or after notice and hearing:

39 (A) An order enjoining a party from harassing, intimidating,
40 molesting, attacking, striking, stalking, threatening, sexually

1 assaulting, battering, abusing, telephoning, including, but not
2 limited to, making annoying telephone calls, as described in Section
3 653m of the Penal Code, destroying personal property, contacting,
4 either directly or indirectly, by mail or otherwise, or coming within
5 a specified distance of, or disturbing the peace of, the petitioner.

6 (B) An order enjoining a party from specified behavior that the
7 court determines is necessary to effectuate orders described in
8 subparagraph (A).

9 (7) “Unlawful violence” is any assault or battery, or stalking as
10 prohibited in Section 646.9 of the Penal Code, but shall not include
11 lawful acts of self-defense or defense of others.

12 (c) In the discretion of the court, on a showing of good cause,
13 a temporary restraining order or injunction issued under this section
14 may include other named family or household members.

15 (d) Upon filing a petition for an injunction under this section,
16 the petitioner may obtain a temporary restraining order in
17 accordance with Section 527, except to the extent this section
18 provides a rule that is inconsistent. The temporary restraining order
19 may include any of the restraining orders described in paragraph
20 (6) of subdivision (b). A temporary restraining order may be issued
21 with or without notice, based on a declaration that, to the
22 satisfaction of the court, shows reasonable proof of harassment of
23 the petitioner by the respondent, and that great or irreparable harm
24 would result to the petitioner.

25 (e) A request for the issuance of a temporary restraining order
26 without notice under this section shall be granted or denied on the
27 same day that the petition is submitted to the court, unless the
28 petition is filed too late in the day to permit effective review, in
29 which case the order shall be granted or denied on the next day of
30 judicial business in sufficient time for the order to be filed that day
31 with the clerk of the court.

32 (f) A temporary restraining order issued under this section shall
33 remain in effect, at the court’s discretion, for a period not to exceed
34 21 days, or, if the court extends the time for hearing under
35 subdivision (g), not to exceed 25 days, unless otherwise modified
36 or terminated by the court.

37 (g) Within 21 days, or, if good cause appears to the court, 25
38 days from the date that a petition for a temporary order is granted
39 or denied, a hearing shall be held on the petition for the injunction.
40 If no request for temporary orders is made, the hearing shall be

1 held within 21 days, or, if good cause appears to the court, 25 days,
2 from the date that the petition is filed.

3 (h) The respondent may file a response that explains, excuses,
4 justifies, or denies the alleged harassment or may file a
5 cross-petition under this section.

6 (i) At the hearing, the judge shall receive any testimony that is
7 relevant, and may make an independent inquiry. If the judge finds
8 by clear and convincing evidence that unlawful harassment exists,
9 an injunction shall issue prohibiting the harassment.

10 (j) (1) In the discretion of the court, an order issued after notice
11 and hearing under this section may have a duration of ~~not more~~
12 ~~than three~~ *up to ten* years, subject to termination or modification
13 by further order of the court either on written stipulation filed with
14 the court or on the motion of a party. ~~These orders may be renewed,~~
15 ~~upon the request of a party, for a duration of not more than three~~
16 ~~years, without a showing of any further harassment since the~~
17 ~~issuance of the original order, subject to termination or~~
18 ~~modification by further order of the court either on written~~
19 ~~stipulation filed with the court or on the motion of a party. The~~
20 ~~request for renewal may be brought at any time within the three~~
21 ~~months before the expiration of the order.~~

22 (2) The failure to state the expiration date on the face of the
23 form creates an order with a duration of ~~three~~ *five* years from the
24 date of issuance.

25 (3) If an action is filed for the purpose of terminating or
26 modifying a protective order prior to the expiration date specified
27 in the order by a party other than the protected party, the party
28 who is protected by the order shall be given notice, pursuant to
29 subdivision (b) of Section 1005, of the proceeding by personal
30 service or, if the protected party has satisfied the requirements of
31 Chapter 3.1 (commencing with Section 6205) of Division 7 of
32 Title 1 of the Government Code, by service on the Secretary of
33 State. If the party who is protected by the order cannot be notified
34 prior to the hearing for modification or termination of the protective
35 order, the court shall deny the motion to modify or terminate the
36 order without prejudice or continue the hearing until the party who
37 is protected can be properly noticed and may, upon a showing of
38 good cause, specify another method for service of process that is
39 reasonably designed to afford actual notice to the protected party.
40 The protected party may waive his or her right to notice if he or

1 she is physically present in court and does not challenge the
2 sufficiency of the notice.

3 (k) This section does not preclude either party from
4 representation by private counsel or from appearing on the party's
5 own behalf.

6 (l) In a proceeding under this section if there are allegations of
7 unlawful violence or credible threats of violence, a support person
8 may accompany a party in court and, if the party is not represented
9 by an attorney, may sit with the party at the table that is generally
10 reserved for the party and the party's attorney. The support person
11 is present to provide moral and emotional support for a person
12 who alleges he or she is a victim of violence. The support person
13 is not present as a legal adviser and may not provide legal advice.
14 The support person may assist the person who alleges he or she is
15 a victim of violence in feeling more confident that he or she will
16 not be injured or threatened by the other party during the
17 proceedings if the person who alleges he or she is a victim of
18 violence and the other party are required to be present in close
19 proximity. This subdivision does not preclude the court from
20 exercising its discretion to remove the support person from the
21 courtroom if the court believes the support person is prompting,
22 swaying, or influencing the party assisted by the support person.

23 (m) Upon the filing of a petition for an injunction under this
24 section, the respondent shall be personally served with a copy of
25 the petition, temporary restraining order, if any, and notice of
26 hearing of the petition. Service shall be made at least five days
27 before the hearing. The court may for good cause, on motion of
28 the petitioner or on its own motion, shorten the time for service
29 on the respondent.

30 (n) A notice of hearing under this section shall notify the
31 respondent that if he or she does not attend the hearing, the court
32 may make orders against him or her that could last up to three
33 years.

34 (o) (1) The court may, upon the filing of a declaration by the
35 petitioner that the respondent could not be served within the time
36 required by statute, reissue an order previously issued and dissolved
37 by the court for failure to serve the respondent. The reissued order
38 shall remain in effect until the date set for the hearing.

39 (2) The reissued order shall state on its face the date of
40 expiration of the order.

1 (p) (1) If a respondent, named in a restraining order issued after
 2 a hearing, has not been served personally with the order but has
 3 received actual notice of the existence and substance of the order
 4 through personal appearance in court to hear the terms of the order
 5 from the court, no additional proof of service is required for
 6 enforcement of the order.

7 (2) If the respondent named in a temporary restraining order is
 8 personally served with the order and notice of hearing with respect
 9 to a restraining order or protective order based on the temporary
 10 restraining order, but the respondent does not appear at the hearing,
 11 either personally or by an attorney, and the terms and conditions
 12 of the restraining order or protective order issued at the hearing
 13 are identical to the temporary restraining order, except for the
 14 duration of the order, then the restraining order or protective order
 15 issued at the hearing may be served on the respondent by first-class
 16 mail sent to the respondent at the most current address for the
 17 respondent available to the court.

18 (3) The Judicial Council form for temporary orders issued
 19 pursuant to this subdivision shall contain a statement in
 20 substantially the following form:

21
 22 “If you have been personally served with this temporary
 23 restraining order and notice of hearing, but you do not appear at
 24 the hearing either in person or by a lawyer, and a restraining order
 25 that is the same as this temporary restraining order except for the
 26 expiration date is issued at the hearing, a copy of the restraining
 27 order will be served on you by mail at the following address: ____.

28 If that address is not correct or you wish to verify that the
 29 temporary restraining order was converted to a restraining order
 30 at the hearing without substantive change and to find out the
 31 duration of that order, contact the clerk of the court.”

32
 33 (q) (1) Information on any temporary restraining order or
 34 injunction relating to civil harassment issued by a court pursuant
 35 to this section shall be transmitted to the Department of Justice in
 36 accordance with either paragraph (2) or (3).

37 (2) The court shall order the petitioner or the attorney for the
 38 petitioner to deliver a copy of an order issued under this section,
 39 or reissuance, extension, modification, or termination of the order,
 40 and any subsequent proof of service, by the close of the business

1 day on which the order, reissuance, extension, modification, or
2 termination was made, to a law enforcement agency having
3 jurisdiction over the residence of the petitioner and to any
4 additional law enforcement agencies within the court’s discretion
5 as are requested by the petitioner.

6 (3) Alternatively, the court or its designee shall transmit, within
7 one business day, to law enforcement personnel all information
8 required under subdivision (b) of Section 6380 of the Family Code
9 regarding any order issued under this section, or a reissuance,
10 extension, modification, or termination of the order, and any
11 subsequent proof of service, by either one of the following
12 methods:

13 (A) Transmitting a physical copy of the order or proof of service
14 to a local law enforcement agency authorized by the Department
15 of Justice to enter orders into the California Law Enforcement
16 Telecommunications System (CLETS).

17 (B) With the approval of the Department of Justice, entering
18 the order or proof of service into CLETS directly.

19 (4) Each appropriate law enforcement agency shall make
20 available information as to the existence and current status of these
21 orders to law enforcement officers responding to the scene of
22 reported harassment.

23 (5) An order issued under this section shall, on request of the
24 petitioner, be served on the respondent, whether or not the
25 respondent has been taken into custody, by any law enforcement
26 officer who is present at the scene of reported harassment involving
27 the parties to the proceeding. The petitioner shall provide the
28 officer with an endorsed copy of the order and a proof of service
29 that the officer shall complete and send to the issuing court.

30 (6) Upon receiving information at the scene of an incident of
31 harassment that a protective order has been issued under this
32 section, or that a person who has been taken into custody is the
33 subject of an order, if the protected person cannot produce a
34 certified copy of the order, a law enforcement officer shall
35 immediately attempt to verify the existence of the order.

36 (7) If the law enforcement officer determines that a protective
37 order has been issued, but not served, the officer shall immediately
38 notify the respondent of the terms of the order and shall at that
39 time also enforce the order. Verbal notice of the terms of the order
40 shall constitute service of the order and is sufficient notice for the

1 purposes of this section and for the purposes of Section 29825 of
2 the Penal Code.

3 (r) The prevailing party in any action brought under this section
4 may be awarded court costs and attorney’s fees, if any.

5 (s) Any willful disobedience of any temporary restraining order
6 or injunction granted under this section is punishable pursuant to
7 Section 273.6 of the Penal Code.

8 (t) (1) A person subject to a protective order issued under this
9 section shall not own, possess, purchase, receive, or attempt to
10 purchase or receive a firearm or ammunition while the protective
11 order is in effect.

12 (2) The court shall order a person subject to a protective order
13 issued under this section to relinquish any firearms he or she owns
14 or possesses pursuant to Section 527.9.

15 (3) Every person who owns, possesses, purchases, or receives,
16 or attempts to purchase or receive, a firearm or ammunition while
17 the protective order is in effect is punishable pursuant to Section
18 29825 of the Penal Code.

19 (u) This section does not apply to any action or proceeding
20 covered by Title 1.6C (commencing with Section 1788) of Part 4
21 of Division 3 of the Civil Code or by Division 10 (commencing
22 with Section 6200) of the Family Code. This section does not
23 preclude a petitioner from using other existing civil remedies.

24 (v) (1) The Judicial Council shall develop forms, instructions,
25 and rules relating to matters governed by this section. The petition
26 and response forms shall be simple and concise, and their use by
27 parties in actions brought pursuant to this section shall be
28 mandatory.

29 (2) A temporary restraining order or injunction relating to civil
30 harassment issued by a court pursuant to this section shall be issued
31 on forms adopted by the Judicial Council of California and that
32 have been approved by the Department of Justice pursuant to
33 subdivision (i) of Section 6380 of the Family Code. However, the
34 fact that an order issued by a court pursuant to this section was not
35 issued on forms adopted by the Judicial Council and approved by
36 the Department of Justice shall not, in and of itself, make the order
37 unenforceable.

38 (w) There is no filing fee for a petition that alleges that a person
39 has inflicted or threatened violence against the petitioner, or stalked
40 the petitioner, or acted or spoken in any other manner that has

1 placed the petitioner in reasonable fear of violence, and that seeks
2 a protective or restraining order or injunction restraining stalking
3 or future violence or threats of violence, in any action brought
4 pursuant to this section. No fee shall be paid for a subpoena filed
5 in connection with a petition alleging these acts. No fee shall be
6 paid for filing a response to a petition alleging these acts.

7 (x) (1) Subject to paragraph (4) of subdivision (b) of Section
8 6103.2 of the Government Code, there shall be no fee for the
9 service of process by a sheriff or marshal of a protective order,
10 restraining order, or injunction to be issued, if either of the
11 following conditions applies:

12 (A) The protective order, restraining order, or injunction issued
13 pursuant to this section is based upon stalking, as prohibited by
14 Section 646.9 of the Penal Code.

15 (B) The protective order, restraining order, or injunction issued
16 pursuant to this section is based upon unlawful violence or a
17 credible threat of violence.

18 (2) The Judicial Council shall prepare and develop forms for
19 persons who wish to avail themselves of the services described in
20 this subdivision.