

AMENDED IN ASSEMBLY APRIL 16, 2013

AMENDED IN ASSEMBLY APRIL 1, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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~~ 5 years and would ~~repeal the order renewal provisions~~ *extend the order renewal period for up to additional 5 years*. 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:

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

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

12 (b) For the purposes of this section:

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

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

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

32 (4) "Petitioner" means the person to be protected by the
33 temporary restraining order and injunction and, if the court grants
34 the petition, the protected person.

35 (5) "Respondent" means the person against whom the temporary
36 restraining order and injunction are sought and, if the petition is
37 granted, the restrained person.

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

4 (A) An order enjoining a party from harassing, intimidating,
5 molesting, attacking, striking, stalking, threatening, sexually
6 assaulting, battering, abusing, telephoning, including, but not
7 limited to, making annoying telephone calls, as described in Section
8 653m of the Penal Code, destroying personal property, contacting,
9 either directly or indirectly, by mail or otherwise, or coming within
10 a specified distance of, or disturbing the peace of, the petitioner.

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

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

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

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

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

37 (f) A temporary restraining order issued under this section shall
38 remain in effect, at the court’s discretion, for a period not to exceed
39 21 days, or, if the court extends the time for hearing under

1 subdivision (g), not to exceed 25 days, unless otherwise modified
2 or terminated by the court.

3 (g) Within 21 days, or, if good cause appears to the court, 25
4 days from the date that a petition for a temporary order is granted
5 or denied, a hearing shall be held on the petition for the injunction.
6 If no request for temporary orders is made, the hearing shall be
7 held within 21 days, or, if good cause appears to the court, 25 days,
8 from the date that the petition is filed.

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

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

16 (j) (1) In the discretion of the court, an order issued after notice
17 and hearing under this section may have a duration of ~~up to ten~~
18 *not more than five* years, subject to termination or modification
19 by further order of the court either on written stipulation filed with
20 the court or on the motion of a party. ~~The length of the order shall~~
21 ~~be determined based upon the seriousness of the facts before the~~
22 ~~court, the probability of future violations occurring, and the safety~~
23 ~~of the victim and his or her immediate family. The order may be~~
24 ~~renewed, upon the request of a party, for a duration of not more~~
25 ~~than five additional years, without a showing of any further~~
26 ~~harassment since the issuance of the original order, subject to~~
27 ~~termination or modification by further order of the court either~~
28 ~~on written stipulation filed with the court or on the motion of a~~
29 ~~party. A request for renewal may be brought at any time within~~
30 ~~the three months before the expiration of the order.~~

31 (2) The failure to state the expiration date on the face of the
32 form creates an order with a duration of five years from the date
33 of issuance.

34 (3) If an action is filed for the purpose of terminating or
35 modifying a protective order prior to the expiration date specified
36 in the order by a party other than the protected party, the party
37 who is protected by the order shall be given notice, pursuant to
38 subdivision (b) of Section 1005, of the proceeding by personal
39 service or, if the protected party has satisfied the requirements of
40 Chapter 3.1 (commencing with Section 6205) of Division 7 of

1 Title 1 of the Government Code, by service on the Secretary of
2 State. If the party who is protected by the order cannot be notified
3 prior to the hearing for modification or termination of the protective
4 order, the court shall deny the motion to modify or terminate the
5 order without prejudice or continue the hearing until the party who
6 is protected can be properly noticed and may, upon a showing of
7 good cause, specify another method for service of process that is
8 reasonably designed to afford actual notice to the protected party.
9 The protected party may waive his or her right to notice if he or
10 she is physically present in court and does not challenge the
11 sufficiency of the notice.

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

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

32 (m) Upon the filing of a petition for an injunction under this
33 section, the respondent shall be personally served with a copy of
34 the petition, temporary restraining order, if any, and notice of
35 hearing of the petition. Service shall be made at least five days
36 before the hearing. The court may for good cause, on motion of
37 the petitioner or on its own motion, shorten the time for service
38 on the respondent.

39 (n) A notice of hearing under this section shall notify the
40 respondent that if he or she does not attend the hearing, the court

1 may make orders against him or her that could last up to three
2 years.

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

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

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

16 (2) If the respondent named in a temporary restraining order is
17 personally served with the order and notice of hearing with respect
18 to a restraining order or protective order based on the temporary
19 restraining order, but the respondent does not appear at the hearing,
20 either personally or by an attorney, and the terms and conditions
21 of the restraining order or protective order issued at the hearing
22 are identical to the temporary restraining order, except for the
23 duration of the order, then the restraining order or protective order
24 issued at the hearing may be served on the respondent by first-class
25 mail sent to the respondent at the most current address for the
26 respondent available to the court.

27 (3) The Judicial Council form for temporary orders issued
28 pursuant to this subdivision shall contain a statement in
29 substantially the following form:
30

31 “If you have been personally served with this temporary
32 restraining order and notice of hearing, but you do not appear at
33 the hearing either in person or by a lawyer, and a restraining order
34 that is the same as this temporary restraining order except for the
35 expiration date is issued at the hearing, a copy of the restraining
36 order will be served on you by mail at the following address: ____.

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

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

6 (2) The court shall order the petitioner or the attorney for the
7 petitioner to deliver a copy of an order issued under this section,
8 or reissuance, extension, modification, or termination of the order,
9 and any subsequent proof of service, by the close of the business
10 day on which the order, reissuance, extension, modification, or
11 termination was made, to a law enforcement agency having
12 jurisdiction over the residence of the petitioner and to any
13 additional law enforcement agencies within the court’s discretion
14 as are requested by the petitioner.

15 (3) Alternatively, the court or its designee shall transmit, within
16 one business day, to law enforcement personnel all information
17 required under subdivision (b) of Section 6380 of the Family Code
18 regarding any order issued under this section, or a reissuance,
19 extension, modification, or termination of the order, and any
20 subsequent proof of service, by either one of the following
21 methods:

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

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

28 (4) Each appropriate law enforcement agency shall make
29 available information as to the existence and current status of these
30 orders to law enforcement officers responding to the scene of
31 reported harassment.

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

39 (6) Upon receiving information at the scene of an incident of
40 harassment that a protective order has been issued under this

1 section, or that a person who has been taken into custody is the
2 subject of an order, if the protected person cannot produce a
3 certified copy of the order, a law enforcement officer shall
4 immediately attempt to verify the existence of the order.

5 (7) If the law enforcement officer determines that a protective
6 order has been issued, but not served, the officer shall immediately
7 notify the respondent of the terms of the order and shall at that
8 time also enforce the order. Verbal notice of the terms of the order
9 shall constitute service of the order and is sufficient notice for the
10 purposes of this section and for the purposes of Section 29825 of
11 the Penal Code.

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

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

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

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

24 (3) Every person who owns, possesses, purchases, or receives,
25 or attempts to purchase or receive, a firearm or ammunition while
26 the protective order is in effect is punishable pursuant to Section
27 29825 of the Penal Code.

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

33 (v) (1) The Judicial Council shall develop forms, instructions,
34 and rules relating to matters governed by this section. The petition
35 and response forms shall be simple and concise, and their use by
36 parties in actions brought pursuant to this section shall be
37 mandatory.

38 (2) A temporary restraining order or injunction relating to civil
39 harassment issued by a court pursuant to this section shall be issued
40 on forms adopted by the Judicial Council of California and that

1 have been approved by the Department of Justice pursuant to
2 subdivision (i) of Section 6380 of the Family Code. However, the
3 fact that an order issued by a court pursuant to this section was not
4 issued on forms adopted by the Judicial Council and approved by
5 the Department of Justice shall not, in and of itself, make the order
6 unenforceable.

7 (w) There is no filing fee for a petition that alleges that a person
8 has inflicted or threatened violence against the petitioner, or stalked
9 the petitioner, or acted or spoken in any other manner that has
10 placed the petitioner in reasonable fear of violence, and that seeks
11 a protective or restraining order or injunction restraining stalking
12 or future violence or threats of violence, in any action brought
13 pursuant to this section. No fee shall be paid for a subpoena filed
14 in connection with a petition alleging these acts. No fee shall be
15 paid for filing a response to a petition alleging these acts.

16 (x) (1) Subject to paragraph (4) of subdivision (b) of Section
17 6103.2 of the Government Code, there shall be no fee for the
18 service of process by a sheriff or marshal of a protective order,
19 restraining order, or injunction to be issued, if either of the
20 following conditions applies:

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

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

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

O