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AB-2907 Firearms: restrained persons. (2023-2024)

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Assembly Bill No. 2907

CHAPTER 538

An act to amend Sections 136.2, 273.5, 273.75, 368, 646.9, 1203.097, and 29825 of, and to add Sections 273.76 and 29825.5 to, the Penal Code, relating to firearms.

[Approved by Governor September 24, 2024. Filed with Secretary of State September 24, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2907, Zbur. Firearms: restrained persons.

Existing law provides for the issuance of various temporary restraining orders, restraining orders, and injunctions. Under existing law, persons who are subject to these orders are prohibited from purchasing, owning, or possessing firearms or ammunition. Existing law requires a restrained person who owns or possesses firearms or ammunition to relinquish these items under specified timeframes pursuant to a prescribed procedure.

This bill would enact similar restriction and relinquishment procedures for persons who are the subject of specified criminal protective orders issued in domestic violence convictions.

This bill would also require the arresting officer in domestic violence cases to question the arrestee, the victim, and other household members about any firearms or ammunition owned or possessed by the arrestee, to query a specified database to find any firearms owned or possessed by the arrestee, and to ensure that any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search is taken into temporary custody. The bill would require the officer to document these actions and to provide the information, as specified, to the district attorney or prosecutor.

By requiring new duties of local law enforcement officers, this bill would impose a state-mandated local program.

This bill would also require the court, when determining the length of a criminal protective order, to consider this information from the arresting officer.

This bill would incorporate additional changes to Section 273.5 of the Penal Code proposed by AB 2308 to be operative only if this bill and AB 2308 are enacted and this bill is enacted last.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 136.2 of the Penal Code is amended to read:

136.2. (a) (1) Upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, a court with jurisdiction over a criminal matter may issue orders, including, but not limited to, the following:

(A) An order issued pursuant to Section 6320 of the Family Code.

(B) An order that a defendant shall not violate any provision of Section 136.1.

(C) An order that a person before the court other than a defendant, including, but not limited to, a subpoenaed witness or other person entering the courtroom of the court, shall not violate any provision of Section 136.1.

(D) An order that a person described in this section shall have no communication whatsoever with a specified witness or a victim except through an attorney under reasonable restrictions that the court may impose.

(E) An order calling for a hearing to determine if an order described in subparagraphs (A) to (D), inclusive, should be issued.

(F) (i) An order that a particular law enforcement agency within the jurisdiction of the court provide protection for a victim, witness, or both, or for immediate family members of a victim or a witness who reside in the same household as the victim or witness or within reasonable proximity of the victim's or witness' household, as determined by the court. The order shall not be made without the consent of the law enforcement agency except for limited and specified periods of time and upon an express finding by the court of a clear and present danger of harm to the victim or witness or immediate family members of the victim or witness.

(ii) For purposes of this paragraph, "immediate family members" include the spouse, children, or parents of the victim or witness.

(G) (i) An order protecting a victim or witness of violent crime from all contact by the defendant or contact with the intent to annoy, harass, threaten, or commit acts of violence by the defendant. The court or its designee shall transmit orders made under this paragraph to law enforcement personnel within one business day of the issuance, modification, extension, or termination of the order pursuant to subdivision (a) of Section 6380 of the Family Code. It is the responsibility of the court to transmit the modification, extension, or termination orders made under this paragraph to the same agency that entered the original protective order into the California Restraining and Protective Order System.

(ii) (I) If a court does not issue an order pursuant to clause (i) when the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, the court, on its own motion, shall consider issuing a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur, that provides as follows:

(ia) The defendant shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect.

(ib) The defendant shall relinquish ownership or possession of any firearms pursuant to Section 527.9 of the Code of Civil Procedure.

(II) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while this protective order is in effect is punishable pursuant to Section 29825.

(iii) An order issued, modified, extended, or terminated by a court pursuant to this subparagraph shall be issued on forms adopted by the Judicial Council that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not make the order unenforceable.

(iv) A protective order issued under this subparagraph may require the defendant to be placed on electronic monitoring if the local government, with the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy to authorize electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order electronic monitoring to be paid for by the local government that adopted the policy to

authorize electronic monitoring. The duration of electronic monitoring shall not exceed one year from the date the order is issued. The electronic monitoring shall not be in place if the protective order is not in place.

(2) For purposes of this subdivision, a minor who was not a victim of, but who was physically present at the time of, an act of domestic violence is a witness and is deemed to have suffered harm within the meaning of paragraph (1).

(b) A person violating an order made pursuant to subparagraphs (A) to (G), inclusive, of paragraph (1) of subdivision (a) may be punished for a substantive offense described in Section 136.1 or for a contempt of the court making the order. A finding of contempt shall not be a bar to prosecution for a violation of Section 136.1. However, a person held in contempt shall be entitled to credit for punishment imposed therein against a sentence imposed upon conviction of an offense described in Section 136.1. A conviction or acquittal for a substantive offense under Section 136.1 shall be a bar to a subsequent punishment for contempt arising out of the same act.

(c) (1) (A) Notwithstanding subdivision (e), an emergency protective order issued pursuant to Chapter 2 (commencing with Section 6250) of Part 3 of Division 10 of the Family Code or Section 646.91 shall have precedence in enforcement over any other restraining or protective order, provided the emergency protective order meets all of the following requirements:

(i) The emergency protective order is issued to protect one or more individuals who are already protected persons under another restraining or protective order.

(ii) The emergency protective order restrains the individual who is the restrained person in the other restraining or protective order specified in clause (i).

(iii) The provisions of the emergency protective order are more restrictive in relation to the restrained person than are the provisions of the other restraining or protective order specified in clause (i).

(B) An emergency protective order that meets the requirements of subparagraph (A) shall have precedence in enforcement over the provisions of any other restraining or protective order only with respect to those provisions of the emergency protective order that are more restrictive in relation to the restrained person.

(2) Except as described in paragraph (1), a no-contact order, as described in Section 6320 of the Family Code, shall have precedence in enforcement over any other restraining or protective order.

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

(2) The court shall order a person subject to a protective order issued under this section to relinquish ownership or possession of any firearms pursuant to Section 527.9 of the Code of Civil Procedure.

(3) A person who owns, possesses, purchases, or receives, or attempts to purchase or receive a firearm while the protective order is in effect is punishable pursuant to Section 29825.

(e) (1) When the defendant is charged with a crime involving domestic violence, as defined in Section 13700 of this code or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, the court shall consider issuing the above-described orders on its own motion. All interested parties shall receive a copy of those orders. To facilitate this, the court's records of all criminal cases involving domestic violence, a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, shall be marked to clearly alert the court to this issue.

(2) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been issued, except as described in subdivision (c), a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over a civil court order against the defendant.

(3) Custody and visitation with respect to the defendant and the defendant's minor children may be ordered by a family or juvenile court consistent with the protocol established pursuant to subdivision (f), but if it is ordered after a criminal protective order has been issued pursuant to this section, the custody and visitation order shall make reference to and, if there is not an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) or a no-contact order, as described in Section 6320 of the Family Code, acknowledge the precedence of enforcement of an appropriate

criminal protective order. On or before July 1, 2014, the Judicial Council shall modify the criminal and civil court forms consistent with this subdivision.

(f) On or before January 1, 2003, the Judicial Council shall promulgate a protocol, for adoption by each local court in substantially similar terms, to provide for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims. The protocol shall include, but shall not be limited to, mechanisms for ensuring appropriate communication and information sharing between criminal, family, and juvenile courts concerning orders and cases that involve the same parties and shall permit a family or juvenile court order to coexist with a criminal court protective order subject to the following conditions:

(1) An order that permits contact between the restrained person and the person's children shall provide for the safe exchange of the children and shall not contain language, either printed or handwritten, that violates a "no-contact order" issued by a criminal court.

(2) The safety of all parties shall be the courts' paramount concern. The family or juvenile court shall specify the time, day, place, and manner of transfer of the child as provided in Section 3100 of the Family Code.

(g) On or before January 1, 2003, the Judicial Council shall modify the criminal and civil court protective order forms consistent with this section.

(h) (1) When a complaint, information, or indictment charging a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, has been filed, the court may consider, in determining whether good cause exists to issue an order under subparagraph (A) of paragraph (1) of subdivision (a), the underlying nature of the offense charged and the information provided to the court pursuant to Section 273.75.

(2) When a complaint, information, or indictment charging a violation of Section 261, 261.5, or former Section 262, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, has been filed, the court may consider, in determining whether good cause exists to issue an order under paragraph (1) of subdivision (a), the underlying nature of the offense charged, the defendant's relationship to the victim, the likelihood of continuing harm to the victim, any current restraining order or protective order issued by a civil or criminal court involving the defendant, and the defendant's criminal history, including, but not limited to, prior convictions for a violation of Section 261, 261.5, or former Section 262, a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, including, but not limited to, commercial sexual exploitation of a minor in violation of Section 236.1, any other forms of violence, or a weapons offense.

(i) (1) When a criminal defendant has been convicted of a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of subdivision (a), (b), or (c) of Section 236.1 prohibiting human trafficking, Section 261, 261.5, former Section 262, subdivision (a) of Section 266h, or subdivision (a) of Section 266i, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a victim of the crime. The order may be valid for up to 10 years, as determined by the court. This protective order may be issued by the court regardless of whether the defendant is sentenced to the state prison or a county jail, whether the defendant is subject to mandatory supervision, or whether imposition of sentence is suspended and the defendant is placed on probation. The order may be modified by the sentencing court in the county in which it was issued throughout the duration of the order. It is the intent of the Legislature in enacting this subdivision that the duration of a restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, the safety of a victim and the victim's immediate family, and any information provided to the court pursuant to Section 273.75.

(2) When a criminal defendant has been convicted of a crime involving domestic violence, as defined in Section 13700 or in Section 6211 of the Family Code, a violation of Section 261, 261.5, or former Section 262, a violation of Section 186.22, or a crime that requires the defendant to register pursuant to subdivision (c) of Section 290, the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with a percipient witness to the crime if it can be established by clear and convincing evidence that the witness has been harassed, as defined in paragraph (3) of subdivision (b) of Section 527.6 of the Code of Civil Procedure, by the defendant.

(3) An order under this subdivision may include provisions for electronic monitoring if the local government, upon receiving the concurrence of the county sheriff or the chief probation officer with jurisdiction, adopts a policy authorizing electronic monitoring of defendants and specifies the agency with jurisdiction for this purpose. If the court determines that the defendant has the ability to pay for the monitoring program, the court shall order the defendant to pay for the monitoring. If the court determines that the defendant does not have the ability to pay for the electronic monitoring, the court may order the electronic monitoring to be paid for by the local government that adopted the policy authorizing electronic monitoring. The duration of the electronic monitoring shall not exceed one year from the date the order is issued.

(j) For purposes of this section, "local government" means the county that has jurisdiction over the protective order.

SEC. 2. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.

(4) The mother or father of the offender's child.

(c) Holding oneself out to be the spouse of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(d) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(e) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(f) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(g) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(h) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (f), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(i) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a domestic violence shelter-based program, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) (A) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(B) For any order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. An order to make payments to a domestic violence shelter-based program shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a person who is married or in a registered domestic partnership is caused in whole or in part by the criminal acts of their spouse or domestic partner in violation of this section, the community property may not be used to discharge the liability of the offending spouse or domestic partner for restitution to the injured spouse or domestic partner, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse or domestic partner and dependents, required by this section, until all separate property of the offending spouse or domestic partner is exhausted.

(j) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court pursuant to Section 273.75. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(k) If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of their right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

SEC. 2.5. Section 273.5 of the Penal Code is amended to read:

273.5. (a) A person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000), or by both that fine and imprisonment.

(b) Subdivision (a) shall apply if the victim is or was one or more of the following:

(1) The offender's spouse or former spouse.

(2) The offender's cohabitant or former cohabitant.

(3) The offender's fiancé, or someone with whom the offender has, or previously had, an engagement or dating relationship, as defined in paragraph (10) of subdivision (f) of Section 243.

(4) The mother or father of the offender's child.

(c) Holding oneself out to be the spouse of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(d) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(e) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(f) (1) A person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars (\$10,000).

(2) A person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(g) If probation is granted to a person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(h) If probation is granted, or the execution or imposition of a sentence is suspended, for a defendant convicted under subdivision (a) who has been convicted of a prior offense specified in subdivision (f), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of an offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of an offense specified in subdivision (f), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that the defendant be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(i) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a domestic violence shelter-based program, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) (A) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(B) For an order to pay a fine, make payments to a domestic violence shelter-based program, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. An order to make payments to a domestic violence shelter-based program shall not be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. If the injury to a person who is married or in a registered domestic partnership is caused in whole or in part by the criminal acts of their spouse or domestic partner in violation of this section, the community property may not be used to discharge the liability of the offending spouse or domestic partner for restitution to the injured spouse or domestic partner, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse or domestic partner and dependents, required by this section, until all separate property of the offending spouse or domestic partner is exhausted.

(j) (1) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from contact with the victim, which may be valid for up to 15 years, as determined by the court. It is the intent of the Legislature that the length of a restraining order be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court pursuant to Section 273.75. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(2) Upon a written petition by the prosecuting attorney, defendant, or victim, the issuing court may modify or terminate a protective order for good cause provided the prosecuting attorney, defendant, and victim are notified at least 15 days before the hearing on the petition.

(k) If a peace officer makes an arrest for a violation of this section, the peace officer is not required to inform the victim of their right to make a citizen's arrest pursuant to subdivision (b) of Section 836.

SEC. 3. Section 273.75 of the Penal Code is amended to read:

273.75. (a) On any charge involving acts of domestic violence as defined in subdivisions (a) and (b) of Section 13700 of the Penal Code or Sections 6203 and 6211 of the Family Code, the district attorney or prosecuting city attorney shall perform or cause to be performed, by accessing the electronic databases enumerated in subdivision (b), a thorough investigation of the defendant's history, including, but not limited to, prior convictions for domestic violence, other forms of violence or weapons offenses and any current protective or restraining order issued by any civil or criminal court. This information and the information provided by the arresting agency pursuant to Section 273.76 shall be presented for consideration by the court (1) when setting bond or when releasing a defendant on their own recognizance at the arraignment, if the defendant is in custody, (2) upon consideration of any plea agreement, and (3) when issuing a protective order pursuant to subdivision (h) or (i) of Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, subdivision (k) of Section 646.9, or paragraph (2) of subdivision (a) of Section 1203.097. In determining bail or release upon a plea agreement, the court shall consider the safety of the victim, the victim's children, and any other person who may be in danger if the defendant is released.

(b) For purposes of this section, the district attorney or prosecuting city attorney shall search or cause to be searched the following databases, when readily available and reasonably accessible:

(1) The California Sex and Arson Registry (CSAR).

(2) The Supervised Release File.

(3) State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code.

(4) The Federal Bureau of Investigation's nationwide database.

(5) Locally maintained criminal history records or databases.

However, a record or database need not be searched if the information available in that record or database can be obtained as a result of a search conducted in another record or database.

(c) If the investigation required by this section reveals a current civil protective or restraining order or a protective or restraining order issued by another criminal court and involving the same or related parties, and if a protective or restraining order is issued in the current criminal proceeding, the district attorney or prosecuting city attorney shall send relevant information regarding the contents of the order issued in the current criminal proceeding, and any information regarding a conviction of the defendant, to the other court immediately after the order has been issued. When requested, the information described in this subdivision may be sent to the appropriate family, juvenile, or civil court. When requested, and upon a showing of a compelling need, the information described in this section may be sent to a court in another state.

(d) If the information provided to the court pursuant to subdivision (a) indicates that the defendant owns or possesses a firearm, or if the court otherwise receives evidence that the defendant owns or possesses a firearm or ammunition, the court shall provide information to the defendant on how to comply with the firearm and ammunition prohibition. If evidence of compliance with firearms prohibitions is not provided within 48 hours of the defendant being served with the protective order or after a review hearing pursuant to Rule 4.700 of the California Rules of Court if required or as may be required otherwise, the court shall order the clerk of the court to notify within two business days, by the most effective means available, the prosecuting agency and appropriate law enforcement officials of the issuance and contents of the protective order, information about the firearm or ammunition, and of any other information obtained through the search that the court determines is appropriate. The prosecuting agency and law enforcement officials so notified shall take all actions necessary to obtain those and any other firearms or ammunition owned, possessed, or controlled by the defendant and to address any violation of the order with respect to firearms or ammunition as appropriate and as soon as practicable.

SEC. 4. Section 273.76 is added to the Penal Code, to read:

273.76. (a) The arresting officer for an offense involving an act of domestic violence as defined in subdivisions (a) and (b) of Section 13700, or in Sections 6203 and 6211 of the Family Code, shall do all of the following:

(1) Query the Automated Firearms System through the California Law Enforcement Telecommunications System for any firearms owned or possessed by the arrestee.

(2) Ask the arrestee, victim, and any other household members, if applicable, about any firearms owned or possessed by the arrestee.

(3) Ensure that, pursuant to Section 18250, any firearm or other deadly weapon in plain sight or discovered pursuant to a consensual or other lawful search is taken into temporary custody.

(4) Document in detail, in the arrest report, the actions taken as required by this subdivision.

(b) The investigating or filing officer shall include a copy of the Automated Firearms System report when filing the case with the district attorney or prosecuting city attorney.

SEC. 5. Section 368 of the Penal Code is amended to read:

368. (a) The Legislature finds and declares that elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.

(b) (1) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which their person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars (\$6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.

(2) If, in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 12022.7, the defendant shall receive an additional term in the state prison as follows:

(A) Three years if the victim is under 70 years of age.

(B) Five years if the victim is 70 years of age or older.

(3) If, in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:

(A) Five years if the victim is under 70 years of age.

(B) Seven years if the victim is 70 years of age or older.

(c) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which their person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(d) A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(e) A caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:

(1) By a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

(2) By a fine not exceeding one thousand dollars (\$1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars (\$950).

(f) A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(g) As used in this section, "elder" means a person who is 65 years of age or older.

(h) As used in this section, "dependent adult" means a person, regardless of whether the person lives independently, who is between the ages of 18 and 64, who has physical or mental limitations which restrict their ability to carry out normal activities or to protect their rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes a person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(i) As used in this section, "caretaker" means a person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for a single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for a single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require them to receive appropriate counseling as a condition of probation. A defendant ordered to be placed in a counseling program shall be responsible for paying the expense of participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of the inability to pay.

(l) Upon conviction for a violation of subdivision (b), (c), (d), (e), or (f), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court pursuant to Section 273.75. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

SEC. 6. Section 646.9 of the Penal Code is amended to read:

646.9. (a) 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 their safety, or the safety of their immediate family, is guilty of the crime of stalking, punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison.

(b) Any person who violates subdivision (a) when there is a temporary restraining order, injunction, or any other court order in effect prohibiting the behavior described in subdivision (a) against the same party, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) (1) Every person who, after having been convicted of a felony under Section 273.5, 273.6, or 422, commits a violation of subdivision (a) shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or five years.

(2) Every person who, after having been convicted of a felony under subdivision (a), commits a violation of this section shall be punished by imprisonment in the state prison for two, three, or five years.

(d) In addition to the penalties provided in this section, the sentencing court may order a person convicted of a felony under this section to register as a sex offender pursuant to Section 290.006.

(e) For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose.

(f) For the purposes of this section, "course of conduct" means 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."

(g) For the purposes of this section, "credible threat" means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for their safety, or the safety of their family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for their safety or the safety of their family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of "credible threat."

(h) For purposes of this section, the term "electronic communication device" includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. "Electronic communication" has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

(i) This section shall not apply to conduct that occurs during labor picketing.

(j) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon a showing of good cause, may find that the counseling requirement shall not be imposed.

(k) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court pursuant to Section 273.75.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.

(m) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

SEC. 7. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, the safety of the victim and their immediate family, and the information provided to the court pursuant to Section 273.75.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) (A) A minimum payment by the defendant of a fee of five hundred dollars (\$500) to be disbursed as specified in this paragraph. If, after a hearing in open court, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee. If the court exercises its discretion to reduce or waive the fee, it shall state the reason on the record.

(B) Two-thirds of the moneys deposited with the county treasurer pursuant to this section shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code, to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. Of the moneys deposited in the domestic violence programs special fund, no more than 8 percent may be used for administrative costs, as specified in Section 18305 of the Welfare and Institutions Code.

(C) The remaining one-third of the moneys shall be transferred, once a month, to the Controller for deposit in equal amounts in the Domestic Violence Restraining Order Reimbursement Fund and in the Domestic Violence Training and Education Fund, which are hereby created, in an amount equal to one-third of funds collected during the preceding month. Moneys deposited into these funds pursuant to this section shall be available upon appropriation by the Legislature and shall be distributed each fiscal year as follows:

(i) Funds from the Domestic Violence Restraining Order Reimbursement Fund shall be distributed to local law enforcement or other criminal justice agencies for state-mandated local costs resulting from the notification requirements set forth in subdivision (b) of Section 6380 of the Family Code, based on the annual notification from the Department of Justice of the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order databank system.

(ii) Funds from the Domestic Violence Training and Education Fund shall support a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be

administered by the State Department of Public Health, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(D) The fee imposed by this paragraph shall be treated as a fee, not as a fine, and shall not be subject to reduction for time served as provided pursuant to Section 1205 or 2900.5.

(E) The fee imposed by this paragraph may be collected by the collecting agency, or the agency's designee, after the termination of the period of probation, whether probation is terminated by revocation or by completion of the term.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours class time duration. The defendant shall attend consecutive weekly sessions, unless granted an excused absence for good cause by the program for no more than three individual sessions during the entire program, and shall complete the program within 18 months, unless, after a hearing, the court finds good cause to modify the requirements of consecutive attendance or completion within 18 months.

(7) (A) (i) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(ii) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exists:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use their resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a domestic violence shelter-based program, up to a maximum of five thousand dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a domestic violence shelter-based program, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include their future earning capacity. A defendant shall bear the burden of demonstrating lack of their ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a domestic violence shelter-based program be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. When the injury to a married person is caused, in whole or in part, by the criminal acts of their spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.

(B) Education.

(C) Vocational achievements.

(D) Criminal history.

(E) Medical history.

(F) Substance abuse history.

(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and to refuse to enroll the defendant if it is determined that the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse, sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program, which shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in subparagraph (A) of paragraph (10) of subdivision (a), and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer's programs that have been approved by the probation department pursuant to paragraph (5). The probation department shall do both of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department, in writing, within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling, and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer's programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

(i) The completion of a written application containing necessary and pertinent information describing the applicant program.

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted

batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2) if there is no existing batterer's program in the city, county, or city and county.

(iii) The onsite review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars (\$250) and for approval renewal not to exceed two hundred fifty dollars (\$250) every year in an amount sufficient to cover its costs in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke an approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, either of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that assesses the defendant's progress during the defendant's participation in the batterer's program.

(d) An act or omission relating to the approval of a batterer's treatment programs under paragraph (5) of subdivision (c) is a discretionary act pursuant to Section 820.2 of the Government Code.

SEC. 8. Section 29825 of the Penal Code is amended to read:

29825. (a) A person who purchases or receives, or attempts to purchase or receive, a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, subdivision (k) of Section 646.9, Section 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(b) A person who owns or possesses a firearm knowing that the person is prohibited from doing so in any jurisdiction by a temporary restraining order or injunction issued pursuant to Section 527.6, 527.8, or 527.85 of the Code of Civil Procedure, a protective order as defined in Section 6218 of the Family Code, a protective order issued pursuant to Section 136.2, subdivision (j) of Section 273.5, subdivision (l) of Section 368, subdivision (k) of Section 646.9, Section 646.91, or paragraph (2) of subdivision (a) of Section 1203.097 of this code, a protective order issued pursuant to Section 15657.03 of the Welfare and Institutions Code, or by a valid order issued by an out-of-state jurisdiction that is similar or equivalent to a temporary restraining order, injunction, or protective order specified in this subdivision, that includes a prohibition from owning or possessing a firearm, is guilty of a public offense, punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) If probation is granted upon conviction of a violation of this section, the court shall impose probation consistent with Section 1203.097.

(d) The Judicial Council shall provide notice on all protective orders issued within the state that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect. The order shall also state that a firearm owned or possessed by the person shall be relinquished to the local law enforcement agency for that jurisdiction, sold to a licensed firearms dealer, or transferred to a licensed firearms dealer pursuant to Section 29830 for the duration of the period that the protective order is in effect, and that proof of surrender or sale shall be filed within a

specified time of receipt of the order. The order shall state the penalties for a violation of the prohibition. The order shall also state on its face the expiration date for relinquishment.

SEC. 9. Section 29825.5 is added to the Penal Code, to read:

29825.5. (a) A person subject to a protective order issued pursuant to subdivision (j) of Section 273.5, subdivision (l) of Section 368, or subdivision (k) of Section 646.9 shall relinquish any firearm they possess or control pursuant to this section.

(b) Upon the issuance of a protective order, the court shall order the restrained person to relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order, either by surrendering the firearm to the control of a local law enforcement agency, or by selling the firearm to a licensed firearms dealer, as specified in Article 1 (commencing with Section 26700) and Article 2 (commencing with Section 26800) of Chapter 2 of Division 6. The court shall provide the person with information on how any firearms or ammunition still in the possession of the restrained party are to be relinquished, according to local procedures, and the process for submitting a receipt to the court showing proof of relinquishment.

(c) If a person refuses to relinquish a firearm or ammunition based on an assertion of the right against self-incrimination as provided by the Fifth Amendment to the United States Constitution and Section 15 of Article I of the California Constitution, the court may grant use immunity for the act of relinquishing the firearm or ammunition as required pursuant to this section.

(d) A local law enforcement agency may charge a person subject to a protective order a fee for the storage of any firearm relinquished pursuant to this section. The fee shall not exceed the actual cost incurred by the local law enforcement agency for the storage of the firearm. For purposes of this subdivision, "actual cost" means expenses directly related to taking possession of a firearm, storing the firearm, and surrendering possession of the firearm to a licensed dealer as defined in Section 26700 or to the person relinquishing the firearm.

(e) The protective order shall state on its face that the restrained person is prohibited from owning, possessing, purchasing, or receiving a firearm while the protective order is in effect and that the firearm shall be relinquished to the local law enforcement agency for that jurisdiction or sold to a licensed gun dealer, and that proof of surrender or sale shall be filed with the court within a specified period of receipt of the order. The order shall also state on its face the expiration date for relinquishment. This section does not limit a respondent's right under existing law to petition the court at a later date for modification of the order.

(f) The protective order shall prohibit the person from possessing or controlling any firearm for the duration of the order. At the expiration of the order, the local law enforcement agency shall return possession of any surrendered firearm to the restrained person, within five days after the expiration of the relinquishment order, unless the local law enforcement agency determines that (1) the firearm has been stolen, (2) the person is prohibited from possessing a firearm because they are in any prohibited class for the possession of firearms, as defined in this chapter and Chapter 3 (commencing with Section 29900), and Sections 8100 and 8103 of the Welfare and Institutions Code, or (3) another successive order has been issued against the person under this section. If the local law enforcement agency determines that the restrained person is the legal owner of any firearm deposited with the local law enforcement agency and is prohibited from possessing any firearm, the person shall be entitled to sell or transfer the firearm to a licensed dealer as defined in Section 26700. If the firearm has been stolen, the firearm shall be restored to the lawful owner upon their identification of the firearm and proof of ownership.

(g) The court may, as part of the relinquishment order, grant an exemption from the relinquishment requirements of this section for a particular firearm or ammunition if the restrained person is not otherwise prohibited from owning, possessing, controlling, or purchasing a firearm and ammunition under state or federal law and one of the following applies:

(1) (A) The respondent is currently employed as a sworn peace officer who is required, as a condition of continued employment, to carry a firearm, ammunition, or firearm and ammunition and the current employer is unable to reassign the peace officer to another position where the use of a specified firearm or ammunition is unnecessary. In such a case, a court may allow the peace officer to continue to carry a specified firearm, ammunition, or firearm and ammunition, either on duty or off duty, if the court finds by a preponderance of the evidence, in writing or on the record, both of the following:

(i) The peace officer's personal safety depends on the ability to carry that specified firearm, ammunition, or firearm and ammunition outside of scheduled work hours.

(ii) The peace officer does not pose an additional threat of harm to a protected party or the public by having access to that specific firearm, ammunition, or firearm and ammunition, including whether the peace officer might use the firearm for a purpose other than as permitted under this paragraph.

(B) Prior to making this finding, the court shall require a mandatory psychological evaluation of the peace officer by a licensed mental health professional with domestic violence expertise. The court shall consider the results of an evaluation

and may require the peace officer to enter into counseling or another remedial treatment program to deal with a propensity for domestic violence.

(2) (A) If the respondent is not a peace officer but is required to carry a specific firearm, ammunition, or firearm and ammunition during scheduled work hours as a condition of continued employment, the current employer is unable to reassign the respondent to another position where the firearm, ammunition, or firearm and ammunition is unnecessary. In such a case, a court may grant an exemption to allow the respondent to possess a specific firearm, ammunition, or firearm and ammunition only during scheduled work hours if the court finds by a preponderance of the evidence, in writing or on the record, that the respondent does not pose an additional threat of harm to a protected party or the public by having access to the specific firearm, ammunition, or firearm and ammunition only during scheduled work hours, including whether the respondent might utilize the firearm, ammunition or firearm and ammunition for a purpose other than as permitted under this paragraph.

(B) To assist the court in making this determination, the court may order a psychological evaluation of the respondent by a licensed mental health professional with domestic violence expertise.

(C) If the court grants an exemption pursuant to this paragraph, the order shall provide that the specific firearm, ammunition, or firearm and ammunition shall be in the physical possession of the respondent only during scheduled work hours and that the exemption does not authorize the respondent to possess any other firearm or ammunition, or to possess the specific firearm, ammunition, or firearm and ammunition outside of scheduled work hours.

(h) During the period of the relinquishment order, the restrained person is entitled to make one sale of all firearms that are in the possession of a local law enforcement agency pursuant to this section. A licensed firearms dealer, who presents a local law enforcement agency with a bill of sale indicating that all firearms owned by the restrained person that are in the possession of the local law enforcement agency have been sold by the restrained person to the licensed firearms dealer, shall be given possession of those firearms, at the location where the firearms are stored, within five days of presenting the local law enforcement agency with the bill of sale.

(i) (1) The relinquishment or surrender of a firearm to a law enforcement agency pursuant to this section or the return of a firearm to a person pursuant to this section shall not be subject to the requirements of Section 27545.

(2) Returns of firearms or ammunition pursuant to this section shall be governed by the applicable provisions of Chapter 2 (commencing with Section 33850) of Division 11.

SEC. 10. Section 2.5 of this bill incorporates amendments to Section 273.5 of the Penal Code proposed by both this bill and Assembly Bill 2308. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2025, (2) each bill amends Section 273.5 of the Penal Code, and (3) this bill is enacted after Assembly Bill 2308, in which case Section 2 of this bill shall not become operative.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.