

Date of Hearing: July 15, 2025
Counsel: Kimberly Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Nick Schultz, Chair

SB 221 (Ochoa Bogh) – As Introduced January 23, 2025

As Proposed to be Amended in Committee

SUMMARY: Expands the definition of “credible threats” in the crime of stalking to include threats to the safety of a victim’s pet, service animal, emotional support animal, or horse.

EXISTING LAW:

- 1) States that any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of their immediate family is guilty of stalking. (Pen. Code, § 646.9, subd. (a).)
- 2) Punishes stalking by imprisonment in county jail for not more than one year, or by imprisonment in the state prison. (Pen. Code, § 646.9, subd. (a).)
- 3) Provides that a person who commits stalking while there is a temporary restraining order, injunction, or any other court order in effect prohibiting stalking behavior against the same party shall be punished by imprisonment in the state prison for 2, 3, or 4 years. (Pen. Code, § 646.9, subd. (b).)
- 4) Provides that a person who commits stalking after having been convicted of domestic violence, violation of a protective order, or of criminal threats shall be punished by imprisonment in the state prison for 2, 3 or 5 years. (Pen. Code, § 646.9, subd. (c)(1).)
- 5) Provides that a person who commits stalking after previously having been convicted of felony stalking shall be punished by imprisonment in the state prison for 2, 3, or 5 years. (Pen. Code, § 646.9, subd. (c)(2).)
- 6) Authorizes the sentencing court to order a person convicted of felony stalking to register as a sex offender. (Pen. Code, § 646.9, subd. (d).)
- 7) Requires the sentencing court to consider issuing a restraining order valid for up to 10 years when a defendant is convicted of stalking, regardless of whether the defendant is placed on probation or sentenced to state prison or county jail. (Pen. Code, § 646.9, subd. (k).)
- 8) Defines the following terms as it relates to the elements of the crime of stalking:
 - a) “Harass” 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.” (Pen. Code, § 646.9, subd. (e).)

- b) “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.” (Pen. Code, § 646.9, subd. (f).)
 - c) “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 his or her safety or the safety of his or her 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 his or her safety or the safety of his or her 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.” (Pen. Code, § 646.9, subd. (g).)
 - d) “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.” (Pen. Code, § 646.9, subd. (l).)
- 9) Provides that a person who maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal, is guilty of animal cruelty. (Pen. Code, § 597, subd. (a).)
- 10) Punishes a violation of animal cruelty as a felony with imprisonment in the county jail under realignment, or by a fine of not more than \$20,000, or by both; or alternatively, as a misdemeanor with imprisonment in a county jail for not more than one year, or by a fine of not more than \$20,000, or by both. (Pen. Code, § 597, subd. (d).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "Senate Bill 221 would amend Penal Code section 646.9 to conform to the federal stalking statute by including threats to a victim's pet as a component of threatening behavior. According to the Bureau of Justice Statistics Special Report, Stalking Victimization in the US, about four in 10 stalkers threaten a “victim or the victim's family, friends, co-workers, or family pet,” with 87,020 threats to harm a pet being reported. Women are stalked at a higher rate than men.

“Victims of stalking have an increased risk of experiencing depression and anxiety, with some studies indicating nearly 75% report mental health effects. This can be further exacerbated by the injury to or death of a pet. Not updating state statute to conform to federal anti-stalking law leaves victims and their pets vulnerable to threats and attacks by a stalker. Because humans and animals form strong bonds that induce strong feelings of affection and connection, this can make a pet an easy target for threats and physical harm. California's law

ignores how powerful a threat or injury to a beloved pet can be. It is critical that California's anti-stalking law is updated in order to better protect victims and their pets.

- 2) **Stalking:** This bill expands the definition of credible threats in the stalking statute to include threats to a pet, service animal, emotional support animal, or horse as part of 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 his or her safety or the safety of his or her family. Stalking requires a person to engage in **willful, malicious¹, and repeated** harassment or credible threats with the specific intent to place someone in fear **for their safety or the safety of their family**. (See CALCRIM No. 1301; see also *People v. Falck* (1997) 52 Cal.App.4th 287, 297-298.) Stalking is an alternate misdemeanor-felony with a maximum penalty of three years in state prison. If a person violates a restraining order to engage in stalking, the maximum penalty is four years in state prison. The penalty for stalking is understandably very serious since in some instances, stalking escalates to violence and even homicide. According to the Stalking Prevention Awareness Resource Center, approximately 25 percent of stalking cases result in violence, including homicides.²

Stalking requires either repeated following or harassment which necessarily includes multiple acts. (*People v. Jantz* (2006) 137 Cal.App.4th 1283, 1292-1293; *People v. Heilman* (1994) 25 Cal.App.4th 391, 400) "Repeated . . . simply means the perpetrator must follow the victim more than one time. The word adds to the restraint police officers must exercise, since it is not until a perpetrator follows a victim more than once that the conduct rises to a criminal level." (*People v. Heilman, supra*, 25 Cal.App.4th at 400.) It is arguable under California's statute that if a person threatens a pet with harm, it may still constitute stalking because there is a credible reason to think the harm will escalate to a person. For instance, if someone threatens to shoot a person's service dog, with the intent to cause fear, it seems reasonable to fear the perpetrator will shoot them. Additionally, stalking, specifically federal stalking, may be taken cumulatively. (*United States v. Shrader* (4th Cir. 2012) 675 F.3d 300, 311.)

Multiple instances of threats to a pet and one threat to a family member or the victim, would constitute federal stalking. The federal statute was amended to include pets in 2018 and, following an exhaustive review of federal case law, there does not appear to be any judicial application or interpretation on point. (See also *People v. Ibarra* (2007) 156 Cal.App.4th 1174, 1198; *Jantz, supra*, 1292-1293.)

In California, a prosecutor would likely argue that any person would reasonably fear for their own safety (as opposed to that of just of their pet) if the perpetrator was threatening a person's pet in addition to committing other harassing or threatening behavior against that person. The definition of "credible threats" in the stalking statute 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 his or her safety or the safety of his or her family..." This bill just inserts "pet, service animal, emotional support animal, or horse" as part of the

¹ Webster Merriam defines "malicious" as a "desire to cause harm to someone."

² www.stalkingawareness.org

pattern of conduct or combination of statements and conduct that may form the basis of a credible threat.

- 3) **Counterman v. Colorado:** In *Counterman v. Colorado*, in 2023, the U.S. Supreme Court required criminal threats to include some subjective intent to threaten in order to avoid running afoul of the First Amendment. The Court held the state must show the defendant's subjective intent to threaten in order to impose criminal penalties, however, a showing of a mental state of recklessness is sufficient. (See *Counterman v. Colorado* (2023) 143 S.Ct. 2106, 2112.)

“Again, guided by our precedent, we hold recklessness standard is enough. Given that a subjective standard here shields speech not independently entitled to protection – and indeed posing real dangers – we do not require that the State prove the defendant had any more specific intent to threaten the victim.” (*Counterman, supra*, at 143 S.Ct. at 2113.)

The Court considered whether the defendant was aware of the threatening nature of the comments he made online to a local musician or whether his conduct was sufficiently reckless. (See *Counterman*, 143 S.Ct. at 2113.)

“...Recklessness offers the right path forward. We have so far mostly focused on the constitutional interest in free expression, and on the correlative need to take into account threat prosecutions' chilling effect. But the precedent we have relied on has always recognized and insisted on accommodating the competing value in regularly historically unprotected speech. ... [The] standard again, is recklessness. It offers enough breathing space for protected speech without sacrificing too many of the benefits of enforcing laws against true threats. (*Counterman, supra*, at 2116.)

The defendant in *Counterman*, was convicted under Colorado's stalking statute and was based on hundreds of messages sent to the victim over Facebook. Counterman never met the victim and she never responded to any of his messages. While some of the messages were benign, others suggested Counterman might be surveilling the victim, and others expressed anger and threats of harm. The conviction was based solely on the repeated Facebook communications. (*Counterman, supra*, at 2112-13.) Counterman argued that the conviction should be overturned because the statements were not true threats and so were protected under the First Amendment. (*Id.* at 2114.)

The Supreme Court noted that the Colorado courts had used an objective, reasonable person standard to determine if Counterman had made a threat. (*Id.* at 2114.) The question before the Court was “whether the First Amendment still requires proof that the defendant had some subjective understanding of the threatening nature of his statements.” (*Id.* at 2111.) The Court answered the question in the affirmative. (*Id.* at 2115-16.) The Court reasoned that reliance on an objective standard would sometimes result in self-censorship because people would be worried about how their statements would be perceived. (*Ibid.*) To prove this subjective understanding, the Court further held that a mental state of recklessness is

sufficient. In the threats context, recklessness means “that a speaker is aware ‘that others could regard his statements as’ threatening violence and ‘delivers them anyway.’” (*Id.* at 2117.)

While the Supreme Court overturned Counterman’s conviction, it did not overturn the Colorado stalking statute. Rather, what is affected going forward is the evidence prosecutors must prove to establish a conviction under the statute. Under the new U.S. Supreme Court precedent, going forward, prosecutors will have to show that the defendant knew that others could perceive a statement made threatened violence and yet the defendant uttered it anyway.

As in Colorado, California courts have applied an objective reasonable-person standard to determine if statements constitute a credible threat. The California stalking statute itself notes that the person that is the target of the threat must have reasonable fear for their safety. (Pen. Code, § 646.9, subd. (g).) However, under California law, prosecutors also have had to prove subjective *mens rea* for stalking based on threats, namely that “the defendant made a credible threat with the intent to place the other person in reasonable fear for their safety, or for the safety of their immediate family.” (See CALCRIM No. 1301; see also *People v. McCray* (1997) 58 Cal.App.4th 159, 172 [“The crimes with which appellant was charged required proof of his intent to place Michelle in fear for her safety or that of her family.... (§ 646.9, subd. (a)).”].)

- 4) **Argument in Support:** According to the *Berkeley Animal Rights Center*: Stalking is a pattern of repeated behavior that includes unwanted attention, contact, harassment, or other conduct towards a specific person. An estimated one in three women (31.2%) and one in six men (16.1%) in the United States report enduring stalking at some point in their lives while one in 15 women (8.6 million) and one in 24 men (4.8 million) in the United States report being stalked in last 12 months. Stalking behaviors may be committed in person, by following the victim, or by monitoring and harassing the victim electronically. It is a crime of power and control that causes victims to fear for their safety, or the safety of their loved ones.

Perpetrators of stalking tend to damage their victim’s property, even going as far as to target their loved ones, including pets. One National Crime Victimization Survey estimated that four in 10 stalkers threaten a “victim or the victim’s family, friends, co-workers, or family pet,” with 87,020 threats to harm a pet being reported. Unfortunately, stalking victims are unprotected by state law when it comes to their pets. Under existing state anti-stalking law, a stalker can threaten harm to a victim’s pet without consequences.

Current California statute ignores animal abuse as a means to terrorize stalking victims. The relationship between animal cruelty and violent behavior, often referred to as “The Link,” has been widely studied. The abuse of animals is often an indicator of an escalation of violence towards a human. Cruelty towards animals is a means to “perpetuate terror” towards a targeted individual.

In one such California case, a victim ended a short-term romantic relationship with the defendant. The defendant became upset and began to insult the victim. One evening, the victim left her residence and shortly thereafter received a message from the defendant that stated her dog was “gone.” Upon the victim’s return, she determined that her dog was in fact gone and contacted the authorities. The victim advised law enforcement she was fearful of what the defendant would do to her pet in retaliation of her not continuing the romantic

relationship. Under existing California statutory language, prosecutors were unable to formally charge the defendant with stalking despite the implied threat to the victim's pet.

SB 221 would amend Penal Code 646.9 to conform with the federal stalking statute to make a person guilty of stalking if the person with the intent to kill, injure, harass, or intimidate another person, or with the intent to place another person under surveillance for the purpose of killing, injuring, harassing, or intimidating that person, engages in conduct that either places that person in reasonable fear of death or serious bodily injury to themselves, a close family member, or a pet, service animal, emotional support animal, or horse that belongs to that person, or causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to one of the above.

The emotional bond between humans and their companion animals is a source of vulnerability for victims of stalking. A pet is an easy target for threats and physical harm. Both threats and injuries to pets send a strong message to stalking victims about their own helplessness. This bill will send an equally strong message that California recognizes the bond between pets and their guardians as sacred and shall not be threatened as a way to harass a person.

- 5) **Argument in Opposition:** According to *ACLU California Action*: Criminalizing behavior that is insensitive is not only impractical, but dangerous. Over-criminalization exacerbates existing racial and economic disparities in the justice system, while also disproportionately affecting individuals who are low-income and unable to afford legal representation or pay fines. This expansion of criminal activity can ensnare individuals in the criminal justice system for relatively minor infractions, leading to long-term consequences such as loss of employment, housing and civil liberties. We must be mindful of these impacts when considering legislation that seeks to expand crimes.

Moreover, existing law already provides protections to animals under animal cruelty laws at the State and Federal level. In 2016, AB 494 amended Code of Civil Procedure 527.6 (civil harassment), Welfare and Institutions Code sections 213.5 (juvenile) and 15657.03 (elder and dependent adult abuse) to permit a court to issue a protective order for animals to keep a person away from them, and restrain from conduct including making threats. California also allows domestic violence protective orders to include pets. In addition, Federal law includes the crime of stalking and actions that make the victim fear that the stalker will hurt the victim's pet, service or emotional support animal, or horse (18 U.S.C. § 2261A (2019)).

- 6) **Related Legislation:** SB 19 (Rubio) creates a new crime of threatening to commit a crime that will result in death or great bodily injury at a school or place of worship, punishable as an alternate felony-misdemeanor, or as an infraction when committed by a juvenile. SB 19 is pending in this committee.
- 7) **Prior Legislation:** SB 89 (Ochoa-Bogh) was identical to this bill and failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

American Kennel Club, INC.
American Society for the Prevention of Cruelty to Animals
Angel's Furry Friends Rescue
Animal Legal Defense Fund
Animal Rescue Mission
Animal Rescuers for Change
Animal Wellness Action
Arcadia Police Officers' Association
Berkeley Animal Rights Center
Better Together Forever
Born Again Animal Rescue and Adoption
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Police Chiefs Association
California Reserve Peace Officers Association
California State Sheriffs' Association
Claremont Police Officers Association
Compassionate Bay
Concerned Citizens Animal Rescue
Corona Police Officers Association
Culver City Police Officers' Association
Feline Lucky Adventures
Fullerton Police Officers' Association
Giantmecha Syndicate
Greater Los Angeles Animal Spay Neuter Collaborative
Latino Alliance for Animal Care Coalition
Latino Alliance for Animal Care Foundation
Leaders for Ethics, Animals, and the Planet (LEAP)
Los Angeles Democrats for the Protection of Animals
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Michelson Center for Public Policy
Multiple Individuals (488)
Murrieta Police Officers' Association
Newport Beach Police Association
NY 4 Whales
Palos Verdes Police Officers Association
Pibbles N Kibbles Animal Rescue
Placer County Deputy Sheriffs' Association
Plant-based Advocates
Pomona Police Officers' Association
Project Minnie

Real Good Rescue
Riverside County District Attorney
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association
Seeds 4 Change Now Animal Rescue
Seniors Citizens for Humane Education and Legislation
Social Compassion in Legislation
Start Rescue
Students Against Animal Cruelty Club - Hueneme High School
The Canine Condition
The Pet Loss Support Group
The Spayce Project
Underdog Heroes, INC.
Women United for Animal Welfare (WUFAW)
World Animal Protection

Oppose

ACLU California Action
Californians United for a Responsible Budget
Ella Baker Center for Human Rights
Initiate Justice
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
San Francisco Public Defender

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