

**Resolution 06-05-2009**

Domestic Violence Injury: Inclusion of “Dating or Engagement Relationship”

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Penal Code section 273.5 to read as follows:

1 § 273.5

2 (a) Any person who willfully inflicts upon a person who is his or her spouse, former  
3 spouse, cohabitant, former cohabitant, ~~or~~ the mother or father of his or her child, or a person  
4 with whom he or she currently has, or has previously had, a dating or engagement  
5 relationship, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon  
6 conviction thereof shall be punished by imprisonment in the state prison for two, three, or  
7 four years, or in a county jail for not more than one year, or by a fine of up to six thousand  
8 dollars (\$6,000) or by both that fine and imprisonment.

9 (b) Holding oneself out to be the husband or wife of the person with whom one is  
10 cohabiting is not necessary to constitute cohabitation as the term is used in this section.

11 (c) As used in this section, "traumatic condition" means a condition of the body, such  
12 as a wound or external or internal injury, whether of a minor or serious nature, caused by a  
13 physical force.

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

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

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

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

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

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

37 (2) If the defendant has suffered two or more prior convictions within the previous  
38 seven years for a violation of any offense specified in subdivision (e), it shall be a condition

39 of probation, in addition to the provisions contained in Section 1203.097, that he or she be  
40 imprisoned in a county jail for not less than 60 days.

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

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

47 (1) That the defendant make payments to a battered women's shelter, up to a  
48 maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

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

51 For any order to pay a fine, make payments to a battered women's shelter, or pay  
52 restitution as a condition of probation under this subdivision, the court shall make a  
53 determination of the defendant's ability to pay. In no event shall any order to make payments  
54 to a battered women's shelter be made if it would impair the ability of the defendant to pay  
55 direct restitution to the victim or court-ordered child support. Where the injury to a married  
56 person is caused in whole or in part by the criminal acts of his or her spouse in violation of  
57 this section, the community property may not be used to discharge the liability of the  
58 offending spouse for restitution to the injured spouse, required by Section 1203.04, as  
59 operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard  
60 to the injured spouse and dependents, required by this section, until all separate property of  
61 the offending spouse is exhausted.

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

70 (j) As used in this section, the term "dating relationship" means frequent, intimate  
71 associations primarily characterized by the expectation of affectional or sexual involvement  
72 independent of financial considerations.

(Proposed new language underlined; language to be deleted stricken.)

**PROPONENT:** Beatriz Dieringer, Jo-Ann Grace, Les LoBaugh, Danette Meyers, Lisa Berger,  
James Gilliam, John Van de Kamp, Jennifer Kim, Teresa Tracy Sullivan and Jeffrey Erdman

### **STATEMENT OF REASONS**

Existing Law: This domestic violence statute currently protects only certain specified persons  
from the infliction of corporal injury resulting in a traumatic condition by their significant other.

This Resolution: Expands the class of protected persons to include those who are in a dating or engagement relationship with the defendant.

The Problem: This statute is designed to protect victims of domestic violence. Even though victims who are in a dating or engagement relationship with their abuser often experience domestic violence, they are not protected under this statute even if the victim is pregnant with the abuser's child. (See *People v. Ward*, (1998) 62 Cal. App. 4th 122.) In the *Ward* case, the court was required to reverse the conviction of a defendant who had beaten and choked his pregnant girlfriend, because this victim was not the "mother" of his "child" and had not cohabited with or married the defendant.

There is no rational basis to deny the protections afforded by this statute to domestic violence victims who are in a dating relationship but have not chosen to marry or cohabit with their perpetrator or bear him a child. Two statutory definitions of "domestic violence" define it to include abuse committed against a person with whom he or she is having or has had a dating or engagement relationship. (See Cal. Penal Code §13700(b); Cal. Family Code § 6211.) The proposed amendment is also needed to keep this felony statute in conformity with a parallel misdemeanor statute, Penal Code Section 243(e), which prohibits the commission of a domestic violence battery (without the infliction of traumatic injury required under Section 273.5) but provides greater protection for DV victims by including "person{s} with whom the defendant currently has, or has previously had a dating or engagement relationship" in addition to the relationships covered under Penal Code Section 273. The definition of "dating relationship" in this resolution is the same definition used in Penal Code Section 243(e), entitled "Prosecutions." (See Cal. Penal Code § 243(f); *People v. Usher* (2007) 155 Cal. App.4th 1311, 1322-1323, citing, *People v. Rucker* (2005) 126 Cal. App. 4th 1107, 1116-1117 ("...a 'dating relationship' does not include a 'casual relationship or an ordinary fraternization between [two] individuals in a business or social context'...").

## **IMPACT STATEMENT**

This resolution does not impact any other law, statute or rule.

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