

AMENDED IN ASSEMBLY JANUARY 5, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1435

Introduced by Assembly Member Koretz

February 21, 2003

An act to amend Section 1054.5 of, ~~and to add Section 11.5 to,~~ the Penal Code, relating to sanctions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1435, as amended, Koretz. Criminal proceedings: sanctions.

~~Existing provisions of the Code of Civil Procedure authorize a judicial officer to impose reasonable sanctions, not to exceed \$1,500 payable to the county, for violation of a lawful court order as specified; and authorize a judicial officer to effect the exercise of these powers by punishment for contempt, as specified.~~

~~This bill would add a similar provision to the Penal Code.~~

Existing law, added by initiative statute, authorizes a court to issue any lawful order, including specified examples, upon a showing that a party to a criminal proceeding has failed to comply with certain disclosure requirements. Existing law permits amendment of that statute by a $2/3$ vote of each house.

This bill would add ~~monetary sanctions~~ *an award of reasonable attorneys' fees and costs* to this list of lawful orders.

Vote: $2/3$. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section ~~11.5~~ is added to the Penal Code, to read:
2 ~~11.5. (a) Notwithstanding any other provision of law, a~~
3 ~~judicial officer may impose reasonable money sanctions, not to~~
4 ~~exceed fifteen hundred dollars (\$1,500), payable to the county in~~
5 ~~which the judicial officer is located for any violation of a lawful~~
6 ~~court order by a person, done without good cause or substantial~~
7 ~~justification. This power does not apply to advocacy of counsel~~
8 ~~before the court. For the purposes of this section, the term~~
9 ~~“person” includes a witness, a party, a party’s attorney, or both.~~
10 ~~(b) Sanctions imposed pursuant to this section may not be~~
11 ~~imposed except on notice contained in a party’s moving or~~
12 ~~responding papers; or on the court’s own motion, after notice and~~
13 ~~opportunity to be heard. An order imposing sanctions shall be in~~
14 ~~writing and shall recite in detail the conduct or circumstances~~
15 ~~justifying the order.~~
16 ~~(c) For the effectual exercise of the powers conferred by this~~
17 ~~section, a judicial officer may punish for contempt in the cases~~
18 ~~provided in Title 5 (commencing with Section 1209) of Part 3 of~~
19 ~~the Code of Civil Procedure in connection with any proceeding~~
20 ~~arising under this code.~~
21 SEC. 2.—Section 1054.5 of the Penal Code is amended to read:
22 1054.5. (a) No order requiring discovery may be made in
23 criminal cases except as provided in this chapter. This chapter shall
24 be the only means by which the defendant may compel the
25 disclosure or production of information from prosecuting
26 attorneys, law enforcement agencies which investigated or
27 prepared the case against the defendant, or any other persons or
28 agencies which the prosecuting attorney or investigating agency
29 may have employed to assist them in performing their duties.
30 (b) Before a party may seek court enforcement of any of the
31 disclosures required by this chapter, the party shall make an
32 informal request of opposing counsel for the desired materials and
33 information. If within 15 days the opposing counsel fails to
34 provide the materials and information requested, the party may
35 seek a court order. Upon a showing that a party has not complied
36 with Section 1054.1 or 1054.3 and upon a showing that the moving
37 party complied with the informal discovery procedure provided in
38 this subdivision, a court may make any order necessary to enforce



1 the provisions of this chapter, including, but not limited to,
2 immediate disclosure, contempt proceedings, delaying or
3 prohibiting the testimony of a witness or the presentation of real
4 evidence, continuance of the matter, ~~a monetary sanction~~ *an*
5 *award of reasonable attorneys' fees and costs*, or any other lawful
6 order. Further, the court may advise the jury of any failure or
7 refusal to disclose and of any untimely disclosure.

8 (c) The court may prohibit the testimony of a witness pursuant
9 to subdivision (b) only if all other sanctions have been exhausted.
10 The court shall not dismiss a charge pursuant to subdivision (b)
11 unless required to do so by the Constitution of the United States.

