

**ASSEMBLY BILL**

**No. 141**

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**Introduced by Assembly Member Fuentes**

January 13, 2011

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An act to amend Sections 611, 613, and 1209 of the Code of Civil Procedure, and to amend Sections 166, 1122, and 1128 of the Penal Code, relating to jurors.

LEGISLATIVE COUNSEL'S DIGEST

AB 141, as introduced, Fuentes. Jurors: electronic communications.

(1) Existing law requires the court in a jury trial to admonish the jury that it is their duty not to converse with, or permit themselves to be addressed by, any other person on any subject of the trial. The court is required to provide the admonishment in a civil proceeding when the jurors are permitted to separate during the trial, and when the case is submitted to the jury, and, in a criminal proceeding, after the jury has been sworn and before the people's opening address, at each adjournment of the court, and when the jurors are permitted by the court to separate after the case is submitted to the jury. An officer having the jury under his or her charge shall not permit any communication to be made to them, or make any himself or herself, as specified.

This bill would expand those admonishments to include the conduct of research or dissemination of information on any subject of the trial. The bill would require the court, when admonishing the jury against conversation, research, or dissemination of information pursuant to these provisions, to clearly explain, as part of the admonishment, that the prohibition applies to all forms of electronic and wireless communication. The bill would require the officer in charge of a jury to prevent any form of electronic or wireless communication.

(2) Existing law provides that certain acts or omissions in respect to a court of justice, or proceedings therein, are civil contempts of the authority of the court, including, among other things, disobedience of any lawful judgment, order, or process of the court. Existing law also specifies certain criminal contempts of court, punishable as a misdemeanor, including, among other things, resistance willfully offered by a person to the lawful order or process of a court.

This bill would make the willful disobedience by a juror of a court admonishment related to the prohibition on any form of communication or research about the case, including all forms of electronic or wireless communication or research, punishable as either a civil or criminal contempt of court pursuant to those provisions. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.

(3) 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 no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

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

1 SECTION 1. Section 611 of the Code of Civil Procedure is  
2 amended to read:

3 611. If the jury are permitted to separate, either during the trial  
4 or after the case is submitted to them, they shall be admonished  
5 by the ~~Court~~ court that it is their duty not to *conduct research,*  
6 *disseminate information, or converse with, or ~~suffer~~ permit*  
7 themselves to be addressed by, any other person; on any subject  
8 of the trial, and that it is their duty not to form or express an opinion  
9 thereon until the case is finally submitted to them. *The court shall*  
10 *clearly explain, as part of the admonishment, that the prohibition*  
11 *on research, dissemination of information, and conversation*  
12 *applies to all forms of electronic and wireless communication.*

13 SEC. 2. Section 613 of the Code of Civil Procedure is amended  
14 to read:

15 613. When the case is finally submitted to the jury, they may  
16 decide in ~~Court~~ court or retire for deliberation; ~~if~~. *If they retire,*

1 they must be kept together, in some convenient place, under charge  
2 of an officer, until at least three-fourths of them agree upon a  
3 verdict or are discharged by the ~~Court~~ court. Unless by order of  
4 the ~~Court~~ court, the officer having them under his or her charge  
5 ~~must shall~~ not ~~suffer permit~~ any communication to be made to  
6 them, ~~or make any himself~~, including any form of electronic or  
7 wireless communication, or ~~make any himself or herself~~, except  
8 to ask them if they or three-fourths of them are agreed upon a  
9 verdict, ~~and he must~~. The officer shall not, before their verdict is  
10 rendered, communicate to any person the state of their  
11 deliberations, or the verdict agreed upon.

12 SEC. 3. Section 1209 of the Code of Civil Procedure is  
13 amended to read:

14 1209. (a) The following acts or omissions in respect to a court  
15 of justice, or proceedings therein, are contempts of the authority  
16 of the court:

17 ~~1. Disorderly,~~

18 (1) *Disorderly*, contemptuous, or insolent behavior toward the  
19 judge while holding the court, tending to interrupt the due course  
20 of a trial or other judicial proceeding;

21 ~~2. A~~

22 (2) A breach of the peace, boisterous conduct, or violent  
23 disturbance, tending to interrupt the due course of a trial or other  
24 judicial proceeding;

25 ~~3. Misbehavior~~

26 (3) *Misbehavior* in office, or other willful neglect or violation  
27 of duty by an attorney, counsel, clerk, sheriff, coroner, or other  
28 person, appointed or elected to perform a judicial or ministerial  
29 service;

30 ~~4. Abuse~~

31 (4) *Abuse* of the process or proceedings of the court, or falsely  
32 pretending to act under authority of an order or process of the  
33 court;

34 ~~5. Disobedienee~~

35 (5) *Disobedienee* of any lawful judgment, order, or process of  
36 the court;

37 (6) *Willful disobedience by a juror of a court admonishment*  
38 *related to the prohibition on any form of communication or*  
39 *research about the case, including all forms of electronic or*  
40 *wireless communication or research.*

1 ~~6.—Rescuing~~

2 (7) *Rescuing* any person or property in the custody of an officer  
3 by virtue of an order or process of ~~such~~ *that* court;

4 ~~7.—Unlawfully~~

5 (8) *Unlawfully* detaining a witness; or party to an action while  
6 going to, remaining at, or returning from the court where the action  
7 is on the calendar for trial;

8 ~~8.—Any~~

9 (9) *Any* other unlawful interference with the process or  
10 proceedings of a court;

11 ~~9.—Disobedienee~~

12 (10) *Disobedienee* of a subpoena duly served, or refusing to be  
13 sworn or answer as a witness;

14 ~~10.—When~~

15 (11) *When* summoned as a juror in a court, neglecting to attend  
16 or serve as ~~such~~ *a juror*, or improperly conversing with a party to  
17 an action; to be tried at ~~such~~ *the* court, or with any other person,  
18 in relation to the merits of ~~such~~ *the* action, or receiving a  
19 communication from a party or other person in respect to ~~it~~ *the*  
20 *action*, without immediately disclosing the ~~same~~ *communication*  
21 to the court;

22 ~~11.—Disobedienee~~

23 (12) *Disobedienee* by an inferior tribunal, ~~magistrate~~, or *judicial*  
24 officer; of the lawful judgment, order, or process of a superior  
25 court, or proceeding in an action or special proceeding contrary  
26 to law, after ~~such~~ *the* action or special proceeding is removed from  
27 the jurisdiction of ~~such~~ *the* inferior tribunal, ~~magistrate~~, or *judicial*  
28 officer.

29 (b) ~~No~~ A speech or publication reflecting upon or concerning  
30 ~~any~~ a court or ~~any~~ an officer thereof shall *not* be treated or punished  
31 as a contempt of ~~such~~ *the* court unless made in the immediate  
32 presence of ~~such~~ *the* court while in session and in such a manner  
33 as to actually interfere with its proceedings.

34 (c) Notwithstanding Section 1211 or any other ~~provision~~ of law,  
35 if an order of contempt is made affecting an attorney, his *or her*  
36 agent, investigator, or any person acting under the attorney's  
37 direction, in the preparation and conduct of ~~any~~ *an* action or  
38 proceeding, the execution of any sentence shall be stayed pending  
39 the filing within three judicial days of a petition for extraordinary  
40 relief testing the lawfulness of the court's order, the violation of

1 which is the basis of the contempt, except for ~~such~~ conduct as may  
2 be proscribed by subdivision (b) of Section 6068 of the Business  
3 and Professions Code, relating to an attorney’s duty to maintain  
4 respect due to the courts and judicial officers.

5 (d) Notwithstanding Section 1211 or any other ~~provision of law,~~  
6 if an order of contempt is made affecting a public safety employee  
7 acting within the scope of employment for reason of the employee’s  
8 failure to comply with a duly issued subpoena or subpoena duces  
9 tecum, the execution of any sentence shall be stayed pending the  
10 filing within three judicial days of a petition for extraordinary relief  
11 testing the lawfulness of the court’s order, a violation of which is  
12 the basis for the contempt.

13 As used in this subdivision, “public safety employee” includes  
14 any peace officer, firefighter, paramedic, or any other employee  
15 of a public law enforcement agency whose duty is either to  
16 maintain official records or to analyze or present evidence for  
17 investigative or prosecutorial purposes.

18 SEC. 4. Section 166 of the Penal Code is amended to read:

19 166. (a) Except as provided in subdivisions (b), (c), and (d),  
20 every ~~a~~ person guilty of any ~~contempt of court, of any of the~~  
21 following ~~kinds, contempts of court~~ is guilty of a misdemeanor:

22 (1) Disorderly, contemptuous, or insolent behavior committed  
23 during the sitting of ~~any a~~ court of justice, in the immediate view  
24 and presence of the court, and directly tending to interrupt its  
25 proceedings or to impair the respect due to its authority.

26 (2) Behavior ~~as specified in paragraph (1) that is~~ committed in  
27 the presence of ~~any a~~ referee, while actually engaged in ~~any a~~ trial  
28 or hearing, pursuant to the order of ~~any a~~ court, or in the presence  
29 of any jury while actually sitting for the trial of a cause, or upon  
30 ~~any an~~ inquest or other ~~proceedings~~ *proceeding* authorized by law.

31 (3) ~~Any~~ A breach of the peace, noise, or other disturbance  
32 directly tending to interrupt the proceedings of ~~any the~~ court.

33 (4) Willful disobedience of the terms as written of any process  
34 or court order or out-of-state court order, lawfully issued by ~~any~~  
35 a court, including orders pending trial.

36 (5) Resistance willfully offered by any person to the lawful  
37 order or process of ~~any a~~ court.

38 (6) *Willful disobedience by a juror of a court admonishment*  
39 *related to the prohibition on any form of communication or*

1 *research about the case, including all forms of electronic or*  
 2 *wireless communication or research.*

3 ~~(6)~~

4 (7) The contumacious and unlawful refusal of ~~any~~ a person to  
 5 be sworn as a witness or, when so sworn, the like refusal to answer  
 6 ~~any~~ a material question.

7 ~~(7)~~

8 (8) The publication of a false or grossly inaccurate report of the  
 9 proceedings of ~~any~~ a court.

10 ~~(8)~~

11 (9) Presenting to ~~any~~ a court having power to pass sentence  
 12 upon ~~any~~ a prisoner under conviction, or to ~~any~~ a member of the  
 13 court, ~~any~~ an affidavit or testimony, or representation of any kind,  
 14 verbal or written, in aggravation or mitigation of the punishment  
 15 to be imposed upon the prisoner, except as provided in this code.

16 ~~(9)~~

17 (10) Willful disobedience of the terms of ~~any~~ an injunction that  
 18 restrains the activities of a criminal street gang or any of its  
 19 members, lawfully issued by ~~any~~ a court, including an order  
 20 pending trial.

21 (b) (1) ~~Any~~ A person who is guilty of contempt of court under  
 22 paragraph (4) of subdivision (a) by willfully contacting a victim  
 23 by telephone or mail, or directly, and who has been previously  
 24 convicted of a violation of Section 646.9 shall be punished by  
 25 imprisonment in a county jail for not more than one year, by a fine  
 26 of five thousand dollars (\$5,000), or by both that fine and  
 27 imprisonment.

28 (2) For the purposes of sentencing under this subdivision, each  
 29 contact shall constitute a separate violation of this subdivision.

30 (3) The present incarceration of a person who makes contact  
 31 with a victim in violation of paragraph (1) is not a defense to a  
 32 violation of this subdivision.

33 (c) (1) Notwithstanding paragraph (4) of subdivision (a), ~~any~~  
 34 a willful and knowing violation of ~~any~~ a protective order or  
 35 stay-away court order issued pursuant to Section 136.2, in a  
 36 pending criminal proceeding involving domestic violence, as  
 37 defined in Section 13700, or issued as a condition of probation  
 38 after a conviction in a criminal proceeding involving domestic  
 39 violence, as defined in Section 13700, or elder or dependent adult  
 40 abuse, as defined in Section 368, or that is an order described in

1 paragraph (3), shall constitute contempt of court, a misdemeanor,  
2 punishable by imprisonment in a county jail for not more than one  
3 year, by a fine of not more than one thousand dollars (\$1,000), or  
4 by both that imprisonment and fine.

5 (2) If a violation of paragraph (1) results in a physical injury,  
6 the person shall be imprisoned in a county jail for at least 48 hours,  
7 whether a fine or imprisonment is imposed, or the sentence is  
8 suspended.

9 (3) Paragraphs (1) and (2) apply to the following court orders:

10 (A) ~~Any~~An order issued pursuant to Section 6320 or 6389 of  
11 the Family Code.

12 (B) An order excluding one party from the family dwelling or  
13 from the dwelling of the other.

14 (C) An order enjoining a party from specified behavior that the  
15 court determined was necessary to effectuate the orders described  
16 in paragraph (1).

17 (4) A second or subsequent conviction for a violation of ~~any an~~  
18 order described in paragraph (1) occurring within seven years of  
19 a prior conviction for a violation of any of those orders and  
20 involving an act of violence or “a credible threat” of violence, as  
21 provided in subdivisions (c) and (d) of Section 139, is punishable  
22 by imprisonment in a county jail not to exceed one year, or in the  
23 state prison for 16 months or two or three years.

24 (5) The prosecuting agency of each county shall have the  
25 primary responsibility for the enforcement of the orders described  
26 in paragraph (1).

27 (d) (1) A person who owns, possesses, purchases, or receives  
28 a firearm knowing he or she is prohibited from doing so by the  
29 provisions of a protective order as defined in Section 136.2 of this  
30 code, Section 6218 of the Family Code, or Section 527.6 or 527.8  
31 of the Code of Civil Procedure, shall be punished under ~~the~~  
32 ~~provisions of~~ subdivision (g) of Section 12021.

33 (2) A person subject to a protective order described in paragraph  
34 (1) shall not be prosecuted under this section for owning,  
35 possessing, purchasing, or receiving a firearm to the extent that  
36 firearm is granted an exemption pursuant to subdivision (h) of  
37 Section 6389 of the Family Code.

38 (e) (1) If probation is granted upon conviction of a violation of  
39 subdivision (c), the court shall impose probation consistent with  
40 Section 1203.097 ~~of the Penal Code~~.

1 (2) If probation is granted upon conviction of a violation of  
 2 subdivision (c), the conditions of probation may include, in lieu  
 3 of a fine, one or both of the following requirements:

4 (A) That the defendant make payments to a battered women’s  
 5 shelter, up to a maximum of one thousand dollars (\$1,000).

6 (B) That the defendant provide restitution to reimburse the  
 7 victim for reasonable costs of counseling and other reasonable  
 8 expenses that the court finds are the direct result of the defendant’s  
 9 offense.

10 (3) For ~~any~~ *an* order to pay a fine, make payments to a battered  
 11 women’s shelter, or pay restitution as a condition of probation  
 12 under this subdivision or subdivision (c), the court shall make a  
 13 determination of the defendant’s ability to pay. In no event shall  
 14 ~~any~~ *an* order to make payments to a battered women’s shelter be  
 15 made if it would impair the ability of the defendant to pay direct  
 16 restitution to the victim or court-ordered child support.

17 (4) If the injury to a married person is caused in whole, or in  
 18 part, by the criminal acts of his or her spouse in violation of  
 19 subdivision (c), the community property ~~may~~ *shall* not be used to  
 20 discharge the liability of the offending spouse for restitution to the  
 21 injured spouse required by Section 1203.04, as operative on or  
 22 before August 2, 1995, or Section 1202.4, or to a shelter for costs  
 23 with regard to the injured spouse and dependents required by this  
 24 subdivision, until all separate property of the offending spouse is  
 25 exhausted.

26 (5) ~~Any~~ *A* person violating ~~any~~ *an* order described in subdivision  
 27 (c) may be punished for any substantive offenses described under  
 28 Section 136.1 or 646.9. ~~No~~ *A* finding of contempt shall *not* be a  
 29 bar to prosecution for a violation of Section 136.1 or 646.9.  
 30 However, ~~any~~ *a* person held in contempt for a violation of  
 31 subdivision (c) shall be entitled to credit for any punishment  
 32 imposed as a result of that violation against any sentence imposed  
 33 upon conviction of an offense described in Section 136.1 or 646.9.  
 34 ~~Any~~ *A* conviction or acquittal for ~~any~~ *a* substantive offense under  
 35 Section 136.1 or 646.9 shall be a bar to a subsequent punishment  
 36 for contempt arising out of the same act.

37 SEC. 5. Section 1122 of the Penal Code is amended to read:  
 38 1122. (a) After the jury has been sworn and before the people’s  
 39 opening address, the court shall instruct the jury generally  
 40 concerning its basic functions, duties, and conduct. The instructions

1 shall include, among other matters, ~~admonitions that the jurors~~  
2 ~~shall not converse among themselves, or with anyone else, on any~~  
3 ~~subject connected with the trial; that they shall not read or listen~~  
4 ~~to any accounts or discussions of the case reported by newspapers~~  
5 ~~or other news media; that they shall not visit or view the premises~~  
6 ~~or place where the offense or offenses charged were allegedly~~  
7 ~~committed or any other premises or place involved in the case;~~  
8 ~~that prior to, and within 90 days of, discharge, they shall not~~  
9 ~~request, accept, agree to accept, or discuss with any person~~  
10 ~~receiving or accepting, any payment or benefit in consideration~~  
11 ~~for supplying any information concerning the trial; and that they~~  
12 ~~shall promptly report to the court any incident within their~~  
13 ~~knowledge involving an attempt by any person to improperly~~  
14 ~~influence any member of the jury. all of the following admonitions:~~

15 *(1) That the jurors shall not converse among themselves, or*  
16 *with anyone else, conduct research, or disseminate information*  
17 *on any subject connected with the trial. The court shall clearly*  
18 *explain, as part of the admonishment, that the prohibition on*  
19 *conversation, research, and dissemination of information applies*  
20 *to all forms of electronic and wireless communication.*

21 *(2) That they shall not read or listen to any accounts or*  
22 *discussions of the case reported by newspapers or other news*  
23 *media.*

24 *(3) That they shall not visit or view the premises or place where*  
25 *the offense or offenses charged were allegedly committed or any*  
26 *other premises or place involved in the case.*

27 *(4) That prior to, and within 90 days of, discharge, they shall*  
28 *not request, accept, agree to accept, or discuss with any person*  
29 *receiving or accepting, any payment or benefit in consideration*  
30 *for supplying any information concerning the trial.*

31 *(5) That they shall promptly report to the court any incident*  
32 *within their knowledge involving an attempt by any person to*  
33 *improperly influence any member of the jury.*

34 (b) The jury shall also, at each adjournment of the court before  
35 the submission of the cause to the jury, whether permitted to  
36 separate or kept in charge of officers, be admonished by the court  
37 that it is their duty not to *conduct research, disseminate*  
38 *information, or converse among themselves, or with anyone else,*  
39 *on any subject connected with the trial, or to form or express any*  
40 *opinion thereon about the case until the cause is finally submitted*

1 to them. *The court shall clearly explain, as part of the*  
2 *admonishment, that the prohibition on research, dissemination of*  
3 *information, and conversation applies to all forms of electronic*  
4 *and wireless communication.*

5 SEC. 6. Section 1128 of the Penal Code is amended to read:

6 1128. After hearing the charge, the jury may either decide in  
7 court or may retire for deliberation. If they do not agree without  
8 retiring for deliberation, an officer ~~must~~ *shall* be sworn to keep  
9 them together for deliberation in some private and convenient  
10 place, and, during ~~such~~ *the* deliberation, not to permit any person  
11 to speak to or communicate with them, *including any form of*  
12 *electronic or wireless communication*, nor to do so himself or  
13 *herself*, unless by order of the court, or to ask them whether they  
14 have agreed upon a verdict, and to return them into court when  
15 they have so agreed, or when ordered by the court. The court shall  
16 fix the time and place for deliberation. The jurors shall not  
17 deliberate on the case except under ~~such~~ *those* circumstances. If  
18 the jurors are permitted by the court to separate, the court shall  
19 properly admonish them *as provided in subdivision (b) of Section*  
20 *1122.* ~~When~~ *If* the jury is composed of both men and women, and  
21 the jurors are not permitted by the court to separate, in the event  
22 that it ~~shall become~~ *becomes* necessary to retire for the night, the  
23 women ~~must~~ *shall* be kept in a room or rooms separate and apart  
24 from the men.

25 SEC. 7. No reimbursement is required by this act pursuant to  
26 Section 6 of Article XIII B of the California Constitution because  
27 the only costs that may be incurred by a local agency or school  
28 district will be incurred because this act creates a new crime or  
29 infraction, eliminates a crime or infraction, or changes the penalty  
30 for a crime or infraction, within the meaning of Section 17556 of  
31 the Government Code, or changes the definition of a crime within  
32 the meaning of Section 6 of Article XIII B of the California  
33 Constitution.

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