

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 281**

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**Introduced by Assembly Member ~~Gorell~~ Members *Gorell and Williams***

February 8, 2011

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An act to amend Section ~~72~~ of the Labor Code, relating to employment ~~166~~ of the Penal Code, relating to contempt.

LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, Gorell. ~~Employment: compensation. Contempt: gang injunctions.~~

*Existing law, subject to certain exceptions, provides that it is a misdemeanor for any person to commit various kinds of contempt of court, including, among other things, willful disobedience of the terms of any injunction that restrains the activities of a criminal street gang or any of its members, lawfully issued by a court, including an order pending trial.*

*This bill would provide that a first violation of such an injunction would be punishable by imprisonment in a county jail for not more than one year, or by a fine not exceeding \$1,000, or by both that imprisonment and fine. A 2nd violation occurring within 7 years of the first violation would be punishable by imprisonment in a county jail for not less than 90 days nor more than one year, or by a fine not exceeding \$2,500, or by both that imprisonment and fine. A 3rd or subsequent violation occurring within 7 years of a prior violation would be punishable by imprisonment in a county jail for not less than 180 days nor more than one year, or by imprisonment in the state prison for one, 2, or 3 years, or by a fine not exceeding \$5,000, or by both that*

*imprisonment and fine; provided, however, that if probation is granted or execution of sentence suspended, the defendant would be required to serve 180 days in a county jail as a condition thereof. The bill would also provide that these penalties would apply unless a greater penalty is authorized by other provisions of law.*

*By increasing the penalties for an existing crime, this bill would impose a state-mandated local program.*

*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.*

~~Existing law provides that members of the Industrial Welfare Commission shall receive \$100 for each day's attendance at meetings and other official business of the commission.~~

~~This bill would make a nonsubstantive change to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

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

1     SECTION 1. Section 166 of the Penal Code is amended to  
2     read:

3     166. (a) Except as provided in *paragraph (9), and subdivisions*  
4     (b), (c), and (d), every person guilty of any contempt of court, of  
5     any of the following kinds, is guilty of a misdemeanor:

6     (1) Disorderly, contemptuous, or insolent behavior committed  
7     during the sitting of any court of justice, in the immediate view  
8     and presence of the court, and directly tending to interrupt its  
9     proceedings or to impair the respect due to its authority.

10    (2) Behavior as specified in paragraph (1) committed in the  
11    presence of any referee, while actually engaged in any trial or  
12    hearing, pursuant to the order of any court, or in the presence of  
13    any jury while actually sitting for the trial of a cause, or upon any  
14    inquest or other proceedings authorized by law.

15    (3) Any breach of the peace, noise, or other disturbance directly  
16    tending to interrupt the proceedings of any court.

1 (4) Willful disobedience of the terms as written of any process  
2 or court order or out-of-state court order, lawfully issued by any  
3 court, including orders pending trial.

4 (5) Resistance willfully offered by any person to the lawful  
5 order or process of any court.

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

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

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

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

20 (A) *A violation of this paragraph is punishable by imprisonment*  
21 *in a county jail for not more than one year, or by a fine not*  
22 *exceeding one thousand dollars (\$1,000), or by both that*  
23 *imprisonment and fine.*

24 (B) *A second violation of this paragraph occurring within seven*  
25 *years of the first violation is punishable by imprisonment in a*  
26 *county jail for not less than 90 days nor more than one year, or*  
27 *by a fine not exceeding two thousand five hundred dollars (\$2,500),*  
28 *or by both that imprisonment and fine.*

29 (C) *A third or subsequent violation of this paragraph occurring*  
30 *within seven years of a prior violation is punishable by*  
31 *imprisonment in a county jail for not less than 180 days nor more*  
32 *than one year, or by imprisonment in the state prison for one, two,*  
33 *or three years, or by a fine not exceeding five thousand dollars*  
34 *(\$5,000), or by both that imprisonment and fine; provided,*  
35 *however, that if probation is granted or execution of sentence*  
36 *suspended, the defendant shall serve 180 days in a county jail as*  
37 *a condition thereof.*

38 (D) *The penalties in this paragraph shall apply unless a greater*  
39 *penalty is authorized by other provisions of law.*

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

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

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

13 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any  
14 willful and knowing violation of any protective order or stay-away  
15 court order issued pursuant to Section 136.2, in a pending criminal  
16 proceeding involving domestic violence, as defined in Section  
17 13700, or issued as a condition of probation after a conviction in  
18 a criminal proceeding involving domestic violence, as defined in  
19 Section 13700, or elder or dependent adult abuse, as defined in  
20 Section 368, or that is an order described in paragraph (3), shall  
21 constitute contempt of court, a misdemeanor, punishable by  
22 imprisonment in a county jail for not more than one year, by a fine  
23 of not more than one thousand dollars (\$1,000), or by both that  
24 imprisonment and fine.

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

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

30 (A) Any order issued pursuant to Section 6320 or 6389 of the  
31 Family Code.

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

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

37 (4) A second or subsequent conviction for a violation of any  
38 order described in paragraph (1) occurring within seven years of  
39 a prior conviction for a violation of any of those orders and  
40 involving an act of violence or “a credible threat” of violence, as

1 provided in subdivisions (c) and (d) of Section 139, is punishable  
2 by imprisonment in a county jail not to exceed one year, or in the  
3 state prison for 16 months or two or three years.

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

7 (d) (1) A person who owns, possesses, purchases, or receives  
8 a firearm knowing he or she is prohibited from doing so by the  
9 provisions of a protective order as defined in Section 136.2 of this  
10 code, Section 6218 of the Family Code, or Section 527.6 or 527.8  
11 of the Code of Civil Procedure, shall be punished under the  
12 provisions of ~~subdivision (g) of Section 12021~~ 29825.

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

18 (e) (1) If probation is granted upon conviction of a violation of  
19 subdivision (c), the court shall impose probation consistent with  
20 Section 1203.097 of the Penal Code.

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

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

26 (B) That the defendant provide restitution to reimburse the  
27 victim for reasonable costs of counseling and other reasonable  
28 expenses that the court finds are the direct result of the defendant's  
29 offense.

30 (3) For any order to pay a fine, make payments to a battered  
31 women's shelter, or pay restitution as a condition of probation  
32 under this subdivision or subdivision (c), the court shall make a  
33 determination of the defendant's ability to pay. In no event shall  
34 any order to make payments to a battered women's shelter be made  
35 if it would impair the ability of the defendant to pay direct  
36 restitution to the victim or court-ordered child support.

37 (4) If the injury to a married person is caused in whole or in  
38 part by the criminal acts of his or her spouse in violation of  
39 subdivision (c), the community property may not be used to  
40 discharge the liability of the offending spouse for restitution to the

1 injured spouse required by Section 1203.04, as operative on or  
2 before August 2, 1995, or Section 1202.4, or to a shelter for costs  
3 with regard to the injured spouse and dependents required by this  
4 subdivision, until all separate property of the offending spouse is  
5 exhausted.

6 (5) Any person violating any order described in subdivision (c)  
7 may be punished for any substantive offenses described under  
8 Section 136.1 or 646.9. No finding of contempt shall be a bar to  
9 prosecution for a violation of Section 136.1 or 646.9. However,  
10 any person held in contempt for a violation of subdivision (c) shall  
11 be entitled to credit for any punishment imposed as a result of that  
12 violation against any sentence imposed upon conviction of an  
13 offense described in Section 136.1 or 646.9. Any conviction or  
14 acquittal for any substantive offense under Section 136.1 or 646.9  
15 shall be a bar to a subsequent punishment for contempt arising out  
16 of the same act.

17 *SEC. 2. No reimbursement is required by this act pursuant to*  
18 *Section 6 of Article XIII B of the California Constitution because*  
19 *the only costs that may be incurred by a local agency or school*  
20 *district will be incurred because this act creates a new crime or*  
21 *infraction, eliminates a crime or infraction, or changes the penalty*  
22 *for a crime or infraction, within the meaning of Section 17556 of*  
23 *the Government Code, or changes the definition of a crime within*  
24 *the meaning of Section 6 of Article XIII B of the California*  
25 *Constitution.*

26 ~~SECTION 1. Section 72 of the Labor Code is amended to read:~~  
27 ~~72. The members of the commission shall receive one hundred~~  
28 ~~dollars (\$100) for each day of actual attendance at meetings and~~  
29 ~~other official business of the commission and shall receive their~~  
30 ~~actual and necessary expenses incurred in the performance of their~~  
31 ~~duties.~~