

ASSEMBLY BILL

No. 2078

Introduced by Assembly Member Kim

February 17, 2016

An act to amend Section 166 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2078, as introduced, Kim. Protective orders.

Existing law generally punishes the willful disobedience of the terms of a court order as contempt of court by imprisonment in a county jail not exceeding 6 months, a fine not exceeding \$1,000, or both that imprisonment and fine. Existing law makes the willful and knowing violation of specified protective orders or stay-away court orders punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than \$1,000, or by both that imprisonment and fine for a first offense, and makes a 2nd or subsequent conviction for a violation of these specified protective orders or stay-away court orders occurring within 7 years of a prior conviction and involving an act of violence or credible threat of violence punishable as either a misdemeanor or a felony. If probation is granted upon conviction of a willful and knowing violation of these specified protective orders or stay-away court orders, existing law requires the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements.

Under existing law, any person who willfully inflicts corporal injury resulting in a traumatic condition upon a spouse or former spouse,

cohabitant or former cohabitant, fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship, or the mother or father of the offender's child, is guilty of a felony or a misdemeanor. Upon a conviction, existing law allows the sentencing court to issue an order restraining the defendant from any contact with the victim for up to 10 years.

This bill would make a violation of the above protective order issued for the conviction of inflicting a corporal injury resulting in a traumatic condition punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding \$1,000, or by both that imprisonment and fine. The bill would make a 2nd or subsequent violation occurring within 7 years involving an act of violence or a credible threat of violence punishable as a felony or a misdemeanor. If probation is granted for a violation of these protective orders, this bill would require the court to impose a minimum period of probation of 36 months, a criminal protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, a minimum fine of \$500, successful completion of a batterer's program, and a specified amount of appropriate community service, among other requirements. By increasing the punishment for a 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.

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 166 of the Penal Code is amended to
- 2 read:
- 3 166. (a) Except as provided in subdivisions (b), (c), and (d),
- 4 a person guilty of any of the following contempts of court is guilty
- 5 of a misdemeanor:
- 6 (1) Disorderly, contemptuous, or insolent behavior committed
- 7 during the sitting of a court of justice, in the immediate view and
- 8 presence of the court, and directly tending to interrupt its
- 9 proceedings or to impair the respect due to its authority.

1 (2) Behavior specified in paragraph (1) that is committed in the
2 presence of a referee, while actually engaged in a trial or hearing,
3 pursuant to the order of a court, or in the presence of any jury while
4 actually sitting for the trial of a cause, or upon an inquest or other
5 proceeding authorized by law.

6 (3) A breach of the peace, noise, or other disturbance directly
7 tending to interrupt the proceedings of the court.

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

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

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

16 (7) The publication of a false or grossly inaccurate report of the
17 proceedings of a court.

18 (8) Presenting to a court having power to pass sentence upon a
19 prisoner under conviction, or to a member of the court, an affidavit,
20 testimony, or representation of any kind, verbal or written, in
21 aggravation or mitigation of the punishment to be imposed upon
22 the prisoner, except as provided in this code.

23 (9) Willful disobedience of the terms of an injunction that
24 restrains the activities of a criminal street gang or any of its
25 members, lawfully issued by a court, including an order pending
26 trial.

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

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

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

39 (c) (1) Notwithstanding paragraph (4) of subdivision (a), a
40 willful and knowing violation of a protective order or stay-away

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

5 (A) An order issued pursuant to Section 136.2.

6 (B) An order issued pursuant to paragraph (2) of subdivision
7 (a) of Section 1203.097.

8 (C) An order issued after a conviction in a criminal proceeding
9 involving elder or dependent adult abuse, as defined in Section
10 368.

11 (D) An order issued pursuant to Section 1201.3.

12 (E) An order described in paragraph (3).

13 (F) *An order issued pursuant to subdivision (j) of Section 273.5.*

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

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

19 (A) An order issued pursuant to Section 6320 or 6389 of the
20 Family Code.

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

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

26 (4) A second or subsequent conviction for a violation of an order
27 described in paragraph (1) occurring within seven years of a prior
28 conviction for a violation of any of those orders and involving an
29 act of violence or “a credible threat” of violence, as provided in
30 subdivision (c) of Section 139, is punishable by imprisonment in
31 a county jail not to exceed one year, or in the state prison for 16
32 months or two or three years.

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

36 (d) (1) A person who owns, possesses, purchases, or receives
37 a firearm knowing he or she is prohibited from doing so by the
38 provisions of a protective order as defined in Section 136.2 of this
39 code, Section 6218 of the Family Code, or Section 527.6 or 527.8

1 of the Code of Civil Procedure, shall be punished under Section
2 29825.

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

8 (e) (1) If probation is granted upon conviction of a violation of
9 subdivision (c), the court shall impose probation consistent with
10 Section 1203.097.

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

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

16 (B) That the defendant provide restitution to reimburse the
17 victim for reasonable costs of counseling and other reasonable
18 expenses that the court finds are the direct result of the defendant's
19 offense.

20 (3) For an order to pay a fine, make payments to a battered
21 women's shelter, or pay restitution as a condition of probation
22 under this subdivision or subdivision (c), the court shall make a
23 determination of the defendant's ability to pay. In no event shall
24 an order to make payments to a battered women's shelter be made
25 if it would impair the ability of the defendant to pay direct
26 restitution to the victim or court-ordered child support.

27 (4) If the injury to a married person is caused in whole, or in
28 part, by the criminal acts of his or her spouse in violation of
29 subdivision (c), the community property shall not be used to
30 discharge the liability of the offending spouse for restitution to the
31 injured spouse required by Section 1203.04, as operative on or
32 before August 2, 1995, or Section 1202.4, or to a shelter for costs
33 with regard to the injured spouse and dependents required by this
34 subdivision, until all separate property of the offending spouse is
35 exhausted.

36 (5) A person violating an order described in subdivision (c) may
37 be punished for any substantive offenses described under Section
38 136.1 or 646.9. A finding of contempt shall not be a bar to
39 prosecution for a violation of Section 136.1 or 646.9. However, a
40 person held in contempt for a violation of subdivision (c) shall be

1 entitled to credit for any punishment imposed as a result of that
2 violation against any sentence imposed upon conviction of an
3 offense described in Section 136.1 or 646.9. A conviction or
4 acquittal for a substantive offense under Section 136.1 or 646.9
5 shall be a bar to a subsequent punishment for contempt arising out
6 of the same act.

7 SEC. 2. No reimbursement is required by this act pursuant to
8 Section 6 of Article XIII B of the California Constitution because
9 the only costs that may be incurred by a local agency or school
10 district will be incurred because this act creates a new crime or
11 infraction, eliminates a crime or infraction, or changes the penalty
12 for a crime or infraction, within the meaning of Section 17556 of
13 the Government Code, or changes the definition of a crime within
14 the meaning of Section 6 of Article XIII B of the California
15 Constitution.