

AMENDED IN ASSEMBLY APRIL 6, 2011
AMENDED IN ASSEMBLY MARCH 15, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 281

Introduced by Assembly Members Gorell and Williams

February 8, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 281, as amended, Gorell. 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~~ *6 months*, 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~~ *more than 9 months*, 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~~ *more than one year*, 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.

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 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.

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

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

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

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

3 (8) Presenting to any court having power to pass sentence upon
4 any prisoner under conviction, or to any member of the court, any
5 affidavit or testimony or representation of any kind, verbal or
6 written, in aggravation or mitigation of the punishment to be
7 imposed upon the prisoner, except as provided in this code.

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

12 (A) A violation of this paragraph is punishable by imprisonment
13 in a county jail for not more than ~~one year~~ *six months*, or by a fine
14 not exceeding one thousand dollars (\$1,000), or by both that
15 imprisonment and fine.

16 (B) A second violation of this paragraph occurring within seven
17 years of the first violation is punishable by imprisonment in a
18 county jail for not ~~less than 90 days nor more than one year~~ *more*
19 *than nine months*, or by a fine not exceeding two thousand five
20 hundred dollars (\$2,500), or by both that imprisonment and fine.

21 (C) A third or subsequent violation of this paragraph occurring
22 within seven years of a prior violation is punishable by
23 imprisonment in a county jail for not ~~less than 180 days nor more~~
24 ~~than one year, or by imprisonment in the state prison for one, two,~~
25 ~~or three years, or by a fine not exceeding five thousand dollars~~
26 ~~(\$5,000), or by both that imprisonment and fine; provided,~~
27 ~~however, that if probation is granted or execution of sentence~~
28 ~~suspended, the defendant shall serve 180 days in a county jail as~~
29 ~~a condition thereof. *more than one year, or by a fine not exceeding*~~
30 ~~*five thousand dollars (\$5,000), or by both that imprisonment and*~~
31 ~~*fine.*~~

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

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

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

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

6 (c) (1) Notwithstanding paragraph (4) of subdivision (a), any
7 willful and knowing violation of any protective order or stay-away
8 court order issued pursuant to Section 136.2, in a pending criminal
9 proceeding involving domestic violence, as defined in Section
10 13700, or issued as a condition of probation after a conviction in
11 a criminal proceeding involving domestic violence, as defined in
12 Section 13700, or elder or dependent adult abuse, as defined in
13 Section 368, or that is an order described in paragraph (3), shall
14 constitute contempt of court, a misdemeanor, punishable by
15 imprisonment in a county jail for not more than one year, by a fine
16 of not more than one thousand dollars (\$1,000), or by both that
17 imprisonment and fine.

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

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

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

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

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

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

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

1 (d) (1) A person who owns, possesses, purchases, or receives
2 a firearm knowing he or she is prohibited from doing so by the
3 provisions of a protective order as defined in Section 136.2 of this
4 code, Section 6218 of the Family Code, or Section 527.6 or 527.8
5 of the Code of Civil Procedure, shall be punished under the
6 provisions of Section 29825.

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

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

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

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

20 (B) That the defendant provide restitution to reimburse the
21 victim for reasonable costs of counseling and other reasonable
22 expenses that the court finds are the direct result of the defendant's
23 offense.

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

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

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

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