

ASSEMBLY BILL

No. 2683

Introduced by Assembly Member Cooley

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2683, as introduced, Cooley. Contempt: jurors.

Existing law provides that it is contempt of court, a misdemeanor, for a juror to wilfully disobey 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.

This bill would delete that provision.

Vote: majority. 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 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.
10 (2) Behavior specified in paragraph (1) that is committed in the
11 presence of a referee, while actually engaged in a trial or hearing,

1 pursuant to the order of a court, or in the presence of any jury while
2 actually sitting for the trial of a cause, or upon an inquest or other
3 proceeding authorized by law.

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

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

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

11 ~~(6) Willful disobedience by a juror of a court admonishment~~
12 ~~related to the prohibition on any form of communication or research~~
13 ~~about the case, including all forms of electronic or wireless~~
14 ~~communication or research.~~

15 ~~(7)~~

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

19 ~~(8)~~

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

22 ~~(9)~~

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

28 ~~(10)~~

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

33 (b) (1) A person who is guilty of contempt of court under
34 paragraph (4) of subdivision (a) by willfully contacting a victim
35 by telephone or mail, or directly, and who has been previously
36 convicted of a violation of Section 646.9 shall be punished by
37 imprisonment in a county jail for not more than one year, by a fine
38 of five thousand dollars (\$5,000), or by both that fine and
39 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), a
7 willful and knowing violation of a protective order or stay-away
8 court order described as follows shall constitute contempt of court,
9 a misdemeanor, punishable by imprisonment in a county jail for
10 not more than one year, by a fine of not more than one thousand
11 dollars (\$1,000), or by both that imprisonment and fine:

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

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

15 (C) An order issued as a condition of probation after a conviction
16 in a criminal proceeding involving elder or dependent adult abuse,
17 as defined in Section 368.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 subdivision, until all separate property of the offending spouse is
2 exhausted.

3 (5) A person violating an order described in subdivision (c) may
4 be punished for any substantive offenses described under Section
5 136.1 or 646.9. A finding of contempt shall not be a bar to
6 prosecution for a violation of Section 136.1 or 646.9. However, a
7 person held in contempt for a violation of subdivision (c) shall be
8 entitled to credit for any punishment imposed as a result of that
9 violation against any sentence imposed upon conviction of an
10 offense described in Section 136.1 or 646.9. A conviction or
11 acquittal for a substantive offense under Section 136.1 or 646.9
12 shall be a bar to a subsequent punishment for contempt arising out
13 of the same act.

O