

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT LEG13-02

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Title	Action Requested
Proposed Legislation: Criminal Procedure: Misdemeanor Contempt by Jurors	Submit comments by June 19, 2013
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Penal Code section 166	January 1, 2015
Proposed by	Contact
Criminal Law Advisory Committee	Arturo Castro, 415-865-7702
Hon. Tricia A. Bigelow, Chair	<a href="mailto:arturo.castro@jud.ca.gov">arturo.castro@jud.ca.gov</a>

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### Executive Summary and Origin

The Criminal Law Advisory Committee proposes amending Penal Code section 166 to delete a category of juror misconduct that constitutes misdemeanor contempt of court—the willful disobedience by a juror of a court admonishment against any communication or research about a pending trial, including electronic or wireless communications. The proposal was developed at the request of numerous criminal judges who expressed concerns that the provision inadvertently impairs the ability of courts to investigate whether juror misconduct occurred, increasing the risk of mistrial and reversal on appeal.

### Background

Penal Code section 166 generally proscribes specific conduct that may constitute misdemeanor contempt of court. Section 166 was recently amended to add subdivision (a)(6), which prohibits the following conduct: “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.”

This subdivision was added by Assembly Bill 141 ([Fuentes] Stats. 2011; ch. 181), which also requires courts to admonish jurors against any conversation, research, or dissemination of information regarding a pending trial, including all forms of electronic and wireless communication. The bill also amended Code of Civil Procedure section 1209 to render the same conduct punishable as civil contempt.

The bill was supported by the Judicial Council and designed to address concerns that use of electronic devices by jurors during trials poses an increasingly significant threat to the integrity

*The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.*

of the trial process. Penal Code section 166(a)(6), in particular, was designed to provide courts with sufficient tools to enforce the admonishments as necessary.

### **The Proposal**

Courts are required to investigate allegations of misconduct by jurors during trials to ensure the integrity of the proceedings. To determine whether misconduct involving the use of an electronic device has occurred, courts must often question jurors because, in many instances, only jurors can explain the subject and purpose of the communication.

By rendering electronic communication about the trial a crime, Penal Code section 166(a)(6) inadvertently impairs the ability of the court to determine if misconduct occurred. Because a prosecutor may charge the juror with a misdemeanor, questions posed by the court may implicate the juror's constitutional rights against compelled testimony and self-incrimination. The implication of the juror's constitutional rights inadvertently thwarts the court's ability to conduct an informal inquiry into the juror's alleged use of electronic communications during the trial.

The committee believes that the proper remedy for this category of juror misconduct is civil—not criminal—contempt of court. Although civil contempt proceedings raise similar constitutional implications, the authority to initiate civil contempt proceedings lies exclusively with the court. Thus, if the court believes that questioning the juror is necessary to preserve the integrity of a pending trial, the court could first offer the juror immunity from civil contempt sanctions in exchange for a formal inquiry on the record. This process would ensure that the conduct of the trial, including any inquiry of a juror into the use of electronic communications during the trial, remains squarely within the province of the court.

Courts need to have the ability to inquire into juror activities that may bear on the outcome of the trial without implicating the juror's constitutional rights because of the possibility of criminal contempt of court sanctions. Without the ability to question the juror at all, the court may be unable to determine if misconduct occurred, which jeopardizes the integrity of the proceedings and increases the risk of mistrial and reversal on appeal. This proposal is designed to eliminate this unforeseen consequence by deleting recently added subdivision (a)(6) from Penal Code section 166.

### **Alternatives Considered**

None.

### **Implementation Requirements, Costs, and Operational Impacts**

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal is designed to reduce the risk of mistrials and reversals on appeals.

## Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal reasonably achieve the stated purpose?
- Would this proposal have an impact on public's access to the courts? If a positive impact, please describe. If a negative impact, what changes might lessen the impact?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide costs savings? If so, please quantify. If not, what changes might be made that would provide savings, or greater savings?
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems.
- Would twelve months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- If this proposal would be cumbersome or difficult to implement in a court of your size, what changes would allow the proposal to be implemented more easily or simply in a court of your size?

### Attachments and Links

The text of the proposed legislation is attached at page 4.

Penal Code section 166 would be amended as follows:

(a) Except as provided in subdivisions (b), (c), and (d), a person guilty of any of the following contempts of court is guilty of a misdemeanor:

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

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

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

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

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

~~(6) 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.~~

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

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

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

~~(10)~~ Willful disobedience of the terms of an 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.

(b) \*\*\* (e)