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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 2338                      **Hearing Date:** August 7, 2020  
**Author:** Weber  
**Version:** May 4, 2020  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Courts: Contempt Orders*

### HISTORY

**Source:** Dawn M. Dell'Acqua

**Prior Legislation:** None applicable

**Support:** California Attorneys for Criminal Justice; Center for Employment Opportunities; San Francisco Financial Justice Project; Western Center on Law & Poverty, INC.

**Opposition:** None known

**Assembly Floor Vote:** 78 - 0

### PURPOSE

***The purpose of this bill is to provide an alternative punishment of probation or a conditional sentence for parties found in contempt of a family law court order or judgement.***

*Existing law* provides that a judgement or order made pursuant to the Family Code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary. (Family Code § 290.)

*Existing law* provides that an individual may be guilty of a criminal contempt misdemeanor if, among other things, that individual willfully disobeys the terms of any process or court order lawfully issued by a court. (Penal Code § 166 (a)(4).)

*Existing law* provides that an individual may be subject to a civil contempt proceeding if, among other things, that individual willfully disobeys any lawful judgment, order or process of the court. (Code of Civil Procedure (CCP) §1209 (a)(5).)

*Existing law* provides that if a court or judge, upon answer and evidence taken, adjudges that a person is guilty of civil contempt, allows a fine to be imposed on that person not exceeding \$1,000 or that person may be imprisoned not exceeding five days, or both. Additionally, allows the court to order the person to pay to the party initiating the contempt proceeding the reasonable attorney's fees and costs incurred by that party in connection with the contempt proceeding. (CCP § 1218 (a).)

*Existing law* provides that any party who is in contempt of a court order or judgment in a dissolution of marriage, dissolution of domestic partnership, or legal separation action is not permitted to enforce the order or judgment, other than a child or spousal support order. (CCP § 1218 (b).)

*Existing law* provides that, in any court action in which a party is found in contempt of court for failure to comply with a court order pursuant to the Family Code, the court must order the following:

- a) On a first finding of contempt, order the contemner to perform community service of up to 120 hours, or to be imprisoned up to 120 hour (5 days), for each count of contempt.
- b) On the second finding of contempt, order the contemner to perform community service of up to 120 hours, in addition to ordering imprisonment of the contemner up to 120 hours, for each count of contempt.
- c) On the third or any subsequent finding of contempt, order both of the following: the contemner must (i) serve a term of imprisonment of up to 240 hours and perform community service of up to 240 hours, for each count of contempt; and (ii) pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to the community service program. (CCP § 1218 (c).)

*Existing law* defines "probation" and "conditional sentence." States that it is the intent of the Legislature that both conditional sentence and probation are authorized whenever probation is authorized in any code as a sentencing option for infractions or misdemeanors. (Penal Code § 1203.)

*This bill* clarifies that in lieu of an order of imprisonment, community service, or both, for a person found in contempt for failure to comply with a court order under the Family Code, the court may grant probation, as defined, or a conditional sentence, as defined, for a period not to exceed one year upon a first finding of contempt, a period not to exceed two years upon a second finding of contempt, and a period not to exceed three years upon a third or any subsequent finding of contempt.

## COMMENTS

### 1. Need for This Bill

According to the author:

The proposed revision to CCP §1218 addresses the existing discrepancies by allowing judicial officers to impose probation, rather than jail in contempt actions falling within the purview of the Family Code. The revision also refers to the definition of probation as set forth in PC §1203, which is that unsupervised probation or summary probation is permissible, which clarifies the Judicial Council's reference on the FL-415 to "probation." In addition, the revision clarifies Paragraph a of the existing statute to relate only to any other civil matters that do not fall within the Family Code, whereas, the reading of the current statute does not make that clear. Finally, the revision places

limitations on the term of probation for such offenses and the State's overall goal of reducing prison population.

## 2. Power of contempt

Courts have the power of contempt in order to enforce orders. The U.S. Supreme Court declared that the "power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice." (*Ex parte Robinson* (1874) 86 U.S. 505, 510.)

As a general rule, a criminal contempt proceeding, which requires procedural processes and due process rights like an ordinary criminal prosecution, including the right to counsel and right to a jury trial if the case carries a long enough possible sentence, is designed to punish the person found to be in contempt of court. A civil contempt proceeding, by contrast, is generally designed to seek compliance. A criminal contempt proceeding can be brought under Penal Code Section 166, while a civil contempt proceeding is governed by Code of Civil Procedure Sections 1209 – 1222.

To be found in contempt of court for failure to comply with a court order, the order must be valid and in writing (*Wilson v. Superior Court* (1987) 194 Cal.App.3d 1259, 1273; *In re Marcus* (2006) 138 Cal.App.4th 1009, 1015). In addition, the party must have knowledge of the order (*Phillips v. Superior Court* (1943) 22 Cal.2d 256, 258), the ability to comply with it (*Anderson v. Superior Court* (1998) 68 Cal.App.4th 1240, 1245), and have willfully failed to comply (*Coursey v. Superior Court* (1987) 194 Cal.App.3d 147, 156).

## 3. Civil contempt of court

Once the court finds that an individual is in contempt for failure to comply with a court order under the Family Code, the court must order the punishment listed as follows:

- On a first finding of contempt, the person held in contempt must perform community service of up to 120 hours *or* be imprisoned up to 120 hours, for each count of contempt.
- On the second finding of contempt, the person held in contempt must perform community service of up to 120 hours *and* be imprisoned up to 120 hours, for each count of contempt.
- On the third or any subsequent finding of contempt, that the person held in contempt must serve a term of imprisonment of up to 240 hours, perform community service of up to 240 hours, for each count of contempt, and pay an administrative fee, not to exceed the actual cost of the contemner's administration and supervision, while assigned to the community service program.

There is no alternative to the above punishment, which does not necessarily ensure compliance.

In an unpublished opinion, the Court of Appeal for the Fourth District overturned a trial court's attempt to find a parent in contempt for failure to comply with a child custody order by placing the parent on probation. The court found, in dicta, that the family court did not have jurisdiction to place the parent on probation:

The punishment for contempt is statutory; it may be punished by a fine not exceeding \$1000 or imprisonment not exceeding five days, or both (Code Civ. Proc., § 1218) or, in the case of an omission to perform an act, the sentence may be punishment by imprisonment until the act is performed (Code Civ. Proc., § 1219). The statutory punishment for contempt does not allow for probation. (*Bunyard v. Superior Court* (2012) 2012 Cal. App. Unpub. LEXIS 8783, 27.)

#### **4. Probation for an individual who fails to comply with a family court order**

The bill leaves the existing mandatory punishments for failure to comply with a family court order under CCP Section 1218 (c) in place: community service and imprisonment. However, it provides an alternative punishment that may be used in lieu of the existing punishment: probation or a conditional sentence for a period not to exceed one year upon a first finding of contempt, a period not to exceed two years upon a second finding of contempt, and a period not to exceed three years upon a third or any subsequent finding of contempt. The bill defines “probation” and “conditional sentence” as they are under Section 1203 (a) of the Penal Code:

- “Probation” is defined to mean “the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer.”
- “Conditional sentence” is defined to mean “the suspension of the imposition or execution of a sentence and the order of revocable release in the community subject to conditions established by the court without the supervision of a probation officer.”

The intent is that probation or a conditional sentence will increase compliance with the order. The punishment is suspended as long as the party found in contempt complies with the court order. This bill does not prevent imposition of the existing punishment of imprisonment, community service, or both.

#### **5. Argument in Support**

The California Attorneys for Criminal Justice (CACJ) writes:

Currently, a court may only order community service, imprisonment, or both when a person is found in contempt for failure to comply with the family court. This can subject individuals to significant imprisonment time, especially if they are charged with multiple counts of contempt. CACJ members have seen examples of individuals being charged with multiple counts of contempt for failure to pay child support, which can add up a lot of time. It would be more prudent to allow these individuals to be on probation, allowing them to work and come up with the money they owe.

AB 2338 simply expands the options available to a judge pursuant to the family code. Probation can and often is a better alternative than imprisonment in these circumstances. While we would like to see the maximum period of probation not exceed one year, this bill still moves the law in the right direction.