

Date of Hearing: April 28, 2021

**ASSEMBLY COMMITTEE ON APPROPRIATIONS**  
Lorena Gonzalez, Chair  
AB 764 (Cervantes) – As Amended March 24, 2021

Policy Committee: Public Safety

Vote: 8 - 0

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

**SUMMARY:**

This bill expands the existing crime of willful contempt of court where the defendant has a prior conviction for stalking, which is punished by up to one year in county jail, to include instances where a person willfully contacts a victim by social media, electronic communication, or electronic communication device.

**FISCAL EFFECT:**

Possibly significant non-reimbursable annual costs in the tens of thousands to low hundreds of thousands to counties for increased incarceration costs. County jails are increasingly overcrowded since the enactment of the Public Safety Realignment Act of 2011 (Realignment Act). Jail overcrowding has resulted in additional state funding for new jail space, court-mandated population caps and increased rates of inmate violence and death. Although new and expanded crimes are not reimbursable state mandates, overcrowding in county jails creates cost pressure on the GF because the state has historically granted new funding to counties to offset overcrowding caused by the Realignment Act.

**COMMENTS:**

1) **Purpose and Background.** According to the author:

Existing law provides only incomplete protection to survivors to whom the courts have provided a protective order against a convicted perpetrator of stalking. Assembly Bill 746 will close this loophole by adding social media and other electronic means of communication to the statutory list of prohibited forms of contact. This will provide survivors of stalking who have a court-ordered protective order with the security they both need and deserve.

Penal Code section 166, subdivision (a) punishes a person who willfully violates a restraining order by contacting the victim to a maximum of six months in county jail and a fine of not more than \$1,000. Penal Code section 166, subdivision (b) punishes any person who willfully violates a restraining order by contacting the victim in person, by phone or mail and has previously been convicted of stalking to a maximum of one year in county jail and a fine of \$5,000. This bill expands Penal Code section 166, subdivision (b) by clarifying that a person who willfully violates a restraining order after being convicted of stalking by contacting the victim via electronic means may also be sentenced to up to one year in the county jail.

2) **Argument in Support.** According to the San Diego County District Attorney's Office:

Stalking, by its very nature, involves repeated behavior of unwanted contacts that are threatening to the victim's safety and that the perpetrator intentionally knows is threatening to that person. Often times the contacts, violations, or threats are made via social messaging and social media platforms, such as through Facebook, Instagram, Snapchat, other similar applications, or text messages or email. While Penal Code section 166(b)(1) specifically addresses behaviors that are violations of the court order, the use of the terms: contacting a victim "by telephone or mail" does not reflect current society. This legislation will clarify and reflect the more current means of communication in order to better protect stalking victims from further contact and harassment from their stalkers.

**Analysis Prepared by:** Kimberly Horiuchi / APPR. / (916) 319-2081