



## SB-349 Courthouses: Privilege from civil arrest. (2017-2018)

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CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

**SENATE BILL**

**NO. 349**

**Introduced by Senator Lara**

**(Principal coauthors: Assembly Members Chiu, Gonzalez Fletcher, and Mark Stone)**

**(Coauthors: Senators Atkins, Bradford, Mitchell, Pan, Skinner, and Wiener)**

**(Coauthors: Assembly Members Bonta, Caballero, Chu, Gloria, Jones-Sawyer, Kalra, Quirk, Reyes, Rubio, Santiago, Thurmond, and Ting)**

**February 14, 2017**

An act to add Section 43.54 to the Civil Code, and to amend Section 177 of the Code of Civil Procedure, relating to courthouses.

### LEGISLATIVE COUNSEL'S DIGEST

SB 349, Lara. Courthouses: Privilege from civil arrest.

Existing law prohibits specified conduct inside public buildings owned and occupied, or leased and occupied, by the state. Existing law provides that a judicial officer has the power to preserve and enforce order in judicial proceedings and to compel obedience to judicial orders, as specified.

This bill would clarify the power of judicial officers to prevent activities that threaten access to courthouses, including by protecting the privilege from arrest. The bill would provide that no person shall be subject to civil arrest in a courthouse while attending a court proceeding or having legal business in the courthouse, and that a violation of these provisions constitutes contempt of court. The bill would also authorize the Attorney General to bring a civil action to obtain equitable and declaratory relief for a violation of this section, and it would allow a party in a successful action to enforce liability for a violation of this section to recover court costs and reasonable attorney's fees.

By expanding the scope of 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 Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

### **SECTION 1.** The Legislature finds and declares the following:

(a) The threat that persons may be subject to civil arrest while in California's courthouses or attending judicial proceedings is a threat to the proper functioning of California's government and to the rights enjoyed by all Californians.

(b) The United States Supreme Court has recognized that "the unhindered and untrammelled functioning of our courts is part of the very foundation of our constitutional democracy," and that a state may therefore adopt measures necessary and appropriate to safeguarding the administration of justice by its courts. (United States v. Grace (1983) 461 U.S. 171, 178.)

(c) The United States Supreme Court has likewise acknowledged that a state has "the power to preserve the property under its control for the use to which it is lawfully dedicated," and that "[t]here is little doubt that in some circumstances the Government may ban the entry on to public property that is not a 'public forum' of all persons except those who have legitimate business on the premises." (United States v. Grace (1983) 461 U.S. 171, 178.)

(d) Accordingly, California may regulate entry and access to the courts, and activity on courthouse premises and vicinities, that threatens the fair and nondiscriminatory administration of justice or the openness of courts.

(e) Proceedings in California's courts in both criminal and civil matters have historically been open to the public, and this presumption of openness has been codified under the Code of Civil Procedure section 124, which provides that, with certain exceptions, "the sittings of every court shall be public."

(f) The United States Supreme Court has said that, "courts of justice ought everywhere to be open, accessible, free from interruption, and to cast a perfect protection around every [person] who necessarily approaches them." (Stewart v. Ramsay (1916) 242 U.S. 128, 129.)

(g) Public access to courts serves a vital role in the functioning of California's judicial process and the preservation of our republican form of government, which is a "government of laws"—laws for California and Californians.

(h) Public scrutiny of judicial proceedings allows the public to observe the functioning of their government and determine whether justice is meted out fairly.

(i) Access fosters an appearance of fairness, promoting public confidence in, and respect for, the judicial process.

(j) Providing this transparency also serves as a critical check on the use and abuse of judicial power—a check that is essential to our structure of self-government.

(k) Public access to California's courts also enhances the truth-finding function of judicial proceedings, safeguarding their integrity.

(l) Accordingly, protecting persons from civil arrest while in California's courthouses or attending judicial proceedings is necessary to preserve the vital role served by public access to courts.

(m) Protecting persons from civil arrest while in California's courthouses or attending judicial proceedings is also necessary to ensure that litigants, witnesses, and others are not deterred from participating in such proceedings which are often necessary to

protect and vindicate rights guaranteed by the laws of California; that courts and parties have access to testimony and other evidence critical to factfinding; and that the dignity of judicial proceedings is upheld and not disturbed or diminished, all of which ensures California courts' ability to administer justice.

(n) Protecting persons from civil arrest while in California's courthouses or attending judicial proceedings is also necessary to preserve the individual rights of all Californians.

(o) Access to courts is part of the right to free speech enshrined in the California and United States constitutions, because access to government ensures that Californians' constitutionally protected right to discuss the government is the right to engage in informed discussion.

(p) Access, being vital, should be universal in so far as possible, to protect Californians' rights to equal protection of the laws—and California's right to benefit from the informed views of all.

(q) Access is necessary to preserve the right to petition government for redress, and to preserve numerous trial rights of individuals, including the right to be present, to present claims and defenses, to testify at trial, to call witnesses, to compulsory process, and of course to have a public trial.

(r) Civil arrests of persons in California's courthouses or attending judicial proceedings threatens all of the foregoing public and private values of public access as well as the core functions of California courts, and must be considered unreasonable and unlawful seizures whether undertaken by local, state, or federal officers.

(s) The provisions of this act are thus necessary to protect and preserve the integrity of the proceedings of the judicial branch of California government.

(t) Courts being essential to a republican form of government and to the functioning of California's government, California has the reserved power under the Tenth Amendment to protect their proceedings, as well as the obligation under the United States Constitution to preserve California's republican form of government.

(u) A person who is arrested or detained in violation of this act may, like any other person unlawfully arrested or detained, seek a writ of habeas corpus.

**SEC. 2.** Section 177 of the Code of Civil Procedure is amended to read:

**177.** A judicial officer shall have power:

1. To preserve and enforce order in the officer's immediate presence, and in proceedings before the officer, when the officer is engaged in the performance of official duty;
2. To compel obedience to the officer's lawful orders as provided in this code;
3. To compel the attendance of persons to testify in a proceeding before the officer, in the cases and manner provided in this code;
4. To administer oaths to persons in a proceeding pending before the officer, and in all other cases where it may be necessary in the exercise of his powers and duties.
5. To prevent activities that threaten access to state courthouses and court proceedings, and to prevent interruption of judicial administration, including protecting the privilege from civil arrest at courthouses and court proceedings.

**SEC. 3.** Section 43.54 is added to the Civil Code, to read:

**43.54.** (a) A person shall not be subject to civil arrest of any type in a courthouse while attending a court proceeding or having legal business in the courthouse.

(b) This section does not narrow, or in any way lessen, any existing common law privilege.

(c) A violation of this section is a contempt of the authority of the court as provided in Title 5 of Part 3 of the Code of Civil Procedure.

(d) The Attorney General may bring a civil action in the name of the people to obtain appropriate equitable and declaratory relief if the Attorney General has reasonable cause to believe that a violation of this section has occurred.

(e) A party in a successful action to enforce liability for a violation of this section may recover court costs and reasonable attorney's fees.

**SEC. 4.** The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that be given effect without the invalid provision or application.

**SEC. 5.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.