

# Calif. jurors misusing Internet could face fines

By Sudhin Thanawala, AP

Jurors who threaten to derail trials by researching them on Google or posting comments about them on Twitter are often dismissed with nothing more than a tongue-lashing from a judge.

But that may soon change in California. Legislation supported by state court officials would authorize judges in some counties to fine jurors up to \$1,500 for social media and Internet use violations, which have led to mistrials and overturned convictions around the country.

As jurors and judges have become more technology savvy in recent years, the perils of jurors playing around with their smartphones have become a mounting concern, particularly in technology-rich California. A 2011 state law made improper electronic or wireless communication or research by a juror punishable by contempt.

Supporters of the latest California measure say a potential fine would give teeth to existing prohibitions against social media and Internet use and simplify the process for holding wayward jurors accountable.

"It's disruptive of the judicial process, and there ought to be a fairly simple and convenient way for a judge to sanction a juror based on the order that the judge has given," said Assemblyman Rich Gordon, D-Menlo Park, who authored the legislation.

But critics question whether it will have any practical effect on jurors who are constantly on sites such as Facebook and Twitter and suggest judges vet the social media activity of

potential jurors before seating them.

“If you have an Internet addict who just can’t psychologically stop, you may want to excuse that person,” said Paula Hannaford-Agor, who studies juries at the National Center for State Courts.

Brian Walsh, a judge in the Silicon Valley county of Santa Clara, said a fine could also change the dynamic between judges and juries.

“You want to present the jurors’ obligations to serve as an inviting opportunity to participate in the democratic process,” he said. “One could consider it counterproductive to be laying out all the penalties a juror can incur if they blow it.”

It is not clear exactly how many times juror social media or Internet use has affected trials. But anecdotal evidence suggests it is more than sporadic.

Eric Robinson, co-director of the Press Law and Democracy Project at Louisiana State University, said he used to track cases of juror social media or Internet misconduct using news accounts and other sources, but there were so many “it got to be more trouble than it was worth.”

“Those are the ones we hear about,” he said. “I’m sure it happens a lot more.”

An Arkansas court in 2011 threw out a death row inmate’s murder conviction in part because of Tweets. One said “Choices to be made. Hearts to be broken.” Another said “It’s over” less than hour before the jury announced its verdict.

A New Jersey appeals court in 2014 tossed the heroin possession conviction of two men after a juror was accused of searching the defendants’ names online and finding information about their criminal records.

A California appeals court in January cited juror Internet research in throwing out a fraud conviction against an investment firm CEO. The juror looked up a case involving an accountant the defendant blamed for the fraud.

Judges warn jurors against using social media and the Internet, and have the power to hold them in contempt if they violate those rules.

Greg Hurley, a lawyer who studies juries at the National Center for State Courts, said he is unaware of any state that fines jurors outside the contempt process.

California judges say the contempt process can be time consuming and is rarely invoked. A juror facing contempt has a right to an attorney, and the court could get bogged down in a lengthy formal hearing. So judges often opt to replace a wayward juror with an alternate to keep the proceedings moving.

“Historically, contempt has been something judges are told, ‘Don’t do,’” said J. Richard Couzens, a retired judge from California’s Placer County who now rotates through courts around the state. “You have to follow so many rules to institute a contempt process.”

Couzens, a member of the judicial committee that recommended the fines legislation, said he dismissed a juror years ago in a theft case for using a cellphone to figure out the value of a stolen item.

The fine would be similar to a traffic citation, making it relatively easy to dispense, Couzens said.

Judges could mention it when warning jurors against Internet and social media use, said Steve Austin, presiding judge in California’s Contra Costa County.

“At the very least with the sanction, it would be a good thing

you'd be able to tell the jurors," he added.

The legislation initially called for giving all state judges the power to fine wayward jurors. But it was scaled back after legislators expressed concern that it could dissuade potential jurors from serving.

The bill now authorizes the judiciary to select some county courts for a five-year pilot program, which a legislative analysis said could save participating courts money. It is before the full assembly.