SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 617	**Hearing Date:**	January 12, 2016
Author:	Block		
Version:	January 5, 2016		
Urgency:	No	**Fiscal:**	No
Consultant:	JRD		

Subject: ***Crimes***

HISTORY

Source: San Diego County District Attorney's Office

Prior Legislation: None Known

Support: Unknown

Opposition: California Civil Liberties Union; California Public Defenders Association; Legal Services for Prisoners with Children; Los Angeles County District Attorney's Office

PURPOSE

The purpose of this legislation is to allow a crime punishable as a misdemeanor to be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney, as specified.

Existing law states that except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars ($1,000), or by both. (Penal Code § 19.)

Under existing law no person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to subdivision (h) of Section 1170 or a conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year, as specified. (Penal Code § 19.2.)

Under existing law when an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. (Penal Code § 19.4.)

Existing law states that an infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail. (Penal Code § 19.6.)

Existing law states that except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof. (Penal Code § 19.7.)

Existing law states that specified offenses are an infraction when:

- The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor; or

- The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(Penal Code §§ 17 and 19.8.)

This bill codifies legislative findings declaring that there are low-level misdemeanor offenses that, at the discretion of the prosecuting attorney, and based on the facts of the committed offenses, the lack of prior delinquency or criminality of the offender, and the lack of the offender's need for supervision, can be effectively prosecuted as infractions. And, that reducing these misdemeanors to infractions will not compromise public safety, and that diverting low-level misdemeanor offenders away from the criminal justice system and the stigma associated with it will avoid costs associated with protracted court involvement, jury trials, attorney representation, confinement, and probation involvement.

This bill states that except as provided by express statutory provisions providing an alternative punishment or procedure, a crime punishable as a misdemeanor with a maximum term of confinement not exceeding six months in jail may be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney.

This bill states that a crime charged as a misdemeanor shall not be reduced to an infraction except at the discretion of the prosecuting attorney pursuant to this section, or pursuant to express statutory provisions providing an alternative punishment or procedure. The prosecuting attorney may reduce the misdemeanor charge to an infraction pursuant to this section at any time before trial.

This bill states that a person charged with an infraction are subject to the provisions of penal code section 19.6 and cannot be punished by imprisonment, is not entitled to a trial by jury, and not entitled to have counsel appointed, unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail, as specified.

This bill states that a person charged with an infraction pursuant to this section shall have the right to elect that the charge be elevated to a misdemeanor and shall then have all of the rights, privileges, punishments, consequences, fines, penalites and disabilities afforded those charged with misdemeanors. And, the person charged must be notified of this right in writing or in person before a disposition on the charge is accepted.

This bill states that an offense that is charged as an infraction pursuant to this the section is punishable by a fine not exceeding two hundred and fifty dollars ($250), except where a lesser fine is expressly provided.

This bill limits the misdemeanors that can be reduced to infraction by stating that the section added by this legislation does not apply to the following:

- A misdemeanor firearms violation;
- A misdemeanor violation of the requirement to register pursuant to Chapter 5.5 (commencing with section 290) of Title 9 of Part 1;
- A misdemeanor violation of a crime for which a person is required to register pursuant to section 290.
- A misdemeanor child endangerment or child abuse violation;
- A misdemeanor elder abuse violation;
- A misdemeanor domestic violence violation;
- A misdemeanor driving-under-the-influence violation;
- A misdemeanor sex offense;
- An misdemeanor that is imposed by an initiative statute that does not permit a lesser punishment; or,
- A misdemeanor violation resulting in restitution being owed to a victim.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-

Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, Coleman v. Brown, Plata v. Brown (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

> SB 617 will reduce the number of people who enter the criminal justice system while continuing to hold them accountable for their offense. This measure will allow county prosecutors to charge certain non-serious, non-violent misdemeanors as infractions. It excludes serious misdemeanors including those involving sex crimes, child abuse, elder abuse, domestic violence, driving under the influence, and any offense involving a firearm.
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> California recently made major reforms to its criminal justice system by implementing AB 109, or realignment, in response to the prison overcrowding crisis. With the emphasis on keeping offenders close to home and highlighting re-entry services, realignment has increased the jail population and costs at the local level. SB 617 provides a tool to county district attorneys to weed out folks that do not belong in the criminal justice system.
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> This measure will also generate major savings to our court system which has seen major cuts to its operating budget due to the recent budget crisis. According to the Criminal Justice Statistics Center, there were over 750,000 misdemeanor arrests in

2013[1]. Averaging about $380 per case to administer, courts are spending roughly $500 million per year on misdemeanors alone[2]. In contrast, the average cost to administer an infraction is only about $35 per case[3]; significantly lower than a misdemeanor. This measure will reduce costs to the courts, by reducing the number of jury trials and cutting back on court administrative services. It also cuts down on the number of people incarcerated and on probation.

SB 617 is an important measure whose time has come. It will continue to hold offenders of minor offenses accountable and reserve our criminal justice system for those that need to be there.

2. Effect of Legislation

This legislation would allow a crime punishable as a misdemeanor, with a maximum term of confinement not exceeding six months in jail, to be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney. This legislation, however, does limit the misdemeanors that can be reduced. Specifically, misdemeanors involving a firearms violation, sex offender registration violation, child endangerment or child abuse violation, elder abuse violation, domestic violence violation, driving under the influence violation, or a sex offense, and misdemeanors requiring restitution, cannot be charged as an infraction.

According to the San Diego District Attorney's Office, who is the sponsor of this legislation:

> SB 617 allows a person charged with an infraction to elevate the charge back up to a misdemeanor, preserving their rights and privileges, such as the right to counsel and the right to jury trial.
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> The currently existing non-custodial penalties and fines associated with the minor offenses will mirror Penal Code 19.8 (b) by a fine not exceeding $250. In the case of indigent defendants, there is language to allow for judicial discretion to lower fines or forego imposition of the fines and require the defendant to perform community service.
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> SB 617 will allow the prosecutor to exercise his or her discretion at charging, the earliest phase of the prosecution, or at any time before trial, as soon as information regarding the facts of the committed offense, the lack of prior delinquency or criminality of the offender, and the lack of the offender's need for supervision become apparent and warrant prosecution of an infraction.
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> SB 617 will result in steering minor offenders away from the criminal justice system, and from the stigma associated with it. It will allow offenders to be held accountable while avoiding costs associated with protracted court involvement, jury trials, attorney representation, confinement, and probation involvement, all of which are inapplicable to infractions.

[1] Criminal Justice Statistics Center, Office of the California Attorney General Kamala Harris
[2] Legislative Analyst Office, California's Criminal Justice System: A Primer, 2013. Page 36
[3] Legislative Analyst Office, California's Criminal Justice System: A Primer, 2013. Page 36

The most recent amendments to the legislation provide that an offense that is charged as an infraction pursuant to this the section is punishable by a fine not exceeding $250, except where a lesser fine is expressly provided, and, additionally, require that the person being charged with an infraction be notified in writing or in person that they have the ability to have the matter proceed as a misdemeanor.

This legislation, as amended, is more in line with the current "wobblette" code sections, than the prior version. The primary differences are that, under the existing wobblette section: (1) the decision to reduce the misdemeanor to an infraction occurs at arraignment, and (2) the court, with the consent of the defendant, may determine that the offense is an infraction. Members may wish to consider recommending an amendment making the code sections consistent.

3. Argument in Opposition

The Los Angeles District Attorney's office states:

> I regret to inform you that the preliminary position of the Los Angeles District Attorney's Office on Senate Bill 617, as proposed to be amended in committee, is Oppose, unless Amended. We would be happy to work with your office and the sponsor to attempt to address our concerns regarding the bill.
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> SB 617 would provide that, subject to specified exceptions, misdemeanors punished by a maximum term of confinement not exceeding 6 months in jail may be charged with a misdemeanor or infraction, in the discretion of the prosecution. The bill further provides that a misdemeanor shall not be reduced to an infraction, except at the discretion of the prosecution. Fines for crimes filed as or reduced to infractions would be limited to a maximum of $250.
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> Our initial concern is that SB 617 may not operate as intended. While the bill has express language stating that a misdemeanor cannot be reduced to an infraction without the consent of the prosecution, we believe that this language could be construed as unconstitutional under a separation of powers analysis. Once a charge is filed, the ability to reduce or dispose of a filed charge becomes a judicial function and cannot be conditioned upon the prosecution's approval. Manduley v. Superior Court (2002) 27 Cal. 4th 537,552; Esteybar v. Municipal Court for Long Beach Municipal Court (1971) 5 Cal. 3d 119, 122; People v. Tenorio (1970) 3 Cal. 3d 89, 94. Hence, we believe it is likely that an appellate court would construe SB 617 to permit the reduction of a misdemeanor to an infraction over the objection of the prosecutor.
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> We also have a serious concern about the limitation of the fine to $250. This could have the unintended consequence of limiting the effectiveness of many misdemeanors in the areas of environmental crimes, consumer protection and OSHA (worker safety protection). Most cases in these areas are against corporations that cannot be punished by incarceration. In the regulatory context, thousands of dollars in fines are often necessary to compel compliance and protect public health and safety. Moreover, some misdemeanors in these cases are punished as felonies if there is a prior misdemeanor conviction. This is a strong disincentive for a corporate criminal.

In general, a misdemeanor conviction has a deterrent effect upon corporations and its officers and employees. An infraction and a $250 fine would have little or no deterrent effect.

There are numerous six month misdemeanors in the codes. Many are for conduct that is arguably as serious as those punished by a longer term. An alternate approach might be to identify misdemeanors that are less serious but have resulted in a significant expenditure of court time and to add those crimes to the list of misdemeanors that can be filed as or reduced to an infraction under current law.

We look forward to working with you regarding Senate Bill 617.

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