
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 629 **Hearing Date:** May 12, 2015
Author: Mitchell
Version: April 6, 2015
Urgency: No **Fiscal:** No
Consultant: LT

Subject: *Crimes: Taking Person From Lawful Custody of Peace Officer*

HISTORY

Source: Mayor Kevin Johnson, Sacramento

Prior Legislation: None

Support: Association for Los Angeles Deputy Sheriffs; Association of Deputy District Attorneys; California State Conference of the National Association for the Advancement of Colored People; California Narcotic Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association; Los Angeles Probation Officers Union; AFSCME Local 685

Opposition: None known

PURPOSE

The purpose of this bill is to eliminate the term ‘lynching’ from the Penal Code.

Existing law provides that “the taking by means of a riot of any person from the lawful custody of any peace officer is a lynching.” (Penal Code § 405a.)

Existing law provides that “every person who participates in any lynching is punishable by imprisonment, as specified, for two, three, or four years.” (Penal Code § 405b.)

This bill would amend this section to read, “A person who participates in the taking by means of a riot of another person from the lawful custody of a peace officer is guilty of a felony, punishable by imprisonment, as specified, for two, three, or four years.”

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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. Stated Need for This Bill

The author states:

SB 629 amends CA Penal Code § 405 (a) & (b) to eliminate the reference to ‘lynching’ as used to define the taking by means of a riot of any person from the lawful custody of a peace officer. It does **not** reduce the penalties associated with this act. The term “lynching” carries with it cultural significance and its current usage in code is contrary to what the vast majority of people understand the crime of lynching to entail. Lynching is defined in all dictionaries searched by the author’s office as the practice of killing a person or people by extrajudicial mob action.

2. What This Bill Would Do

As noted in the author's statement, the term 'lynching' is understood as meaning an extrajudicial hanging. This bill would eliminate any confusion caused by the conflict between the statutory meaning, the taking of a person from the lawful custody of a peace officer by means of a riot, and the commonly accepted meaning of the term. This bill would not change the penalty.

3. Background

According to *History of Lynching in the United States*:

The lynching era encompasses roughly the five decades between the end of Reconstruction and the beginning of the Great Depression. During these years we may estimate that there were 2,018 separate incidents of lynching in which at least 2,462 African-American men, women and children met their deaths in the grasp of southern mobs, comprised mostly of whites. Although lynchings and mob killings occurred before 1880, notably during early Reconstruction when blacks were enfranchised, radical racism and mob violence peaked during the 1890s in a surge of terrorism that did not dissipate until well into the twentieth century (17).

In addition to the punishment of specific criminal offenders, lynching in the American South had three entwined functions:

- To maintain social order over the black population through terrorism;
- To suppress or eliminate black competitors for economic, political, or social rewards; and
- To stabilize the white class structure and preserve the privileged status of the white aristocracy (18-19).

Lethal mob violence for seemingly minor infractions of the caste codes of behavior was more fundamental for maintaining terroristic social control than punishment for what would seem to be more serious violations of the criminal codes (19).¹

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¹ <http://www.umass.edu/complit/aclanet/USLynch.html>