SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	AB 1941	**Hearing Date:**	May 15, 2018
Author:	Jones-Sawyer		
Version:	January 29, 2018		
Urgency:	No	**Fiscal:**	No
Consultant:	SC		

Subject: ***Misdemeanors***

HISTORY

Source: Conference of California Bar Associations

Prior Legislation: SB 1310 (Lara), Ch. 174, Stats. 2014

Support: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association; Drug Policy Alliance; Ella Baker Center for Human Rights; Improve Your Tomorrow

Opposition: None known

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to allow the court to reduce an offense punishable as either a felony or a misdemeanor to a misdemeanor upon successful completion of probation, regardless of whether the court had previously imposed a sentence.

Existing law defines a felony as a crime that is punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail under the provisions of realignment. (Pen. Code, § 17, subd. (a).)

Existing law states that every other crime or public offense is a misdemeanor except those offenses classified as infractions. (Pen. Code, § 17, subd. (a).)

Existing law recognizes that certain crimes may be punished as either a felony or a misdemeanor. These crimes are commonly known as "wobblers." (Pen. Code, § 17, subd. (b).)

Existing law states that when a crime is punishable as either a felony or a misdemeanor, it is a misdemeanor for all purposes under the following circumstances:

- After a judgment imposing punishment other than imprisonment in state prison or imprisonment in the county jail under realignment;
- When the court, upon committing the defendant to the Division of Juvenile Justice, designates the offense to be a misdemeanor;

- When the court grants probation to a defendant without imposition of sentence, and at the time of granting probation or upon application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor;

- When the prosecutor files a complaint in court specifying that the offense is a misdemeanor; or,

- When at or before the preliminary hearing, or before filing an order holding the defendant to answer, the magistrate determines the offense is a misdemeanor. (Pen. Code, § 17, subd. (b).)

Existing law defines "probation" as "the suspension of the imposition or execution of a sentence and the order of conditional and revocable release in the community under the supervision of a probation officer." (Pen. Code, § 1203, subd. (a).)

Existing law authorizes the court to revoke, modify, or change its order of suspension of imposition or execution of sentence, at any time during the term of probation. (Pen. Code, § 1203.3, subd. (a).)

Existing law states that modification of a probationary sentence includes reducing a felony to a misdemeanor. (Pen. Code, § 1203.3, subd. (b)(1)(B).)

Existing law provides that, upon revocation and termination of probation, the court may, if the sentence has been suspended, pronounce judgment for any option within the period for which the defendant might have been sentenced. However, if the judgment was pronounced and the execution of the sentence was suspended, the court may revoke the suspension and order the judgment to be in full force and effect. (Pen. Code, § 1203.2, subd. (c).)

This bill allows the court to reduce an offense to a misdemeanor regardless of whether probation was granted without imposition of sentence.

COMMENTS

1. Need for This Bill

According to the author of this bill:

> Under existing criminal law, a court has the discretion to sentence a defendant charged with a "wobbler" (an offense that can be charged as either a felony or a misdemeanor) to supervised felony probation and then, if the defendant successfully completes probation, to reduce the offense to a misdemeanor. The possibility of such a reduction (which removes some of the stigma and harm to the defendant's future employment and housing prospects) motivates defendants to perform well on probation.
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> The problem is that under current law, if a judge wishes to motivate a defendant to perform well on probation by also suspending a prison sentence over their head as a condition of probation, the suspension of such a sentence bars the defendant from ever requesting a reduction in the future, regardless of how well the defendant performs on probation.

2. Reducing a Felony to a Misdemeanor

"Offenses punishable as felonies or misdemeanors are traditionally called 'wobblers.'" (*People v. Stevens* (1996) 48 Cal.App.4th 982, 987, fn. 12.) For those offenses, whether the crime is a felony depends upon the punishment imposed. (*People v. Cornell* (1860) 16 Cal. 187, 188.) Unless and until a misdemeanor sentence is imposed, the conviction for a wobbler remains a felony for all purposes. (*People v. Bozigian* (1969), 270 Cal.App.2d 373, 379.) Reduction of a felony to a misdemeanor enables a defendant to avoid many, but not all, of the consequences of conviction. For example, reduction of a felony to a misdemeanor does not relieve a defendant of the duty to register as a sex offender if the offense requires registration.

Penal Code section 17, subdivision (b) is the mechanism by which defendants can get a wobbler offenses reduced to a misdemeanor. The statute does not give the court the authority to reduce a straight felony to a misdemeanor. (*People v. Feyrer* (2010) 48 Cal.4th 426, 441-442.) Subdivision (b)(3) allows the judge to declare the offense a misdemeanor when the court grants probation to a defendant *without imposition of sentence*, and at the time of granting probation or upon application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor. (Emphasis added.)

When a defendant convicted of a wobbler is a granted probation by suspending the imposition of a sentence, "his or her offense is '*deemed* a felony' unless subsequently 'reduced to a misdemeanor by the sentencing court.'" (*People v. Feyrer*, *supra*, 48 Cal.4th at pp. 438-439, citations omitted.) "If ultimately a misdemeanor sentence is imposed, the offense is a misdemeanor from that point on, but not retroactively." (*Id*. at p. 439.)

3. Sentencing to Probation

Probation may be granted by the trial court by suspending the imposition of a sentence or imposing a sentence and suspending its execution. (*People v. Segura* (2008) 44 Cal.4th 921, 932.) When a judge grants probation he or she must specify whether the imposition of the sentence is suspended or whether the sentence is imposed, but execution of that sentence is suspended. (*People v. Howard* (1997) 16 Cal.4th 1081, 1084.) There is an important distinction between these two orders. If the defendant later violates probation, the sentencing options available to the judge who wants to revoke probation depend on whether the court originally ordered suspending the imposition of a sentence or imposing a sentence and suspending its execution. If probation was granted by suspending the imposition of a sentence, the judge revoking probation may choose from all of the initially-available sentencing options. On the other hand, if probation was granted by imposing a sentence and suspending its execution, the judge revoking probation lacks the power to change the previously imposed sentence. (*Ibid*.)

This bill would authorize the court to reduce a felony to a misdemeanor upon successful completion of probation regardless of whether the imposition of sentence was suspended or if the sentence was imposed but its execution was suspended. It would give similarly-situated defendants the same incentive to successfully complete probation. Reduction to a misdemeanor would not be automatic – the judge retains discretion to determine if the defendant's performance on probation warrants this benefit.

4. Argument in Support

According to the Conference of California Bar Association, the sponsor of this bill:

> AB 1941 will correct an inequity in current law that permits a court to use the promise of reducing a felony to a misdemeanor upon successful completion of probation as an incentive when no sentence is imposed, but doesn't permit it when the sentence is suspended.
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> Under current law, a person who is convicted of a felony for a crime that could be prosecuted either as a felony or a misdemeanor (a "wobbler"), but who is sentenced only to supervised probation, can subsequently have the conviction reduced from a felony to a misdemeanor upon petition if the person complies with all conditions of probation. This can be a powerful incentive for an individual to comply with all conditions of probation, because a felony conviction prevents a person from obtaining professional licenses, serving on a jury, obtaining a loan or getting a job.
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> However, if that person were to receive the same felony conviction but be given a suspended prison sentence, existing law prevents that person from applying for, and the court from granting, a reduction of that conviction to a misdemeanor. No matter how diligently the person complied with all terms of probation, he or she cannot remove the felony – and all its restrictions – from the record. This is not only inequitable, but it deprives the court of a powerful tool to incentivize defendants to successfully complete probation and rehabilitate themselves.
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> AB 1941 equalizes the treatment in these cases to give all persons who have been convicted of a felony but served no prison or jail time for the offense the opportunity to clear a felony conviction from their record. Making this relief available to persons whose sentence has been suspended [is] reasonable and consistent with the intent of the statute. It provides a defendant with a similar procedural history, (i.e. a suspended sentence and order for probation as opposed to simple probation), the additional incentive to successfully complete probation and earn a misdemeanor, and an opportunity to move forward in life as a rehabilitated individual.

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