
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 288 **Hearing Date:** April 14, 2015
Author: McGuire
Version: February 23, 2015
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Theft of Redwood Burls*

HISTORY

Source: Author

Prior Legislation: None known

Support: Humboldt County District Attorney; California District Attorney Association; California State Sheriffs' Association; Save the Redwoods League; Sonoma County Agricultural Preservation and Open Space District; Sonoma Land Trust; California Forestry Association; Mendocino/Humboldt Redwood Companies

Opposition: None known

PURPOSE

The purpose of this legislation is to make it a felony to “steal, take or carry away” a burl of a redwood tree without consent of the owner, as specified.

Existing law provides that every person who feloniously steals, takes, carries, leads, or drives away the personal property of another is guilty of theft, as specified. (Penal Code § 484.)

Existing law defines “grand theft” as any theft where the money, labor, or real or personal property taken or when the property is taken from the person of another is of a value exceeding \$950. (Penal Code §§ 487(a) and (c).)

Existing law provides that grand theft is committed when the money, labor, or real or personal property taken is of a value in excess of \$950, except as specified. (Penal Code § 487(a).)

Existing law provides that, notwithstanding the default value of \$950 to establish grand theft, grand theft is committed in any of the following cases:

- When domestic fowls, avocados, or other farm crops are taken of a value exceeding \$250;
- When fish or other aqua-cultural products are taken from a commercial or research operation that is producing that product of a value exceeding \$250;
- Where money, labor or property is taken by a servant or employee from his or her principal and aggregates \$950 or more in any consecutive 12-month period;

- When the property is taken from the person of another; or
- When the property taken is an automobile, firearm, horse, mare, gelding, bovine animal, caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar, gilt, barrow, or pig. (Penal Code § 487(b).)

Existing law provides that grand theft is an alternate felony-misdemeanor, punishable by imprisonment in the county jail for up to one year, a fine of up to \$1,000, or both, or by a felony jail sentence of 16 months, two years or three years pursuant to Penal Code Section 1170, subdivision (h), and a fine of up to \$10,000. (Penal Code § 489(b).)

Existing law provides that, notwithstanding Section 487, or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has prior a conviction for a serious or violent felony or an offense requiring registration pursuant to 290, as specified. (Penal Code § 490.2(a).)

This bill would make it a felony, punishable by imprisonment pursuant to subdivision (h) of section 1170, or a fine up to ten thousand dollars, or both that fine and imprisonment, to steal, take or carry away, without consent of the owner, the burl of a redwood trees from the property of another.

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. Need for This Legislation

According to the Author:

California's majestic redwood trees – the tallest trees on the planet - are being targeted at an increased rate by poachers seeking to make an easy profit. These poachers will frequently butcher healthy ancient old growth redwoods, often clear cutting paths to the tree where the criminals then use chainsaws to either fell the redwood or hack out the valuable pieces of burl wood. When burls are chopped off it significantly injures the tree, and can actually kill these national treasures.

Poachers are able to sell the beautiful, hard wood burls, which are used to create decorative products and trinkets, at high prices. Because the burl of a redwood is becoming more and more rare, poaching on public lands is increasing in frequency and intensity. Currently, if caught and depending on the estimated value of the burl, the perpetrator is likely to be charged with a misdemeanor and no associated fine.

A redwood burl is the dormant, knobby material that grows at the base of the tree trunk which allows the redwood to grow new saplings and roots. They become visible once a tree is about 3 years old and they continue to grow over the life of the tree. Burls also develop on other parts of the tree in response to wounding, to cover the damage and protect the tree. While coast redwoods do produce seeds, they most commonly reproduce through sprouts that grow from burls.

A burl produces a marbled appearance once the wood is cut and polished. Depending on the size of the burl, it can be used to make anything from salt-and-pepper shakers, tables or bedroom head and footboards. While some burls are small others can weigh hundreds of pounds and can fetch hundreds to tens of thousands of dollars.

Only 5 percent of the remaining old growth redwoods still stand. According to Save the Redwoods “these trees are only naturally occurring today in a narrow band along the coast of Northern California. Since the 1840’s, 95 percent of the coast redwood forest has been cut down, and today only 120,000 acres of ancient coast redwood forest remain.” In 1978, the U.S. congress passed the Redwood Park expansion bill. The total cost of the expansion was about 1 billion.

The state has been aware of redwood burl poaching since the early 2000’s, however only recently started tracking the number of thefts due to the increasing frequency of incidents. Burl theft was at a recorded low in 2011 when only 4 cases were reported. However, burl theft sharply increased to 14 cases in 2012 and has been increasing ever since. Between 2010 and 2014, burl thefts in California State and National Parks have totaled over 106 incidents. However, this number could be much greater as these are only “reported” incidents.

Burl theft poses grave risks to ancient redwoods because poaching requires cutting into the tree base or completely cutting down the tree to remove the burl. Once the bark of the redwood is injured, the tree is instantly vulnerable to pests, fire, disease, and wind – any one of these variables can weaken and kill redwoods. Park officials and local District Attorneys believe there is a small contingent of individuals responsible for perpetrating the crime. Poachers are motivated by a lethargic local economy and costly methamphetamine habits, according to park officials, and they have been targeting even bigger burls and using increasingly audacious tactics. Last year, a redwood projected to be 400 years old was felled by thieves who wanted access to a 500-pound burl that was 60 feet up.

California’s redwoods are considered a national treasure. These towering trees bring tourists from around the world to enjoy their unparalleled grandeur. The United Nations lists Redwood National and State Parks as a world heritage site. These redwoods also play a critical role in carbon sequestration and helping the state achieve its greenhouse gas reduction targets.

SB 288 will deter potential thefts and make it easier for District Attorneys to prosecute by making the illegal take of a redwood burl a mandatory felony with an associated \$10,000 fine.

2. Redwood Burl Theft

This legislation would make theft of a redwood burl a felony, regardless of the value of the burl. The Humboldt County District Attorney states, in support of this legislation:

Currently a park ranger or other law enforcement officer investigating the theft of a burl must determine if its monetary value reaches the threshold amount of \$950. This requirement of establishing a dollar amount is difficult and frequently the “street value” of the burl does not come close to the true value of the wood, does not incorporate the risk of mortality to the damaged tree that remains, and does not reflect the value placed on our natural resources by the public.

The frequency of burl theft has increased in Northern California over the last few years; making the act a felony will aid in deterring this crime while reflecting the value of the redwoods to our community and people everywhere.

Aside from statements that the \$950 requirement makes prosecution more difficult, the Committee has not been provided with examples in which the \$950 threshold was an impediment to prosecution. Two recent burl cases in Humboldt County were successfully prosecuted as felony vandalism:

“(Danny E.) Garcia **pleaded guilty to felony vandalism** on May 27 and is waiting to be sentenced,” Humboldt County Assistant District Attorney Kelly Neel said on Monday. Garcia had also faced charges of felony grand theft and receiving stolen property. The sentencing will be on June 19 at 2 p.m. in courtroom five of the Humboldt County courthouse.

(*Man to be Sentenced in Burl Poaching Case*, Melissa Simon, Times-Standard News, June 20, 2014, <http://www.times-standard.com/general-news/20140609/man-to-be-sentenced-in-burl-poaching-case/2>; emphasis added.)

Orick resident Danny E. Garcia was sentenced Wednesday to 700 hours of community service and ordered to pay just over \$11,000 in restitution for hacking redwood burls off trees in the Redwood National and State Parks last year.

Garcia also received a suspended sentence of one year in jail, four years probation — with a credit of 170 days served — and he must not own or possess a firearm for yelling at customers and telling them he was going to kill them at an Orick cafe in January 2012.

Humboldt County Superior Court Judge Joyce Hinrichs said the intent of the sentence was to change Garcia's history of getting by after making offenses, and to have a chance for change.

“This has had a real impact on you and your family and I think you having lived somewhere else has had an impact, and I'm hoping there will be meaningful change,” Hinrichs said during the sentencing.

There were no additional statements by Humboldt County Public Defender Jennifer Dixon or Humboldt County Deputy District Attorney Elan Firpo during the sentencing. Garcia only spoke to answer yes-or-no questions asked by Hinrichs on whether or not he understands the sentence and his right to appeal.

The case gained national attention after park officials released photos of the damage caused to the trees. Hinrichs said that many people living on the North Coast forget to appreciate the beauty of the redwoods and told Garcia he was opportunistic when he damaged the trees.

“I hope this sentence will keep people from doing this,” Hinrichs said in reference to those who purchase burls without proof of proper harvesting and those who cut the burls.

National Park Service Ranger Jeff Denny told the Times-Standard earlier this month that Garcia's arrest in May ended a year-long poaching investigation that began in April 2013 after park rangers received a tip leading them to a store in Del Norte County. The investigation began when a researcher conducting a survey found an old-growth redwood tree with several cuts on it and burls hacked from the tree fallen on the ground around it, with the largest at 8 feet wide by 8 feet high and just under 2 feet thick. Park rangers documented the tree and kept an eye on it.

“This is something that has been going on for a long time, and park staff is continuing to investigate the burl cuts, but we don't have any other suspects and haven't made any other arrests,” Denny said earlier.

Larry Morrow, a second suspect in the case, **pleaded guilty to felony vandalism** at a May 27 hearing and received a suspended sentence with three years probation with conditions of obeying all the laws and paying \$1,600 in victim restitution, according to court documents. Morrow remains in custody at the Humboldt County jail and is scheduled to be released on July 11, according to the jail.

Both Morrow and Garcia are required to stay out of Redwood National and State Parks, according to court documents.

(Burl Poacher Sentenced to Community Service, Melissa Simon, Times-Standard News, June 20, 2014, <http://www.times-standard.com/general-news/20140620/burl-poacher-sentenced-to-community-service/1>; emphasis added.)

3. Author's Amendments

In discussions concerning the scope and intent of this bill, the author intends to amend this bill as follows: (1) strike the current provisions of the legislation; (2) add a new vandalism section making defacement, damage, or destruction of a redwood tree in the amount of four hundred dollars or more, punishable by imprisonment pursuant to subdivision (h) of Section 1170 or in a county jail not exceeding one year, or by a fine of not more than ten thousand dollars, or if the amount of defacement, damage, or destruction is ten thousand dollars or more, by a fine of not more than fifty thousand dollars, or by both that fine and imprisonment; (3) add a subdivision to the new vandalism section stating that if the amount of defacement, damage, or destruction is less than four hundred dollars, vandalism is punishable by imprisonment in a county jail not exceeding one year, or by a fine of not more than one thousand dollars, or by both that fine and imprisonment; (4) add a subdivision to the new vandalism section increasing the misdemeanor fine if the person has a previous conviction for vandalizing a redwood tree; (5) add a subdivision to the new vandalism section that defines “damages;” (6) add an additional fine, not to exceed \$5,000, to pay for forest restoration; and, (7) add a new section stating that the statute of limitations for vandalism of a redwood tree, pursuant to the new vandalism section, begins running at the date of discovery.

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