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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 284                      **Hearing Date:** March 28, 2017  
**Author:** Nguyen  
**Version:** February 9, 2017  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal Procedure: Misdemeanor Citations*

### HISTORY

**Source:** Orange County Sheriff's Office

**Prior Legislation:** Proposition 47, approved by California voters in 2014  
AB 668 (Eng), Ch. 465, Stats. 2009  
AB 1209 (Ma), Ch. 278, Stats. 2009  
AB 1488 (Bates), Ch. 30, Stats. 2003

**Support:** California State Sheriffs' Association; Orange County Board of Supervisors

**Opposition:** American Civil Liberties Union; Courage Campaign

### PURPOSE

*The purpose of this bill is to keep in jail custody persons who have been arrested for misdemeanor offenses related to theft, burglary and shoplifting, rather than releasing those persons with a written notice to appear in court.*

*Existing law* requires nonviolent property crimes where the amount of property taken is \$950 or less to be punished as misdemeanors. (Proposition 47, approved by California voters on Nov. 4, 2014.)

*Existing law* requires a peace officer to release persons arrested for misdemeanors with a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court, except in specified circumstances. (Pen. Code, § 853.6.)

*Existing law* prohibits the release of persons arrested for specified violent crimes and crimes related to domestic violence and stalking. (Pen. Code, § 853.6, subd. (a)(2).)

*Existing law* specifies that if the following reasons exist a peace officer may choose to take into custody a person charged with a misdemeanor upon a written notice to appear in court:

- The person arrested was so intoxicated that he or she could have been a danger to himself or herself or to others;

- The person arrested required medical examination or medical care or was otherwise unable to care for his or her own safety;
- The person was arrested for a Vehicle Code violation and the person fails to present identification, refuses to give his or her promise to appear in court, or demands and immediate appearance before a magistrate;
- There were one or more outstanding arrest warrants for the person;
- The person could not provide satisfactory evidence of personal identification;
- The prosecution of the offense or offenses for which the person was arrested, or the prosecution of any other offense or offenses, would be jeopardized by immediate release of the person arrested;
- There was a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested;
- The person arrested demanded to be taken before a magistrate or refused to sign the notice to appear;
- There is reason to believe that the person would not appear at the time and place specified in the notice and the basis for this determination is specifically stated;
- The person is arrested for certain violent crimes requiring a hearing in open court before release. (Pen. Code, § 853.6, subd. (a)(2).)

*This bill* adds when a person is arrested for misdemeanor theft, burglary or shoplifting as one of the reasons an officer could use to take a person into custody rather than releasing the person upon a written notice to appear in court.

## COMMENTS

### 1. Need for This Bill

According to the author:

Over the last two years California has seen an increase in property crime. According to the FBI's Uniform Crime Report, in 2015 property crime was up 6.6% from the previous year. Additionally, 41 of the state's 58 counties saw increases in their property crime rates in 2015. Orange County saw a 23% increase in overall property crime over that same period of time. Property crime has significant impacts on the quality of life in a community. A greater prevalence of such crime poses a threat to both the safety and economic security of a community.

Under current law burglary, theft and shoplifting of property valued under \$950 is a misdemeanor. Those arrested for these crimes, per state law, are issued a citation and released. The law does not allow law enforcement the ability to remove these individuals from the community and book them into jail. As a result of this minimal consequence for property theft, those that perpetrate these crimes face no accountability for their actions. This problem is illustrated by stories from the field. In Stanton, CA sheriff's deputies responded to a shoplifting call at a grocery store. The subject arrested was an individual who had already been cited twice that day for the same crime. Unfortunately, even theft of items

of minimal value can add up to exponential losses for local businesses and residents.

Penal Code 853.6 section (g) and (i) lists specific exceptions where a misdemeanor offender may be held by a peace officer and booked into custody. As an example, a person who is arrested for driving under the influence can be taken into custody and booked into jail. Property crimes are not currently included in this list of exceptions and therefore violators of such laws are merely issued a citation and released for their offense. The proposed bill would amend Penal Code 853.6 to give law enforcement the option to book and hold violators of misdemeanor property crimes like burglary theft, and shoplifting. Removing these offenders from the community, even for a limited time, will make it more difficult to re-offend and remove the convenience of committing multiple crimes in a short period of time.

## **2. Existing Law on Own Recognizance Release of Misdemeanants**

Existing law states that any person who is arrested for a misdemeanor need not be taken before a magistrate and may be released on his or her promise to appear in court when required. (Pen. Code, § 853.6, subd. (a)(1).) This practice is commonly referred to as “cite and release” because it authorizes a person to be issued a citation and released on his or her own recognizance. This procedure is not allowed when a person has been arrested for certain crimes involving violence or if a person is arrested for a misdemeanor violation of a protective order involving domestic violence, as specified. In those cases, the arrestee must be taken before the court before he or she may be released from custody.

Additionally, an officer may choose not to release a misdemeanant in certain specified circumstances such as when the person is so intoxicated that he or she could be a danger or when the person has an outstanding warrant. Existing law includes as one of the enumerated reasons for nonrelease when there is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested. (Pen. Code, § 853.6, subd. (i)(7).)

This bill adds misdemeanor arrests of theft, burglary or shoplifting to the list of circumstances that would allow a peace officer to take a person into custody rather than releasing him or her on her own recognizance with a promise to appear in court at a later date. The proponents of this bill state that this change is needed because “[p]roperty crimes are not currently included in this list of exceptions” and “[r]emoving these offenders from the community, even for a limited time, will make it more difficult to re-offend and remove the convenience of committing multiple crimes in a short period of time.” However, it appears that an exception does exist to address this concern. An officer is explicitly allowed to keep a person in custody if “there is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered by release of the person arrested.” (Pen. Code, § 853.6, subd. (i)(7).) This applies to crimes against property and to those offenders who would repeat or resume their crimes if released. The application of this exception to a nonviolent property crime has been upheld. (*Burdett v. Reynoso* (N.D.Cal. Aug. 23, 2007, No. C-06-00720 JCS) 2007 WL 2429426 at \*66 [case involving a person who was arrested for vandalism after kicking over a motorcycle rather than being cited and released, the court found that officers were

reasonable in believing that there was a reasonable likelihood that the person would resume vandalizing the motorcycle if released].)

Should misdemeanor property crimes be added to the list of exceptions to the law requiring cite and release of most misdemeanants when it appears that an exception already exists to allow an officer to take such offenders into custody under certain circumstances?

### **3. Overview and Purpose of Proposition 47:**

Proposition 47, also known as the Safe Neighborhoods and Schools Act, was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. Specifically, the initiative reduced the penalties for possession for personal use of most illegal drugs to misdemeanors. The initiative also reduced the penalties for theft, shoplifting, receiving stolen property, writing bad checks, and check forgery valued at \$950 or less from alternate felony-misdemeanors to straight misdemeanors. Among the crimes reduced to misdemeanors by Proposition 47 "are certain second degree burglaries where the defendant enters a commercial establishment with the intent to steal. Such offense is now characterized as shoplifting as defined in new [Penal Code] section 459.5." (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879.) The measure limited the reduced penalties to offenders who do not have designated prior convictions for serious or violent felonies and who are not required to register as sex offenders. (See Legislative Analyst's Office analysis of Proposition 47 <<http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf>>.)

After the passage of Proposition 47, opponents of the initiative have claimed that there was an increase in crime which can be attributed to the initiative. However, reports evaluating the effects of the initiative have found that Proposition 47 had little to no effect on California's crime rates overall. (*California prison reform didn't cause crime increase, study finds*, KQED (Feb. 18, 2016) <<http://www.scpr.org/news/2016/02/18/57729/study-cas-prison-reform-didnt-cause-crime-increase/>> [as of Mar. 18, 2017].)

This bill would add the property crimes that were reduced under Proposition 47 as an exception to the general rule requiring misdemeanants to be cited and released. Considering that California voters have determined that these property crimes deserve misdemeanor penalties, would this bill frustrate the goals of Proposition 47 of reducing prison and jail spending on these low-level offenses?

### **4. Ongoing Concerns of Large Pretrial Populations in County Jails**

While Proposition 47 helped reduce the population in county jails, including the pretrial population by decreasing new bookings on arrests and warrants for Prop 47 offenses (see Mia Bird, et al., *How Has Proposition 47 Affected California's Jail Population?* Public Policy Institute of California (March 2016)), pretrial inmates still make up a majority of the jail population.

The most recently available data from the Board of State and Community Corrections shows that the majority of jail inmates are unsentenced, roughly 62 percent of the population. Data shows that California relies more heavily on pretrial detention than the rest of the United States. (Sonya

Tafoya, *Pretrial Detention and Jail Capacity in California*, Public Policy Institute of California (July 2015) <[http://www.ppic.org/main/publication\\_quick.asp?i=1154](http://www.ppic.org/main/publication_quick.asp?i=1154)> [as of March 15, 2017].) This dynamic strains the capacity of county jails making it necessary to release sentenced inmates, while people who have not been found guilty of any crimes sit in jail because they have not been released on their own recognizance and cannot afford to post bail.

The existing bail system has come under scrutiny because of claims that it does not promote public safety and it unfairly penalizes defendants who are poor while allowing defendants who have means to buy their way out of jail. (*California's Bail System Punishes the Poor, and It's Time for the Government to Do Something About It*, Skelton, Los Angeles Times (Jan. 16, 2017) <<http://www.latimes.com/politics/la-pol-sac-skelton-california-bail-system-20170116-story.html>> [as of Mar. 18, 2017].) The discussion of bail reform is currently ongoing as the Legislature considers bills that would implement major changes to the system (SB 10 (Hertzberg) and AB 42 (Bonta)) and the Judiciary has set up a working group to study current pretrial detention practices and provide recommendations for potential reforms. (*Chief Justice Appoints Working Group to Recommend Changes in Pretrial Detention* (Oct. 28, 2016) <<http://newsroom.courts.ca.gov/news/chief-justice-appoints-working-group-to-recommend-changes-in-pre-trial-detention>> [as of Mar. 18, 2017].)

This bill takes a category of offenders who are generally required to be released on their own recognizance and instead allows them to be held in jail where they can either wait several days to appear before the court or post bail. Considering that the current bail system is under scrutiny, should more persons be subjected to bail, especially those who commit low-level property crimes?

## 5. Argument in Support

According to the Orange County Board of Supervisors:

Current law categorizes burglary, theft, and shoplifting of property valued under \$950 as a misdemeanor. Those arrested for these crimes, per state law, are issued a citation and released. As a result of the minimal consequences, the perpetrators of these crimes face no accountability for their actions. In 2015, Orange County experienced a 23% increase in overall property crimes, which significantly impacts the quality of life in a community. Additionally, 41 of the state's 58 counties saw an increase in their property crime rates in 2015.

SB 284 would allow law enforcement to book and hold violators of misdemeanor property crimes. Removing these offenders for a limited amount of time may help deter offenders from reoffending, lower property crime rates and provide safer and more economically secure communities for our businesses and residents.

## 6. Argument in Opposition

The American Civil Liberties Union of California is opposed to this bill and writes:

Under current law, when a law enforcement officer arrests a person for a misdemeanor, the officer is generally required to cite and release the person under current law. (Penal Code, §853.6). Cite-and-release provides an efficient, cost-

saving, and equitable approach to addressing people have been arrested for crimes and do not need to be held in jail.

There are some eligibility and discretionary exceptions to the cite-and-release statute, though they are generally limited to crimes involving violence or violations of protective orders, emergencies or medical emergencies, and situations where the officer cannot identify a person. (Penal Code, §853.6, subdivisions (a)(2)-(3) & (i).).

Adding arrest for minor misdemeanors like shoplifting or check forgery to the list of situations under which a law enforcement officer may deny cite and release does not follow the spirit or purpose of the other exceptions. Rather, it will serve only to further overcrowd our jails, subject people arrested for minor crimes to the racial and economic inequities plaguing our current money bail system, and waste taxpayer dollars.

Moreover, requiring people arrested for these crimes to go to jail may actually decrease community safety. Research has shown that unnecessary pretrial detention has been found to increase crime. Detaining low-and moderate-risk defendants, even for just a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition.<sup>1</sup> When held even 2-3 days, low risk defendants are almost 40% more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours.<sup>2</sup> When held for 8-14 days, these defendants are 51% more likely to commit another crime within 2 years after completion of their cases than equivalent defendants held no more than 24 hours.<sup>3</sup>

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<sup>1</sup> Christopher T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, Laura and John Arnold Foundation (November 2013).

<http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*