
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 770 **Hearing Date:** April 18, 2017
Author: Glazer
Version: February 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Violent Felonies*

HISTORY

Source: Author

Prior Legislation: Proposition 57, passed by voters on November 8, 2016
SB 1269 (Galgiani), failed passage in Senate Public Safety (2016)
AB 1188 (Pan), failed passage in Assembly Public Safety (2011)
AB 60 (Jeffries), failed passage in Assembly Public Safety (2011)
AB 16 (Swanson), held in Assembly Appropriations' Suspense file (2009)
SB 440 (Denham), failed passage in Senate Public Safety (2009)
AB 303 (Spitzer), held in Assembly Appropriations' Suspense file (2007)
AB 426 (Galgiani), failed passage in Senate Public Safety (2007)
AB 2016 (Maze), failed passage in Assembly Public Safety (2004)
AB 863 (Horton), failed passage in Assembly Public Safety (2003)
AB 1838 (Hertzberg), Chapter 606, Stats. 2002
AB 2660 (Pacheco), failed passage in Senate Public Safety (2002)
AB 455 (Wyman), failed passage in Assembly Public Safety (2001)
Proposition 21, passed by voters March 7, 2000

Support: Alameda County District Attorney; Association of Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California Narcotic Officers Association; California Police Chiefs Association; Crime Victims United; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Peace Officers Research Association of California; Riverside Sheriffs' Association

Opposition: American Civil Liberties Union of California; California Attorneys for Criminal Justice; California Public Defenders Association; Courage Campaign; Friends Committee on Legislation of California

PURPOSE

The purpose of this bill is to create an additional "violent felony" list that includes 30 felonies that are not on the existing list in order to exclude offenders from Proposition 57's parole provisions and to impose a three-year sentencing enhancement.

Existing law provides a list of specific crimes defined as "violent felony" which includes the following:

- Murder or voluntary manslaughter;
- Mayhem;
- Rape or spousal rape accomplished by means of force or threats of retaliation;
- Sodomy by force or fear of immediate bodily injury on the victim or another person;
- Oral copulation by force or fear of immediate bodily injury on the victim or another person;
- Lewd acts on a child under the age of 14 years, as defined;
- Any felony punishable by death or imprisonment in the state prison for life;
- Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;
- Any robbery;
- Arson of a structure, forest land, or property that causes great bodily injury;
- Arson that causes an inhabited structure or property to burn;
- Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;
- Attempted murder;
- Explosion or attempted explosion of a destructive device with the intent to commit murder;
- Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;
- Explosion of a destructive device which causes death or great bodily injury;
- Kidnapping;
- Assault with intent to commit mayhem, rape, sodomy or oral copulation;
- Continuous sexual abuse of a child;
- Carjacking, as defined;
- Rape or penetration of genital or anal openings by a foreign object;

- Felony extortion;
- Threats to victims or witnesses, as specified;
- First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
- Use of a firearm during the commission of specified crimes; and,
- Possession, development, production, and transfers of weapons of mass destruction.

(Pen. Code, § 667.5, subd. (c).)

This bill creates a separate “violent felony” list that includes the following offenses:

- Assault with a deadly weapon, if a felony;
- Assault by means of force likely to produce great bodily injury, if a felony;
- False imprisonment;
- Discharging a firearm, if a felony;
- Domestic violence resulting in a traumatic condition, if a felony;
- Use of force or threats against a witness or victim of a crime, if a felony;
- Resisting a peace officer and causing death or serious injury, if a felony;
- Inflicting a cruel or inhuman corporal punishment or injury on a child, if a felony;
- A hate crime, if a felony;
- Elder or dependent adult abuse, if a felony;
- Unlawfully causing a fire that causes great bodily injury, if a felony;
- Rape where a person is unconscious or incapable of consenting or resisting, as specified;
- Sexual penetration where a person is unconscious or incapable of giving consent, as specified;
- Sexual battery that is against the will of the person, or if the person is seriously disabled or medically incapacitated, or if the person is unconscious, if a felony;
- Sodomy where a person is unconscious, incapable of giving consent as specified;
- Oral copulation where a person is unconscious, incapable of giving consent as specified;
- Abduction of a minor for purposes of prostitution;

- Child abuse or endangerment, if a felony;
- Human trafficking;
- Possessing, exploding, or igniting a destructive device;
- Violation of a protective order, if a felony;
- Revealing the name and address of a witness or victim, if a felony;
- Assault on a peace officer, if a felony;
- Assault on a school employee, if a felony;
- Battery committed against persons in certain professions, if a felony;
- Inciting a riot in state prison or a county jail, if a felony;
- Battery of a custodial officer;
- Assault with a deadly weapon or by force likely to produce great bodily injury by a person confined in the state prison; and,
- Escape or attempted escape by a person confined in the state prison.

Existing law imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code, § 667.5, subd. (a).)

This bill would add new violent felonies that would require a court to impose the three-year sentence enhancement.

COMMENTS

1. Need for This Bill

According to the author:

This bill adds crimes most Californians consider violent to the list of violent crimes in the penal code. The California Penal Code is outdated and requires improvements in order to correctly identify the severity of certain crimes. In the 2016 general election, California voters approved Proposition 57 in an effort to decrease the state's prison population by granting parole boards the power to consider the early release of prisoners who are serving time for "non-violent" crimes.

However, it is unclear what constitutes a "non-violent" offense that may lead to early release. As Prop 57 stands, crimes such as human trafficking, elder and dependent adult abuse, assault with a deadly weapon, and rape of an unconscious person may not be considered violent crimes.

2. Proposition 57

On November 8, 2016, California voters approved Proposition 57. Proposition 57 was known as the "Parole for Non-Violent Criminals and Juvenile Court Trial Requirements Initiative." The purpose of Proposition 57 was to increase rehabilitation services and decrease the prison population. It requires juvenile court judges, rather than district attorneys, to decide whether a juvenile will be prosecuted as adult. The initiative allows parole consideration for non-violent felons after the inmate has served the full base term of his/her primary offense, exclusive of enhancements or alternative sentences. It also authorizes sentence credits for rehabilitation, good behavior, and education. (Official Voter Information Guide, Proposition 57, California General Election, Nov. 8, 2016 < <http://voterguide.sos.ca.gov/en/propositions/57/analysis.htm> > [as of Mar. 17, 2017].)

Proposition 57 requires the California Department of Corrections and Rehabilitation (CDCR) to draft regulations on how the parole process will be implemented. The initiative specifies that early parole may only be given to persons who have committed non-violent offenses. However, the initiative does not specify what is considered a non-violent felony. Proponents of this legislation want the offenses included in this bill to be considered violent felonies for purposes of Proposition 57 so that inmates who have committed those crimes will not be eligible for early parole.

CDCR has submitted emergency regulations to the Office of Administrative Law on March 24, 2017. In addition to violent felonies, the regulations would make registered sex offenders, nonviolent third strikers who are serving life sentences, and nonviolent offenders who recently committed certain rule violations while in prison ineligible for the new parole consideration process under Proposition 57. (Legislative Analyst Office, *Implementation of Proposition 57* (April 6, 2017) <<http://www.lao.ca.gov/Publications/Report/3648>> [as of April 7, 2017].) The regulations are subject to public hearing and comment which will provide opportunities for stakeholders and the public to provide input. The emergency regulations are expected to go into effect starting July 1, 2017 and will be in place until permanent regulations are implemented.

The purpose of this bill is to prevent earlier parole provided by Proposition 57 for the offenses specified. However, considering that the regulations are expected to be implemented by summer of this year, should the Legislature pass legislation trying to make changes to the Proposition before the regulations are in effect? Any bills that attempt to do so will likely be vetoed.

3. Ongoing Concerns over 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.

The court also ordered California to implement the following population reduction measures in its prisons:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- Release inmates who have been granted parole by BPH but have future parole dates.
- Expand the CDCR's medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- Increase its use of reentry services and alternative custody programs.

(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).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court's population cap in December 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*.) The administration's most recent status report states that as "of December 14, 2016, 114,031 inmates were housed in the State's 34 adult institutions" which amounts to approximately 135.3% of design capacity, and 4,704 inmates were housed in out-of-state facilities. (Defendants' December 2016 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).

This bill would impede existing parole procedures that allow non-violent second strikers (persons whose sentence was doubled because of a prior strike) to be considered for parole after serving 50% of their sentence by expanding the type of offense that is considered violent.

This bill also expands the existing three-year prison prior term enhancement so that it would apply to additional offenses. Under existing law, if the defendant is charged with a violent felony and he or she has a prior conviction for a violent felony, the three-year enhancement would apply. This bill requires the three-year enhancement to be applied if the defendant had previously been convicted of one of the specified offenses if he or she served time in prison for that offense. Existing law contains a variety of enhancements that can be used to increase the

amount of time a defendant will serve. Enhancements can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence. Multiple enhancements can be imposed in a single case to significantly increase the person's sentence.

Although the state is currently in compliance with the court-ordered population cap, creating new enhancements, or expanding upon existing ones, will increase the length of time that an inmate must serve in prison and reverse the progress made in reducing the state prison population. This is contrary to the court's order for a durable solution to prison overcrowding.

4. This Bill Contains Alternate Felony-Misdemeanors and County Jail Felonies

This bill adds several offenses that are alternate felony-misdemeanors, also called "wobblers", to the list of violent felonies, if they were charged as felonies. The current violent felony list contains the most serious crimes under California law, including crimes such as murder, attempted murder, mayhem, forcible sex crimes, arson, and robbery. It currently does not contain any crimes classified as wobblers as they are not deemed to be of a serious enough nature if they can alternatively be charged as a misdemeanor.

This bill also contains felonies that are punishable by imprisonment in county jail, thus many people imprisoned on these felonies will serve time in county jail rather than state prison. The people who are in prison for these offenses are there because of a prior strike or sex offense that, pursuant to criminal justice realignment, requires any new felony sentence to be served in state prison. This bill adds offenses to be designated a violent felony presumably to preclude additional persons from Proposition 57's parole provisions. However, people convicted of those offenses and sentenced to county jail would not go before the parole board because parole only applies to state prison inmates.

5. Similar Legislation

There are several other bills that have been introduced this year to designate additional offenses as violent felonies. SB 652 (Nielsen) would define as a "violent felony" the unlawful possession of a firearm by a person previously convicted of a felony enumerated as a violent felony. SB 75 (Bates) would designate several offenses including some alternate felony-misdemeanors as violent felonies. AB 27 (Melendez) would add specified sexual offenses to the list of "violent felonies." AB 67 (Rodriguez) and AB 197 (Kiley) would add a number of specified felony offenses to the violent felonies list.

AB 67 (Rodriguez) was amended in the Assembly Committee on Public Safety to only add the crime of human trafficking to the list of violent felonies. AB 27 (Melendez) was also amended in the Assembly Committee on Public Safety to remove all wobbler offenses.

Some of the introduced legislation implicates Three Strikes sentencing by amending existing Penal Code section 667.5, subdivision (c). This bill creates a new subdivision (d) under section 667.5 and specifies that the listed offenses are violent felonies for purposes of section 667.5 only so it does not create new strikes for purposes of the Three Strikes law.

6. Argument in Support

The Los Angeles Police Protective League writes in support:

This bill will expand the definition of violent crime to include human trafficking, elder and dependent adult abuse, assault with a deadly weapon, rape, discharge of a firearm at an occupied building and certain crimes targeting peace officers and witnesses. This reclassification is particularly important in the wake of adoption of Proposition 57.

7. Argument in Opposition

According to the American Civil Liberties Union of California:

California law already provides significant punishments – many to be served in state prison – for offenses that would become violent felonies under SB 770. The punishments provided for many of these offenses are often further enhanced by myriad existing sentence enhancements. Governor Brown has criticized our state’s criminal laws, particularly the number of sentencing enhancements, observing:

“[t]here are now 400 separate enhancements that can add up to 25 years, each one of them, and now you have over 5000 separate criminal provisions.”

We believe that existing penalties are more than sufficient to punish the behavior contemplated by SB 770, and that adding new enhancements for 30 offenses will only add to our already complicated Penal Code without measurable benefit in the area of public safety. Research has shown that the severity of punishment does not generally have an increased effect on deterrence. Rather studies have concluded that certainty of punishment – that someone will be punished for a particular crime – has a greater deterrent effect than the severity of the punishment itself. Thus, adding new enhancements for offenses that can already be punished under California law will not deter future crime or make our communities any safer. (Fn. omitted.)

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