
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1395 **Hearing Date:** June 14, 2016
Author: Salas
Version: January 4, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Money Laundering: Criminal Activity: Lotteries and Gaming*

HISTORY

Source: Kern County District Attorney

Prior Legislation: AB 1439 (Salas), Chapter 592, Statutes of 2014

Support: California District Attorneys Association; California Police Chiefs Association; California State Sheriffs' Association; City of Oakland; San Diego District Attorney

Opposition: Legal Services for Prisoners with Children

Assembly Floor Vote: 69 - 2

PURPOSE

The purpose of this bill is to include misdemeanor gambling offenses within the money-laundering statutes, thus making the offenses punishable as felonies.

Existing law states that any person who conducts or attempts to conduct a transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding \$5,000, or a total value exceeding \$25,000 within a 30-day period, through one or more financial institutions with the specific intent to promote, manage, establish, carry on, or to facilitate such conduct, or who knows that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, as defined, is guilty of the crime of money laundering. (Pen. Code, § 186.10, subd. (a).)

Existing law defines "criminal activity" for purposes of money laundering to mean a felony. (Pen. Code, § 186.9, subd. (e).)

Existing law provides that a person convicted of money laundering may be punished by imprisonment in county jail for either a misdemeanor with a maximum of one year or by a felony sentence imposed pursuant to Penal Code § 1170, subdivision (h), by a fine of not more than \$250,000 or twice the value of the property transacted, whichever is greater. On a second or subsequent conviction, the maximum fine that may be imposed is \$500,000 or five times the value of the property transacted, whichever is greater. (Pen. Code, § 186.10, subd. (a).)

Existing law enhances the penalty of a person convicted of money laundering as follows:

- a) A mandatory additional term of one year to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$50,000 but is less than \$150,000;
- b) A mandatory additional term of two years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$150,000 but is less than \$1,000,000;
- c) A mandatory additional term of three years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$1,000,000 but is less than \$2,500,000; or
- d) A mandatory additional term of four years to be served consecutive to the punishment if the value of the transaction or transactions exceeds \$2,500,000. (Pen. Code, § 186.10, subd. (c)(1).)

Existing law provides that if sentence for a felony is imposed pursuant to Penal Code Section 1170, subdivision (h), the defendant shall serve his sentence in a county jail unless he or she has been convicted of a prior or current serious felony or a sex offense for which registration is required. (Pen. Code § 1170, subd. (h).)

Existing law prohibits lotteries, with exceptions for the California State Lottery, bingo for charitable purposes, and charitable raffles conducted by a non-profit, tax-exempt organization, and makes the violation of those crimes punishable as a misdemeanor. (Pen. Code, §§ 319-329.)

Existing law defines a "lottery" as any scheme for the disposal or distribution of property by chance, among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it, or for any share or any interest in such property, upon agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance whether called a lottery, raffle, or gift enterprise, or by whatever name the same may be known. (Pen. Code, § 319.)

Existing law states that every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, tan, fan-tan, seven-and-a-half, twenty-one, hokey-pokey, or any banking or percentage game played with cards, dice, or any device, for money, checks, credit, or other representative of value, and every person who plays or bets at or against any of those prohibited games is guilty of a misdemeanor punishable by a fine not less than \$1,000 or by imprisonment in the county jail not exceeding 6 months, or by both the fine and imprisonment. (Pen. Code, § 330.)

Existing law prohibits any person from using or offering for use any method intended to be used by a person interacting with an electronic video monitor to simulate gambling or play gambling-themed games in a business establishment that (A) directly or indirectly implements the predetermination of sweepstakes cash, cash-equivalent prizes, or other prizes of value, or (B) otherwise connects a sweepstakes player or participant with sweepstakes cash, cash-equivalent prizes, or other prizes of value, except as specified. (Bus. & Prof. Code, § 17539.1, subd. (a)(12).)

This bill expands the definition of "criminal activity" to include misdemeanor and infraction gambling violations for purposes of money laundering.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several 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 December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 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* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 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). 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 Bill

According to the author and the sponsor:

In 2014, I authored Assembly Bill (AB) 1439 to clarify that gambling at sweepstakes cafes is illegal. The bill made internet gambling sweepstakes at these cafes an unfair business practice and gave the Attorney General, district attorneys, and city attorneys the authority to bring civil suit to subject operators and civil penalties for violations.

On June 25, 2015 the California Supreme Court ruled in *People ex rel. v. Grewal* 61 Cal.4th 544, that computerized sweepstakes found at internet cafes are illegal under state gambling laws. In a unanimous ruling, the court rejected arguments that the sweepstakes are different from slot machines because they have predetermined outcomes.

Despite AB 1439 and the *Grewal* decision, new examples of illegal gambling establishments have emerged. These operators claim they are not offering gambling or sweepstakes, but rather “social gaming and mining.” While the business model may have changed, the underlying nature of the games these cafes are offering has not.

Although the law enforcement community intends to continue pursuing these gambling promoters, current California law offers prosecutors very limited tools with which to fight this battle. Specifically, all violations of the Penal Code provisions regarding slot machines and lotteries are misdemeanors.

AB 1395 would provide law enforcement with the ability to use criminal remedies when combatting egregious cases of organized, illegal gambling. Specifically, the bill incorporates violations of the gambling laws into organized crime and money laundering statutes. This approach has been used successfully in other states and will give law enforcement the right tools to go after illegal gambling. We believe that without this proposed legislative change, the industry responsible for developing and promoting this form of gambling may very well continue to move forward with their operations with the understanding that it is worth the risk.

2. Penalties for Money Laundering

Under current law, money laundering is punishable as a "wobbler," meaning that it may be charged and punished as a misdemeanor or a felony. The crime of money laundering requires the defendant to conduct a transaction with money or funds knowing that the money or funds, rather than the transaction, represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity. The money or funds must be composed of at least \$ 5,000 of proceeds from criminal activity. In order to be guilty of money laundering, the defendant must either (1) have the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) know the monetary instrument represents the proceeds of, or is derived directly or indirectly from the

proceeds of, criminal activity. (*People v. Mays* (2007) 148 Cal. App. 4th 13; Pen. Code, § 186.10, subd. (a).)

The penalties may be enhanced with additional jail or prison time for felony money laundering if the transaction amount exceeds \$50,000. (Pen. Code, § 186.10, subd. (c).) The defendant may also be fined up to \$250,000 or two times the value of the property transacted, or on a second or subsequent offense, \$500,000 or five times the value of the property transacted, whichever is greater. (Pen. Code, § 186.10, subd. (a).)

This bill would authorize the use of the money laundering penalty scheme for unlawful gambling and lotteries, which are mostly misdemeanor offenses, but appear to include some infractions. Currently, only felonies may be prosecuted under money laundering. In order to receive the enhanced penalty for money laundering, the defendant must have committed the underlying offense, here unlawful gambling or lotteries, and in addition the elements of money laundering must be proven.

3. This Bill would apply to a Wide Range of Low-Level Gambling, such as Raffles or Lotteries not Conducted by Specified Tax-Exempt Organizations

Existing law applies money laundering to any felony, although as a practical matter only crimes producing profits or income to the perpetrator are covered by the law. This bill applies money laundering laws to every gambling-related offense in two chapters of the Penal Code, from Section 319 through 337z. These sections make criminal virtually every form of lottery, raffle or bingo game not conducted by a registered charitable organization, regardless that a lottery or raffle could have the same purpose as a game conducted by an exempt charity or other entity licensed to do so. These sections also cover any kind of betting on sports or other contests. Applied strictly, it appears that NCAA basketball tournament bracket office pools constitute illegal gambling.

Most of the offenses are misdemeanors, although it appears that the chapters include two infractions. One infraction (Pen. Code § 336.9) applies to participants in a betting pool, such as an office NCAA tournament or Super Bowl pool. The other infraction (Pen. Code § 337k) is a first time offense of “advertis[ing], or facilitate[ing] the advertisement of, nonparimutuel¹ wagering on horse races.” A second or subsequent offense is a misdemeanor.

It appears that the purpose of the bill is to stop ongoing commercial gambling operations in Internet cafes and the like. The author explains the reason for the bill: “[O]rganized criminal enterprises engaged in operating illegal slot machines or lotteries can only be charged under the gambling statutes with misdemeanors. ... We strongly support the passage of AB 1395 because it would *enable prosecutors to pursue money laundering violations in limited, severe cases of illegal gambling* when the proceeds of the gambling operations exceed \$5000.00 within a seven-day period or \$25,000.00 within a thirty-day period.”

The bill includes activity that goes beyond “limited severe cases of illegal gambling.” Members may wish to consider whether the bill could be drafted so as to apply to those targeted by the sponsor.

¹ In parimutuel betting, all bets are combined and the odds calculated, the house takes a percentage and the proceeds are distributed to the winners.

4. Prior Legislation

AB 1439 (Salas), Chapter 592, Statutes of 2014, prohibited any person, when conducting a contest or sweepstakes, from using an electronic video monitor to simulate gambling or play gambling-themed games that offers the opportunity to win sweepstakes cash, cash equivalent prizes, or other prizes of value.

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