
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1242 **Hearing Date:** April 12, 2016
Author: Lara
Version: March 28, 2016
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Sentencing: Misdemeanors*

HISTORY

Source: Los Angeles District Attorney's Office
Immigrant Legal Resource Center
California Attorneys for Criminal Justice
Coalition for Humane Immigrant Rights LA
Mexican American Legal Defense Fund
Latino Coalition for Healthy Communities

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

Support: All of us or None; American Civil Liberties Union; American Friends Service Committee; American Immigration Lawyers Association; Asian Americans Advancing Justice; California Public Defenders Association; California Immigrant Policy Center; California Rural Legal Assistance Foundation; California Civil Liberties Advocacy; Californians United for a Responsible Budget; Canal Alliance; Center of Juvenile and Criminal Justice; Central American Resource Center; Centro Laboral de Graton; Community Legal Services in East Palo Alto; Courage Campaign; Day Labor Center – Hayward/Oakland; Friends Committee on Legislation of California; Human Rights Watch; Latino Coalition for a Healthy California; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Services for Prisoners with Children; National Day Laborer Organizing Network; National Immigration Law Center; A New PATH; Pangea Legal Services; Project ALOFA; Santa Ana Boys and Men of Color; San Quentin Restorative Justice Program; Santa Clara County Public Defender's Office; Services, Immigrant Rights & Education Network; Silicon Valley De-Bug; Southeast Asia Resource Action Center; United Farm Workers

Opposition: None known

PURPOSE

The purpose is to make the law providing that one year is defined as 364 days for the purposes of sentencing a misdemeanor is retroactive.

Existing law provides that every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for period not to exceed 364 days. (Penal Code § 18.5)

This bill would make the above provision retroactive.

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:

Two years ago SB 1310 (Lara, 2014) aligned the definition of misdemeanor between state and federal law. Federal law defines a misdemeanor crime as punishable for up to 364 days and anything longer is considered a felony. Previously, California defined a misdemeanor as a crime punishable for up to 365 days. The federal government did not recognize California's definition due to this minor and technical difference, thousands legal residents, who committed low level and non-violent crimes were subject to deportation, needlessly ripping apart families.

While SB 1310 aligned state and federal law on a prospective basis, it did not help those who were convicted of a misdemeanor prior to 2015. Thousands of legal residents are currently living in California with the threat of deportation looming for minor crimes. Many of those people have families and businesses in the state and a few ties to their country of origin.

SB 1242 will provide on a retroactive basis that all misdemeanors are punishable for no more than 364 days and ensure that legal residents are not deported due to previous discrepancies between state and federal law.

2. Clarifies that This Bill is Retroactive

This bill merely clarifies that the provision defining a year for the purposes of as misdemeanor as 364 days is retroactive.

-- END --