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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 617                      **Hearing Date:** May 12, 2015  
**Author:** Block  
**Version:** April 29, 2015  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** JRD

**Subject:** *Crimes*

## HISTORY

**Source:** San Diego County District Attorney's Office

**Prior Legislation:** None Known

**Support:** Unknown

**Opposition:** California Public Defenders Association; Legal Services for Prisoners with Children

## PURPOSE

***The purpose of this legislation is to allow a crime punishable as a misdemeanor to be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney, as specified.***

*Existing law* states that except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both. (Penal Code § 19.)

*Under existing law* no person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor, or for any reason except upon conviction of a crime that specifies a felony punishment pursuant to subdivision (h) of Section 1170 or a conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year, as specified. (Penal Code § 19.2.)

*Under existing law* when an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor. (Penal Code § 19.4.)

*Existing law* states that an infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail. (Penal Code § 19.6.)

*Existing law* states that except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions including, but not limited to, powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof. (Penal Code § 19.7.)

*Existing law* states that specified offenses are an infraction when:

- The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor; or
- The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(Penal Code §§ 17 and 19.8.)

*This bill* codifies legislative findings declaring that there are low-level misdemeanor offenses that, at the discretion of the prosecuting attorney, and based on the facts of the committed offenses, the lack of prior delinquency or criminality of the offender, and the lack of the offender's need for supervision, can be effectively prosecuted as infractions. And, that reducing these misdemeanors to infractions will not compromise public safety, and that diverting low-level misdemeanor offenders away from the criminal justice system and the stigma associated with it will avoid costs associated with protracted court involvement, jury trials, attorney representation, confinement, and probation involvement.

*This bill* states that except as provided by express statutory provisions providing an alternative punishment or procedure, a crime punishable as a misdemeanor with a maximum term of confinement not exceeding six months in jail may be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney.

*This bill* states that a crime charged as a misdemeanor shall not be reduced to an infraction except at the discretion of the prosecuting attorney pursuant to this section, or pursuant to express statutory provisions providing an alternative punishment or procedure. The prosecuting attorney may reduce the misdemeanor charge to an infraction pursuant to this section at any time before trial.

*This bill* limits the misdemeanors that can be reduced to infraction by stating that the section added by this legislation does not apply to the following:

- A misdemeanor firearms violation;

- A misdemeanor sex offender registration violation;
- A misdemeanor child endangerment or child abuse violation;
- A misdemeanor elder abuse violation;
- A misdemeanor domestic violence violation;
- A misdemeanor driving-under-the-influence violation; or
- A misdemeanor sex offense.

*This bill* states that the person charged with an infraction that was reduced from a misdemeanor pursuant to this section is not to be entitled to a trial by jury, and is not entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.

*This bill* states that statutory provisions of a misdemeanor that is charged as an infraction pursuant to this section, including, but not limited to, fines and penalties, apply to the infraction and shall be imposed as if the offense had been charged as a misdemeanor.

### 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 Bill

According to the author:

SB 617 will give county prosecutors the discretion to charge certain non-serious, non-violent misdemeanors as infractions, while keeping intact all existing non-custodial penalties and fines associated with the minor offense. It excludes serious misdemeanors including those involving sex crimes, child abuse, elder abuse, domestic violence, driving under the influence, and any offense involving a firearm.

California recently made major reforms to its criminal justice system by implementing AB 109, or realignment, in response to the prison overcrowding crisis. With the emphasis on keeping offenders close to home and highlighting re-entry services, realignment has increased the jail population and costs at the local level. SB 617 provides a tool to county district attorneys to weed out folks that do not belong in the criminal justice system.

This measure will also generate major savings to our court system which has seen major cuts to its operating budget due to the recent budget crisis. According to the Criminal Justice Statistics Center, there were over 750,000 misdemeanor arrests in 2013<sup>1</sup>. Averaging about \$380 per case to administer, courts are spending roughly \$500 million per year on misdemeanors alone<sup>2</sup>. In contrast, the average cost to administer an infraction is only about \$35 per case<sup>3</sup>; significantly lower than a misdemeanor. This measure will leave intact all non-custodial penalties and fees associated with the offense but reduce costs to the courts, by reducing the number of jury trials and cutting back on court administrative services. It also cuts down on the number of people incarcerated and on probation.

SB 617 is an important measure whose time has come. It will continue to hold offenders of minor offenses accountable and reserve our criminal justice system for those that need to be there.

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<sup>1</sup> Criminal Justice Statistics Center, Office of the California Attorney General Kamala Harris

<sup>2</sup> Legislative Analyst Office, California's Criminal Justice System: A Primer, 2013. Page 36

<sup>3</sup> Legislative Analyst Office, California's Criminal Justice System: A Primer, 2013. Page 36

## 2. Effect of Legislation

This legislation would allow a crime punishable as a misdemeanor, with a maximum term of confinement not exceeding six months in jail, to be charged as a misdemeanor or an infraction at the discretion of the prosecuting attorney. This legislation, however, does limit the misdemeanors that can be reduced. Specifically, misdemeanors involving a firearms violation, sex offender registration violation, child endangerment or child abuse violation, elder abuse violation, domestic violence violation, driving under the influence violation, or a sex offense, cannot be charged as an infraction. According to the San Diego District Attorney's Office, who is the sponsor of this legislation:

SB 617 will allow the prosecutor to exercise his or her discretion at charging, the earliest phase of the prosecution, or at any time before trial, as soon as information regarding the facts of the committed offence, the lack of prior delinquency or criminality of the offender, and the lack of the offender's need for supervision become apparent and warrant prosecution of an infraction.

SB 617 will result in steering minor offenders away from the criminal justice system, and from the stigma associated with it. It will allow offenders to be held accountable while avoiding costs associated with protracted court involvement, jury trials, attorney representation, confinement, and probation involvement, all of which are inapplicable to infractions.

This legislation states that statutory provisions of a misdemeanor that are charged as an infraction pursuant to this section apply to the infraction and shall be imposed as if the offense had been charged as a misdemeanor. This legislation applies misdemeanor fines and penalties to an infraction charge pursuant to this legislation, but does not set a cap on the amount of fines that can be assessed. The standard fine for a misdemeanor is \$1,000, but penalty assessments bring the fine up to \$4,000. Given that a person is not entitled to an attorney in a case involving an infraction, exposing a person to more than \$4,000 in fines and penalty assessments seems extreme. Members may wish to consider an amendment to include a cap on the amount of fines that can be charged for an infraction under this section.

## 3. Argument in Opposition

According to California Public Defenders Association:

This bill would, subject to exceptions, allow misdemeanors punishable by a maximum term of confinement not exceeding 6 months in jail to be charged as a misdemeanor or an infraction, in the discretion of the prosecuting attorney, as specified. The bill would, for a misdemeanor offense that is charged under these provisions, make all statutory provisions of a misdemeanor offense, including fines or penalties, applicable to the infraction as if the offense were charged as a misdemeanor. The bill would prohibit a misdemeanor charged as an infraction pursuant to these provisions from being punished by imprisonment.

This bill would apply Penal Code section 19.6 to those cases reduced through prosecutorial discretion. (Penal Code section 19.5(d) states: “A person charged with an infraction that was reduced from a misdemeanor pursuant to this section is subject to Section 19.6.” So, what does Penal Code section 19.6 state: (In pertinent part, “...A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him or her unless he or she is arrested and not released on his or her written promise to appear, his or her own recognizance, or a deposit of bail.”

Thus, in essence, the prosecution gets to decide whether an indigent defendant gets a court appointed attorney, even though that defendant may face misdemeanor penalties, with the exception of imprisonment, and other disabilities, also creating the situation where an indigent defendant would face a prosecution lawyer, without the assistance of counsel.

Under existing law, a misdemeanor is punishable by a fine up to \$1,000, whereas an infraction is only punishable by a fine up to \$250. (Penal Code sections 19 and 19.8) CPDA believes that a maximum fine of \$1,000 for an infraction is excessive for a situation where one is denied the right to counsel. If offenses are to be made infractions, then the existing maximum fine for an infraction should be the maximum punishment.

Infractions may also have peripheral consequences. Penal Code section 19.8 already allows for certain misdemeanors to be charged as infractions, however Penal Code section 19.8 has a specific protection; section 19.8(c) provides “Except for the violations enumerated in subdivision (d) of Section 13202.5 of the Vehicle Code, and Section 14601.1 of the Vehicle Code based upon failure to appear, a conviction for an offense made an infraction under subdivision (d) of Section 17 is not grounds for the suspension, revocation, or denial of a license, or for the revocation of probation or parole of the person convicted.” This bill, as written, does not provide these protections, thus one convicted of an infraction pursuant to this legislation could face consequences that are not present in other infraction convictions.

In addition, for certain offenses that could become infractions under this legislation, there may be other consequences, such as adverse immigration consequences. These possible consequences need to be explained to a defendant, in the absence of counsel would not receive the appropriate advisement.

Thus, CPDA opposes this legislation unless 1) the right to counsel is preserved for defendants where infraction charges are filed or where there is reduction of a misdemeanor to an infraction, 2) informed consent from the defendant, which requires right to counsel, for any reduction to take place, and 3) only infraction penalties should apply, meaning a maximum fine of \$250 and no peripheral consequences, such as loss of professional license.