
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 75 **Hearing Date:** April 18, 2017
Author: Bates
Version: March 16, 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), Ch. 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: 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 District Attorneys Association; California Narcotic Officers Association; California Police Chiefs Association; City of Fullerton; City of Laguna Hills; City of Lakewood; City of Thousand Oaks; Crime Victims United of California; League of California Cities; 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 20 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:

- Felony vehicular manslaughter;
- Human trafficking involving a minor;
- Felony battery with infliction of serious bodily injury;
- Assault with caustic chemicals or flammable substances;
- Felony assault with a deadly weapon other than a firearm;
- Assault with a deadly weapon other than a firearm upon a peace officer or firefighter;
- Felony discharge of a firearm at an inhabited or occupied buildings or vehicles;
- Rape or spousal rape where a person is unconscious, incapable of consenting or resisting, or where the act is accomplished against the victim’s will as specified;
- Felony sodomy if the victim was unconscious, if the victim was incapable of giving consent due to intoxication, if the victim was incapable of giving legal consent because of a mental disorder or developmental or physical disability, if the victim submitted to the act under the belief that the person committing the act was someone known to the victim other than the accused, or if the act was accomplished against the victim’s will by threatening to use the authority of a public official;
- Felony oral copulation if the victim was unconscious, if the victim was incapable of giving consent due to intoxication, if the victim was incapable of giving legal consent because of a mental disorder or developmental or physical disability, if the victim submitted to the act under the belief that the person committing the act was someone known to the victim other than the accused, or if the act was accomplished against the victim’s will by threatening to use the authority of a public official;

- Felony penetration with a foreign object if the victim was unconscious, if the victim was incapable of giving consent due to intoxication, if the victim was incapable of giving legal consent because of a mental disorder or developmental or physical disability, if the victim submitted to the act under the belief that the person committing the act was someone known to the victim other than the accused, or if the act was accomplished against the victim's will by threatening to use the authority of a public official;
- Felony corporal punishment or injury of child;
- Felony corporal injury to spouse or cohabitant;
- Arson of a structure, forest land, or property;
- Grand theft of a firearm;
- Solicitation of murder;
- Assault by a prison inmate;
- Holding of hostages by a prison inmate;
- Personal use of a firearm in the commission of a felony; and,
- Possessing, exploding, igniting any destructive device, as specified.

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:

Californians recently passed Proposition 57 (Prop 57) that makes perpetrators eligible for early parole and eventual release from state prison. Though the measure passed, it was misleading on many fronts. Voters didn't get to hear the whole story as opponents lacked the resources to convey their compelling arguments. Prop 57 was sold to voters as a Public Safety and Rehabilitation Act. The measure sought to keep dangerous criminals behind bars, while rehabbing the remaining criminals to save the state money.

The problem is that dangerous criminals, such as those committing sexual assault-related crimes and crimes against children, will now be eligible for parole. Additionally, crimes such as: rape by intoxication, rape of an unconscious person, drive-by shootings, etc. were left out when educating the public on what was

meant by “non-violent” in the proposition. Prop 57 has the unintended consequences of putting our communities at greater risk by allowing these criminals back into the community before justice has been served.

Law enforcement groups throughout California, from the State Sheriffs to the Courtroom Prosecutors, opposed this ballot measure due to the danger it would impose on local communities to which they seek to protect. The lack of definition in the language has left many wondering how drastic the effects may be. According to the “No on 57” campaign, violent crime in California was up by 10% last year. If we continue allowing these violent and dangerous criminals to be released earlier and earlier, public safety will suffer.

Though the measure intended to save the state money and rehabilitate criminals, the negative affect that will increase the number of victims on our streets will only cost more to California taxpayers in the long run. The many ambiguous terms stated in the language of Prop 57 shows the need for clean-up legislation.

It is imperative that SB 75 be signed into law to prevent these perpetrators from re-entering our communities before their time has been served. Just as victims begin putting their lives back together, these dangerous felons may be released again, forcing victims to re-live the crimes committed against them over and over. Lastly, permitting the worst career criminals to be treated as first-time offenders only discounts stronger sentences imposed by a judge for good reason. SB 75 will expand the definition of “violent felonies” and prevent these criminals from re-entering our communities before their time has been served.

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 exclude sex offenders from the parole provisions in Proposition 57. This aligns with the Governor’s 2017-2018 budget proposal to

exclude all sex offenders from early parole consideration, regardless of whether their crimes were designated as “violent”. (See Governor’s Budget Summary 2017-2018 at 75 (Jan. 10, 2017) <<http://www.ebudget.ca.gov/2017-18/pdf/BudgetSummary/PublicSafety.pdf>> [as of Mar. 20, 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 ones 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

770 (Glazer) would add human trafficking, elder and dependent adult abuse, assault with a deadly weapon, rape under specified circumstances, discharge of a firearm at an occupied building, and specified crimes against peace officers and witnesses, 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 so it does not create new strikes for purposes of the Three Strikes law.

7. Arguments in Support

According to the Riverside Sheriffs' Association:

This bill is an essential clarification to Proposition 57, the Public Safety & Rehabilitation Act of 2016. Proposition 57 was approved last year with the intention of showing leniency to offenders who are truly non-violent. Unfortunately, many voters were not aware that the state's definition of "non-violent" includes deeply troubling crimes that most would consider violent due to the physical and emotional harm inflicted on victims.

The City of Thousand Oaks writes:

As one of the safest cities in the nation, the City of Thousand Oaks is pleased to support Senate Bill 75 (Bates). Thousand Oaks was one of the cities that adopted a resolution opposing Proposition 57. The primary intent of Proposition 57 is to relieve the state's overcrowded prison system by providing early release to non-violent inmates, thereby resulting in tens of millions of dollars in cost savings to the State. Unfortunately, the initiative was poorly written and would result in unintended consequences putting the public at greater risk by making a number of violent offenses eligible for early release. . .

8. Arguments in Opposition

The American Civil Liberties Union of California writes in opposition of this bill:

California law already provides significant punishments for the crimes that would become violent felonies under SB 75. The punishments provided for many of the crimes 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 5,000 separate criminal provisions." As the Governor stated in his veto message of several bills in 2015, "[t]his multiplication and particularization of criminal behavior creates increasing complexity without commensurate benefit."

The broader application of violent crime sentencing enhancements proposed under this bill will not benefit 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.

The United States has the highest rate of incarceration in the world. While California has recently made some progress in reducing its incarceration rate, that progress cannot continue if additional enhancements and longer sentences are imposed for an ever-growing list of offenses. California needs to use more sensible and cost-effective ways to address criminal justice, as the rest of the world already does.

The California Attorneys for Criminal Justice writes:

SB 75 reflects a “get tough on crime; throw the book at them” attitude toward criminal defendants that California voters, the Legislature, the Governor and many others around our nation have seen fit to reject in the past several years. Republicans, Democrats, penological experts and even many in law enforcement now agree that the overwhelming weight of the evidence is that longer prison terms do not make our communities safer and that the negative impacts of “mass incarceration” clearly outweigh the benefits this approach was once thought to have. Numerous bills and voter initiatives over the past decade in California have rejected the viewpoint embodied in SB 75. Evidence-based best practices have shown up that locking more people up for longer sentences does not make California a safer place to live.

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