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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair  
2025 - 2026 Regular

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**Bill No:** AB 321                      **Hearing Date:** June 10, 2025  
**Author:** Schultz  
**Version:** May 29, 2025  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SU

**Subject:** *Misdemeanors*

### HISTORY

**Source:** San Francisco Public Defender's Office

**Prior Legislation:** SB 1106 (Wiener), Ch. 734, Stats. of 2022  
AB 1941 (Jones-Sawyer), Ch. 18, Stats. of 2018  
AB 2479 (Bradford), ordered to the Assembly Inactive File, 2014  
AB 2680 (Wright), Chapter 960, Stats. of 1998

**Support:** ACLU California Action; Alliance San Diego; California Attorneys for Criminal Justice; California Coalition for Women Prisoners; California Public Defenders Association; Californians for Safety and Justice; Communities United for Restorative Youth Justice; Drug Policy Alliance; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Immigrant Legal Resource Center; Initiate Justice; Initiate Justice Action; Justice2Jobs Coalition; LA Defensa; LA County Public Defenders Union, Local 148; New Light Wellness; Orange County Equality Coalition; Organizing Rooted in Abolition, Liberation and Empowerment; Secure Justice; Smart Justice California; South Bay People Power; Southeast Asian Resource Action Center; Vera Institute of Justice

**Opposition:** California District Attorneys Association; Riverside County District Attorney

**Assembly Floor Vote:** 52 - 6

### PURPOSE

*The purpose of this bill is to gives courts more opportunities to reduce wobbler offenses before trial, rather than just at or before a preliminary hearing.*

*Existing law* defines a felony as a crime that is punishable with death, by imprisonment in the state prison, or by imprisonment in a county jail under the provisions of realignment. (Pen. Code, § 17, subd. (a).)

*Existing law* states that every other crime or public offense is a misdemeanor except those offenses classified as infractions. (Pen. Code, § 17, subd. (a).)

*Existing law* recognizes that certain crimes may be punished as either a felony or a misdemeanor. (Pen. Code, § 17, subd. (b).) These crimes are commonly known as “wobblers.”

*Existing law* states when a crime is punishable, in the discretion of the court, either as a felony or a misdemeanor, it is a misdemeanor for all purposes under the following circumstances:

- After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail;
- When the court, upon committing the defendant to the Division of Juvenile Justice (DJJ), designates the offense to be a misdemeanor;
- When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor;
- When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint;
- When, at or before the preliminary examination or prior to filing an order holding defendant to answer, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint. (Pen. Code, § 17, subd. (b).)

*Existing law* provides that when a defendant is committed to the Division of Juvenile Justice (DJJ) for a crime punishable, in the discretion of the court, either as a felony or a misdemeanor, the offense shall, upon the discharge of the defendant from DJJ, thereafter be deemed a misdemeanor for all purposes. (Pen. Code, § 17, subd. (c).)

*Existing law* states that a reduction of a wobbler to a misdemeanor does not authorize a judge to relieve a defendant of the duty to register as a sex offender if the defendant is charged with an offense for which registration as a sex offender is required, and for which the trier of fact has found the defendant guilty. (Pen. Code, § 17, subd. (e).)

*This bill* allows a court to reduce wobbler violations any time prior to trial, either on its own motion or the motion of a party.

*This bill* allows a subsequent motion to reduce a felony to a misdemeanor only upon a showing of changed circumstances.

*This bill* replaces references to the former Division of Juvenile Justice, which is now closed, with references to now-existing secure youth treatment facilities.

## COMMENTS

### 1. Need for This Bill

According to the Author:

“When making decisions that impact the trajectory of a criminal case, judges should be able to review and weigh relevant information required to make sound, informed decisions. Further, the offense for which an accused individual faces trial and punishment, also known as the criminal charge against them, should match the accused individual’s alleged conduct. This ensures that the individual faces consequences that are proportionate to their actions.

Currently, under California Penal Code 17(b)(5), for offenses called “wobblers,” judges must decide whether a case will move forward as a misdemeanor or felony at or before the preliminary hearing or after a guilty plea. At the preliminary hearing (the beginning of a criminal case), very little information has been gathered about the defendant and their alleged conduct, and both the accused person and the prosecutor are not entitled to much information. Under PC 17(b)(5), judges cannot re-classify a felony wobbler to a misdemeanor during the trial or during the lengthy post-preliminary, pretrial process during which relevant evidence is gathered and investigations are conducted. The BID Act would allow judges to classify wobbler cases as felonies or misdemeanors, when they have sufficient evidence to make this decision.

AB 321 will enhance court efficiency, save public funds, and lead to more equitable and accurate criminal justice outcomes.”

### 2. Reducing a Felony to a Misdemeanor

"Offenses punishable as felonies or misdemeanors are traditionally called ‘wobblers.’” (*People v. Stevens* (1996) 48 Cal.App.4th 982, 987, fn. 12.) For those offenses, whether the crime is a felony depends upon the punishment imposed. (*Id.* at p. 987.) Unless and until a misdemeanor sentence is imposed, the conviction for a wobbler remains a felony for all purposes. (*People v. Bozigian* (1969), 270 Cal.App.2d 373, 379; see also *U.S. v. Robinson* (9th Cir. 1992) 967 F.2d 287, 283.) Only offenses that are statutorily authorized by the Legislature as wobblers may be reduced from a felony to a misdemeanor. (*People v. Mauch* (2008) 163 Cal.App.4th 669, 674.)

Reduction of a felony to a misdemeanor enables a defendant to avoid many, but not all, of the consequences of a felony conviction. For example, reduction of a wobbler to a misdemeanor means conviction will be treated as a misdemeanor for licensing and employment purposes or for immigration purposes, unless another statute specifies an exception. However, reduction of a felony to a misdemeanor does not relieve a defendant of the duty to register as a sex offender if the offense requires registration. (See Pen. Code, § 17, subd. (e).)

Penal Code section 17, subdivision (b) is the mechanism by which defendants can get a wobbler offenses reduced to a misdemeanor. Under the statute, there are only certain times in the proceedings when the can be reduced from a felony to a misdemeanor. The judge has the discretion to reduce a felony charge to a misdemeanor at the preliminary hearing. (Pen. Code, § 17, subd. (b)(5).) Other opportunities for reduction to a misdemeanor are in the sentencing context, namely: when the sentence imposed does not include imprisonment in state prison or

county jail under realignment (Pen. Code, § 17, subd. (b)(1); or when the judge designates the offense to be a misdemeanor on commitment to the (former) Division of Juvenile Justice (Pen. Code, § 17, subd. (b)(2)); and when the court grants felony probation without the imposition of sentence, but later declared the offense to be a misdemeanor. (Pen. Code, § 17, subd. (b)(3)).

This bill expands the pre-sentencing opportunities for a judge to reduce a wobbler. Specifically, this bill allows a court to reduce a wobbler to a misdemeanor at any time before trial, rather than at the preliminary hearing, either on the court's own motion or upon a defendant's motion. This bill provides that if the pre-trial motion to reduce a wobbler is denied, a subsequent motion can only be made if there is a showing of a change in circumstances.

In the juvenile context, this bill deletes the reference to the now-closed Division of Juvenile Justice, and instead states that the court can reduce a wobbler offense upon commitment to a secure youth treatment facility.

### 3. Argument in Support

According to the San Francisco Public Defender, a co-sponsor of this bill:

The San Francisco Public Defender's Office is a proud CO-SPONSOR of AB 321 (Schultz), The Better Informed Decisions Act ("The BID Act"), which ensures that judges in the state's criminal courts have more time before trial, to review relevant evidence to determine whether a wobbler case will move forward as a misdemeanor or a felony. AB 321 is a common sense policy that passed the Assembly Public Safety Committee and the Assembly floor with bipartisan support....

Co-sponsors of AB 321 (Schultz) and Judicial Council have worked closely to amend the bill's language to ensure judges are not confronted with requests to re-classify wobblers in the middle of trial, nor flooded with reclassification requests. As such, AB 321 requires such requests to be filed before trial commences. Moreover, to file a subsequent request, a party must demonstrate changed circumstances.

The offense for which an accused individual faces trial, also known as the criminal charge against them, should match the accused individual's alleged conduct. This ensures that the individual faces consequences that are proportionate to their actions. However, as explained below, current law places strict restrictions on when judges can review wobbler charges to make sure they are fair. Currently, for offenses called "wobblers"—which can be classified as misdemeanors or felonies—judges must make a final decision on whether a case will move forward as a misdemeanor or felony at or before the preliminary hearing (the very beginning of a case) or after a guilty plea (at the end of a case). At the preliminary hearing stage of a case, very little information has been gathered about the accused person and their alleged conduct. The BID Act is a simple amendment that removes the time restriction that only permits judges to classify wobblers as felonies or misdemeanors at the very beginning of the case. Under the BID Act, judges can make this decision when they have gathered sufficient information about the accused person and their conduct, before trial commences.

The BID Act will improve court efficiency and save public funds because it will ensure that the amount of public resources spent is proportionate to the severity and complexity of each case. Lastly, allowing judges to review wobbler charges to determine whether they are supported by the evidence at a later stage in the criminal case can guard against overcharging and mischarging, and thereby reduce unjust outcomes.

#### **4. Argument in Opposition**

According to the California District Attorneys Association:

Current law gives the court authority to reduce a felony to a misdemeanor prior to a preliminary hearing, immediately after the preliminary hearing, or at sentencing. The timing of the court's authority is important. Existing law ensures that once the preliminary hearing judge, having considered all the evidence and arguments of counsel, has determined there is sufficient cause to proceed as a felony that determination cannot be undercut by another judge except upon at sentencing with the benefit of a full probation report and where both the defendant and the prosecution are able to present evidence.

Current law also gives defendants the opportunity to challenge the outcome of a preliminary hearing through a motion brought under Penal Code section 995 and related opportunities for appellate review. AB 321 would undercut these carefully crafted remedies, encourage forum shopping, and permit judges to make important dispositional decisions without a full hearing on the facts and circumstances of the case.

**-- END --**