
SENATE COMMITTEE ON PUBLIC SAFETY
Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No: SB 165 **Hearing Date:** April 7, 2015
Author: Monning
Version: March 12, 2015
Urgency: No **Fiscal:** Yes
Consultant: AA

*Subject: Illegal Dumping in Connection with the Production or
Cultivation of a Controlled Substance: Civil Penalties*

HISTORY

Source: Author

Prior Legislation: SB 861 (Comm. on Budget and Fiscal Review) – Ch. 35, Stats. of 2014
SB 814 (Comm. on Natural Resources and Water) – Ch. 472, Stats. of 2013
AB 2284 (Chesbro) – Ch. 390, Stats. of 2012

Support: California College and University Police Chiefs Association; California District Attorneys Association; California Police Chiefs Association; California Fish and Game Wardens Association; California Peace Officers' Association; Rural County Representatives of California

Opposition: None Known

PURPOSE

The purpose of this bill is to add additional crimes or violations to an existing Fish and Game Code statute which authorizes civil fines for certain natural resource-related violations in connection with the production or cultivation of a controlled substance.

Existing law generally authorizes civil penalties for certain natural resource-related law violations which are committed in connection with the production or cultivation of a controlled substance either while trespassing on other public or private land, or committed on land that the person owns, leases, or otherwise uses or occupies with the consent of the landowner. (Fish and Game Code § 12025) These provisions describe a process for issuing and serving complaints, conducting hearings, and obtaining a review of a final order. (*Id.*) This bill would apply these civil penalties to additional crimes and violations, as follows:

Violations While Trespassing

Existing law imposes specified civil penalties on persons who, *while trespassing on other public or private land* in connection with the production or cultivation of a controlled substance, violate Fish and Game Code provisions concerning the following conduct:

- Substantially interfering with a river, stream, or lake, as specified; (Fish and Game Code § 1602); not more than \$10,000 for each violation;
- Contaminating waters of the state, as specified; (Fish and Game Code § 5650); not more than \$40,000 for each violation; and,
- Polluting waters of the state, as specified; (Fish and Game Code § 5652) not more than \$40,000 for each violation.

(Fish and Game Code § 12025(a).)

This bill would expand this provision to include violations of the following laws while trespassing on other public or private land in connection with the production or cultivation of a controlled substance:

- The crime of unlawful dumping of waste matter or other specified materials on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified, (Penal Code § 374.3), authorizing a civil penalty of not more than \$40,000);
- The crime of knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified, (Penal Code § 374.8(b), authorizing a civil penalty of not more than \$40,000;
- The crime of willfully or negligently cutting, destroying, mutilating, or removing specified vegetation growing upon state or county highway rights-of-way, or upon public land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, (Penal Code § 384a), authorizing a civil penalty of not more than \$10,000;
- The violation of engaging in timber operations without a license, as specified, (Public Resources Code §§ 4571, 4581), authorizing a civil penalty of not more than \$10,000;
- The violation of unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, (Fish and Game Code § 2000), authorizing a civil penalty of not more than \$10,000; and,
- The violation of unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, (Fish and Game Code § 2002), authorizing a civil penalty of not more than \$10,000.

Violations on Land the Person Owns, Leases or Otherwise Occupies with the Consent of the Landowner

Current law provides that in cases where the above-enumerated existing violations in connection with the production or cultivation of a controlled substance which occurs *on land that the person owns, leases, or otherwise uses or occupies with the consent of the landowner*, the following civil liability amounts apply:

- A person who violates Section 1602 (described above) is subject to a civil penalty of not more than \$8,000 for each violation.
- A person who violates Section 5650 (described above) is subject to a civil penalty of not more than \$20,000 for each violation.
- A person who violates Section 5652 (described above) is subject to a civil penalty of not more than \$20,000 for each violation.

Current law provides that each day that a violation of Section 1602, 5650, or 5652 described in this subdivision occurs or continues to occur shall constitute a separate violation. (Fish and Game Code § 12025(b).)

This bill would expand the scope of this subdivision to include civil penalties for the following additional violations of law committed in connection with the production or cultivation of a controlled substance which occurs *on land that the person owns, leases, or otherwise uses or occupies with the consent of the landowner*:

- The crime of unlawful dumping of waste matter on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified (Penal Code § 374.3(a)) is subject to a civil penalty of not more than \$20,000 for each violation;
- The crime of unlawful dumping of waste matter in commercial quantities on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified (Penal Code § 374.3(h)(1)) is subject to a civil penalty of not more than \$20,000 for each violation;
- The crime of knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified, (Penal Code § 374.8(b), is subject to a civil penalty of not more than \$20,000 for each violation;
- The crime of willfully or negligently cutting, destroying, mutilating, or removing specified growing upon state or county highway rights-of-way, or upon public land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified, (Penal Code § 384a), is subject to a civil penalty of not more than \$10,000 for each violation;
- The violation of engaging in timber operations without a license, as specified, (Public Resources Code §§ 4571, 4581), is subject to a civil penalty of not more than \$8,000 for each violation;
- The violation of unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided, (Fish and Game Code § 2000), is subject to a civil penalty of not more than \$8,000 for each violation.
- The violation of unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code, (Fish and Game Code § 2002), is subject to a civil penalty of not more than \$8,000 for each violation.

This bill would provide that each day that a violation of any of these sections occurs or continues to occur shall constitute a separate violation.

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. Stated Need for This Bill

The author states:

In the almost two decades since California voters passed Proposition 215, the Compassion Use Act of 1996, the cultivation of illegal marijuana on California’s public and private lands has exploded. In 2014 alone, the Department of Fish and Wildlife (DFW) participated in close to 250 marijuana related missions in which 609,480 marijuana plants were eradicated and 15,839 pounds of processed marijuana was seized.

Many of these marijuana grow-sites operate on a commercial scale, leaving behind devastating impacts on the terrestrial and aquatic habitats they occupy. A cultivation operation of 1,000 plants can require up to 5,000 gallons of water per day, causing some

growers to routinely divert streams and tributaries to get enough water. In 2014, DFW found over 135 dams or diversions in rivers and streams, equating to close to 5,000,000 gallons of stolen water. These practices exacerbate California's already historic drought conditions and severely affect Coho Salmon runs and other fishery populations.

Some of these unregulated grow-sites are responsible for the release of rodenticides, highly toxic insecticides, chemical fertilizers, fuels, and hundreds of pounds of waste dumped into the surrounding habitats and watershed systems. Among the few grow-sites DFW found last year, were habitats with over 340,000 pounds of dumped trash and waste and close to 70 gallons of chemicals and fertilizers like D-Con, Malathion, CarboFuran, and Miracle Grow. The need for flat, fertilized land to cultivate cannabis plants has also forced some bad actors to eliminate native vegetation and destroy forested habitat, often bulldozing acres of land with no regard for its ecological impacts. The National Park Service estimates that the cleanup and reclamation costs of these grow-sites can cost up to \$15,000 per acre, with the average grow-site being 10-20 acres.

In an attempt to go after these bad actors, Assemblymember Chesbro carried AB 2284 in the 2012 legislative session, which established the ability for civil fines to be levied against those who commit environmental crimes while engaging in the cultivation of a controlled substance. AB 861 from 2014 expanded this by giving the DFW the ability to assess these civil fines administratively. The civil fines collected under this fine structure can be divided up primarily between enforcement agencies, to cover the cost of their investigations, and the Timber Regulation and Forest Restoration Fund, for the purposes of improving forest health by remediating former marijuana growing operations.

While the current fine structure for these marijuana grow operations provides some new options in environmental enforcement, it is limited in its reach. Currently, District Attorneys or DFW can only assess a civil fine in instances where a grower has substantially diverted a stream or has polluted it with petroleum or other deleterious substances. SB 165 will expand the number and type of environmental crimes for which a civil fine may be levied against a person who cultivates a controlled substance. Civil fines will be able to be brought against growers that engage in: habitat destruction through land conversion and timber operations without the proper permits or a Timber Harvest Plan; the unlawful take or possession of wildlife; the illegal dumping of trash and hazardous materials; waste disposal in a commercial scale; and the removing plant life or vegetation without consent.

2. What This Bill Would Do

As explained in detail above, this bill expands an existing statutory scheme that imposes civil penalties for certain natural resource-related law violations committed in connection with the production or cultivation of a controlled substance either while trespassing on other public or private land, or committed on land that the person owns, leases, or otherwise uses or occupies with the consent of the landowner. Existing law generally covers violations involving substantially interfering with a river, stream, or lake; contaminating waters of the state; and polluting waters of the state. This bill would add several additional, similar violations, involving criminal dumping of waste or hazardous substances; criminal destruction of vegetation; unlawful timber operations; and unlawfully taking or possessing any animal, as specified to these provisions. The following charts briefly depict current law and this bill.

Current Law

Violation	Civil Penalty Amount -- Trespassing	Civil Penalty Amount – Lawful Occupation*
Substantially interfering with a river, stream, or lake, as specified; (Fish and Game Code § 1602)	not more than \$10,000 for each violation	not more than \$8,000 for each violation
Contaminating waters of the state, as specified; (Fish and Game Code § 5650);	not more than \$40,000 for each violation	not more than \$20,000 for each violation
Polluting waters of the state, as specified; (Fish and Game Code § 5652)	not more than \$40,000 for each violation	not more than \$20,000 for each violation *each day a violation occurs = separate violation

What This Bill Would Add

Violation	Civil Penalty Amount -- Trespassing	Civil Penalty Amount – Lawful Occupation*
Unlawful dumping of waste matter or other specified materials on a public or private highway, road, right-of-way, easement, private property without consent, public park or other public property without permission, as specified. (P.C. § 374.3; 374.3(h)(1))	not more than \$40,000	Not more than \$20,000
Knowingly causing any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state, as specified. (P.C. § 374.8(b))	not more than \$40,000	not more than \$40,000
Willfully or negligently cutting, destroying, mutilating, or removing specified vegetation growing upon state or county highway rights-of-way, or upon public	not more than \$10,000	not more than \$10,000

land or upon land not his or her own, or knowingly selling, offering, or exposing for sale, or transporting for sale of the same, as specified. (P.C. § 384a)		
Engaging in timber operations without a license, as specified. (Public Resources Code §§ 4571, 4581)	not more than \$10,000	not more than \$10,000
Unlawfully taking any bird, mammal, fish, reptile, or amphibian except as provided. (Fish and Game Code § 2000).	not more than \$10,000	not more than \$10,000
Unlawfully possessing any bird, mammal, fish, reptile, or amphibian, or parts thereof, taken in violation of any of the provisions of the Fish and Game Code. (Fish and Game Code § 2002)	not more than \$10,000	not more than \$10,000 *each day a violation occurs = separate violation

3. Criminal Penalties; Suggestion Concerning Criminal Restitution Orders

This bill would add three crimes to the current Fish and Game Code civil penalty structure that imposes civil penalties for violations of law committed in connection with the production or cultivation of a controlled substance. Existing provisions in the California Constitution state that all crime victims have the right to seek and secure restitution from the perpetrators of these crimes. Restitution must be ordered in every case without exception. Where a defendant has been ordered to pay restitution, all money, or property collected from the defendant must be first applied to satisfy restitution orders. (California Constitution Article 1 § 28(b)(13)(A)-(C).) In addition, existing law requires the court to order a defendant to make restitution to the victim or victims of the defendant’s crime, based on the amount of loss claimed by the victim or victims or any other showing to the court. The court is required to order full restitution for the losses caused by the defendant’s crime unless the court finds and states compelling and extraordinary reasons for not doing so. (Penal Code § 1202.4(f).) In addition, one of the Penal Code provisions this bill would add expressly authorize the court to impose restitution-type orders, such as removing or paying for the removal of waste (Penal Code § 374.3).

The author and members of the Committee may wish to discuss whether any civil penalties imposed as a result of this provision should be offset by any restitution ordered in a criminal case which is the basis for a civil penalty.

SHOULD THIS AMENDMENT BE MADE?

In addition, the author and members of the Committee may wish to discuss how this bill's civil penalty provisions, which range from \$10,000 to \$40,000, compare in terms of proportionality to existing Fish and Game Code sanctions for similar violations. (For example, the statute authorizing civil penalties of not more than \$25,000 for releasing specified pollutants into the state's waters. (Fish and Game Code §§ 5650 *et seq.*))

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