

ASSEMBLY THIRD READING
AB 2435 (Lee)
As Introduced February 17, 2022
Majority vote

SUMMARY

Restores a defendant's right to an instruction on lesser related offenses to the offense charged, if certain conditions are met.

Major Provisions

- 1) Provides that a jury, or a judge if a jury trial is waived, upon request of a defendant, may find the defendant guilty of a lesser offense, the commission of which is closely related to the offense with which the defendant is charged if all of the following conditions are met:
 - a) The defendant relies on a theory of defense that is consistent with a conviction for the lesser offense.
 - b) The evidence of the lesser offense is relevant to, and admitted for the purpose of, establishing whether the defendant is guilty of the charged offense; and,
 - c) A basis exists, other than an unexplainable rejection of prosecution evidence, on which the jury could find the offense to be less than that charged.
- 2) States the intent of the Legislature to restore the defendant's right to receive jury instructions on lesser related offenses as originally guaranteed by the California Supreme Court in *People v. Geiger* (1994) 35 Cal.3d 510.

COMMENTS

According to the Author

"This bill will allow criminal courts to consider 'lesser-related' offenses rather than only 'lesser-included' offenses, restoring a practice that was in place prior to 1998. Courts would then be allowed to present additional conviction options to a jury.

"When someone is on trial for a criminal offense, a jury is presented with the charged offense and any other 'lesser-included' offenses. A jury must decide whether the facts support a conviction for the charged offense or a 'lesser-included' offense, which is one that overlaps or shares legal elements with the charged offense. In 1984, a California appellate court decided that a defendant in a criminal case was entitled to also present the jury with a 'lesser-related' offense – crimes that may not share all legal elements, but that would be supported by the facts of the case.

"This bill will restore fairness and due process in our criminal legal system by permitting defendants in a criminal case to present to the jury lesser 'related' offenses as an alternative to the underlying charge. This reform, which was in law for more than a decade in California, will help ensure that defendants are properly charged based on the facts of the case, and that they receive a just trial."

Arguments in Support

According to the *California Attorneys for Criminal Justice*, a co-sponsor of this bill, "Under existing law, when there is reasonable doubt about whether the prosecution proved a defendant's guilt on the offense charged at trial, but the evidence is overwhelming that the defendant is guilty of committing one or more lesser-related offenses, jurors are not given the option of finding the defendant guilty on any of these lesser offenses. Instead, jurors are forced into the all-or-nothing prospect of either finding the defendant guilty of the charged crime – despite their reasonable doubt – or acquitting the defendant entirely. Restoring a defendant's right to lesser-related offenses will increase the accuracy of jury verdicts and help to ensure that defendants are not convicted of more serious crimes when a lesser-related offense better fits the facts established at trial.

"Jurors should be given the option of convicting on a lesser offense if it is established by the evidence, regardless of whether it is considered a lesser-included offense or a lesser-related one. The difference, in short, is that if a lesser offense contains an element that is not included in the greater offense, it is a lesser-*related* offense. Lesser-*included* offenses, in contrast, contain some (but not all) of the elements of the greater offense, and no elements that are not included in the greater. This hyper-technical definition should not be used as a basis to deny a defendant the right to jury instructions on lesser offenses.

"In 1984, in *People v. Geiger* (1984) 35 Cal.3d 510, the California Supreme Court held that a defendant in a criminal case had a right under the California Constitution to have the jury provided with the option of convicting on lesser-related offenses. Thus, for example, if a defendant was charged with burglary after he broke a shop window, he could request that the jury be instructed on the lesser-related offense of vandalism if the jurors had a reasonable doubt about whether he intended to steal from inside the store.

"But in 1998, during the height of the "tough on crime" era, the California Supreme Court overturned this rule, eliminating a defendant's right to instructions on lesser-related offenses. (*People v. Birks* (1998) 19 Cal.4th 108.) This change has likely resulted in individuals serving more time incarcerated than if the jury had the option to consider alternative offenses. It has also created a process which may result in unwarranted acquittals when the defendant was in fact guilty of a lesser-related crime, but the jury simply received no instruction on this crime. The *Birks* court concluded that the California Constitution did not guarantee the right to lesser-related offenses. But nothing in the decision stops the Legislature from establishing such a right by statute.

"AB 2435 (Lee) would simply restore the practice of allowing defendants to have a jury instructed on lesser-related offenses, which, as noted above, was the law for 14 years. Defendants should not have to endure harsher convictions and longer sentences when the facts of the case better support conviction on a lesser-related offense. This bill will make the judicial processes fairer for defendants and ensure that individuals who can be proven guilty of a lesser offense do not go entirely acquitted. Under AB 2435, juries will be presented all appropriate options for conviction on lesser offenses, instead of being unnecessarily constrained.

Arguments in Opposition

According to the *California District Attorneys Association*, "In 1998 the California Supreme Court specifically ruled that courts should not instruct on lesser related offenses, holding that prior opinions authorizing such a practice were simply "wrong." (*People v. Birks* (1998) 19

Cal.4th 108, 136.) This has been the law of the land in California for nearly 25 years. AB 2435 states that the intent of the bill is to restore this "wrong" practice as authorized in *People v. Geiger* (1984) 35 Cal.3d 510, a criticized Justice Rose Bird era opinion. The best argument against this bill can be found in the Supreme Court's own language in the Birks opinion:

[W]e now agree that *Geiger* represents an unwarranted extension of the right to instructions on lesser offenses. *Geiger's* rationale has since been expressly repudiated for federal purposes by the United States Supreme Court, and it continues to find little support in other jurisdictions. The *Geiger* rule can be unfair to the prosecution, and actually promotes inaccurate factfinding, because it gives the defendant a superior trial right to seek and obtain conviction for a lesser uncharged offense whose elements the prosecution has neither pled nor sought to prove. Moreover, serious questions arise whether the holding of *Geiger*, ostensibly based on the due process clause of the California Constitution, can be reconciled with other provisions of the same charter. By according the defendant the power to insist, over the prosecution's objection, that an uncharged, nonincluded offense be placed before the jury, the *Geiger* rule may usurp the prosecution's exclusive charging discretion, and may therefore violate the separation of powers clause.

"(*People v. Birks, supra*, 19 Cal.4th at 112-113.)

"We must therefore respectfully oppose this bill."

FISCAL COMMENTS

Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

VOTES

ASM PUBLIC SAFETY: 5-2-0

YES: Jones-Sawyer, Mia Bonta, Bryan, Quirk, Santiago

NO: Lackey, Seyarto

UPDATED

VERSION: February 17, 2022

CONSULTANT: Cheryl Anderson / PUB. S. / (916) 319-3744

FN: 0002210