

Date of Hearing: April 23, 2024

Chief Counsel: Gregory Pagan

**ASSEMBLY COMMITTEE ON PUBLIC SAFETY**

Kevin McCarty, Chair

AB 2470 (Joe Patterson) – As Amended March 18, 2024

**SUMMARY:** Adds the crime of felony domestic violence to the list of “Violent Felonies” that subject a defendant to additional penalties, including under California “Three Strikes” Law, and reduce the custody credits that a defendant may receive.

**EXISTING LAW:**

- 1) Defines a "violent felony" as any of the following (Pen. Code § 667.5(c).):
  - a) Murder or voluntary manslaughter;
  - b) Mayhem;
  - c) Rape or spousal rape accomplished by means of force or threats of retaliation;
  - d) Sodomy by force or fear of immediate bodily injury on the victim or another person;
  - e) Oral copulation by force or fear of immediate bodily injury on the victim or another person;
  - f) Lewd acts on a child under the age of 14 years, as defined;
  - g) Any felony punishable by death or imprisonment in the state prison for life;
  - h) 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;
  - i) Any robbery;
  - j) Arson of a structure, forest land, or property that causes great bodily injury;
  - k) Arson that causes an inhabited structure or property to burn;
  - l) 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;
  - m) Attempted murder;

- n) Explosion or attempted explosion of a destructive device with the intent to commit murder;
  - o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;
  - p) Explosion of a destructive device which causes death or great bodily injury;
  - q) Kidnapping;
  - r) Assault with intent to commit mayhem, rape, sodomy or oral copulation;
  - s) Continuous sexual abuse of a child;
  - t) Carjacking, as defined;
  - u) Rape or penetration of genital or anal openings by a foreign object;
  - v) Felony extortion;
  - w) Threats to victims or witnesses, as specified;
  - x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
  - y) Use of a firearm during the commission of specified crimes; and,
  - z) Possession, development, production, and transfers of weapons of mass destruction.
- 2) Provides that when a defendant is convicted on a new felony offense and has a prior conviction for a specified violent felony, the defendant shall receive a consecutive three-year term for each prior separate prison term served by the defendant where the prior offense was one of the specified violent felonies specified, unless the defendant meets certain conditions. (Pen. Code § 667.5, subd. (a).)
  - 3) States that a conviction of a violent felony counts as a prior conviction for sentencing under the two and three strike law. (Pen. Code § 667.)
  - 4) Provides that if a defendant is convicted of a felony offense and it is pled and proved that the defendant has been convicted of one prior serious or violent offense as defined, the term of imprisonment is twice the term otherwise imposed for the current offense. (Pen. Code § 667)
  - 5) Specifies that notwithstanding any other law, any person who is convicted of a felony that is contained in the "violent" felony list shall accrue no more than 15% of work-time credit. (Pen. Code § 2933.1, subd. (a).)
  - 6) Defines a "serious felony" as any of the following: murder or manslaughter; mayhem; rape; sodomy; oral copulation; lewd acts on a child under the age of 14; any felony punishable by death or imprisonment for life; any felony in which the defendant inflicts great bodily injury;

attempted murder; assault with the intent to commit rape or robbery; assault with a deadly weapon or instrument on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive device with the intention to commit murder or great bodily injury; first-degree burglary; armed robbery or bank robbery; kidnapping; holding of a hostage by a person confined to a state prison; attempting to commit a felony punishable by death or life in prison; any felony where the defendant personally used a dangerous or deadly weapon; selling or otherwise providing heroin, PCP or any type of methamphetamine-related drug; forcible sexual penetration; grand theft involving a firearm; carjacking; assault with the intent to commit mayhem, rape, sodomy or forcible oral copulation; throwing acid or other flammable substance; assault with a deadly weapon on a peace officer; assault with a deadly weapon on a member of the transit authority; discharge of a firearm in an inhabited dwelling or car; rape or sexual penetration done in concert; continuous sexual abuse of a child; shooting from a vehicle; intimidating a victim or witness; any attempt to commit the above-listed crimes except assault or burglary; and using a firearm in the commission of a crime and possession of weapons of mass destruction. (Pen. Code § 1192.7(c).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "'By definition, domestic violence is violent; however, under current California law, in most instances, felony domestic violence convictions are considered 'nonviolent offenses' and are eligible for automatic early release under Prop. 57 after serving only 50% of their sentence. This reality has resulted in the perpetuation of domestic abuse, and in some cases the loss of life. According to research compiled by USA Today, the Associated Press, and Northwestern University, more than 68% of mass shooters have a documented history of domestic violence or have killed a family member. Whether you're a Republican, Independent, or Democrat, you can't argue with the data. Statistics show that violent domestic abusers are the individuals most likely to commit mass shootings. If we hold them accountable and force them to serve the time in which they were sentenced, we will likely reduce mass shootings.'"
- 2) **Domestic Violence Penalties:** Domestic violence is currently an alternate felony/misdemeanor (wobbler) punishable by imprisonment in the state prison for two, three or four years, or by imprisonment in a county jail. A second offense within seven years of a prior conviction is punishable up to five years in prison. (Pen. Code, § 273.5.) An enhancement adding up to five more years could apply if great bodily injury is inflicted. (Pen. Code, § 12022.7, subd. (e).). The wide range of potential sentences is because the element of the crime of domestic violence requiring that a "traumatic condition" be inflicted in order to sustain a conviction need not be serious. In fact, it could be rather minor in nature. There are twenty three "violent felonies" listed in Penal Code § 273.5. All of them are serious in nature in that they may ONLY be charged as a "straight" felony. None of them has an alternative misdemeanor option. There are NO "wobblers" on the "violent felony list. It would be unprecedented to add felony domestic violence to the list of "violent felonies" because of, as mentioned above, the crime of domestic violence is a "wobbler" and would be inappropriate to add to the "violent felony" list.

- 3) **Credit Limitations for Violent Felonies with State Prison Sentences:** Under Penal Code section 2933.1, a defendant convicted of a violent felony as defined by Penal Code section 667.5, subdivision (c), has their presentence conduct credits limited to 15 percent of actual confinement time. (Cal. Code Regs., tit. 15, § 3043.1; *People v. Brown* (2012) 54 Cal.4th 314, 321.)

A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation.

(<https://www.cdcr.ca.gov/proposition57/>, *supra.*) Under the California Department of Corrections and Rehabilitation (CDCR) regulations, a violent felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony. (*Ibid.*; 15 Cal. Code of Regs. § 3043.2.)

Additionally, under CDCR regulations, persons convicted of nonviolent crimes earn 66.6 percent GCC while housed in camp or Minimum Support Facility (MSF) settings. People convicted of violent crimes, however, earn 50 percent GCC in fire camp settings and 33.3 percent in MSF settings. (See (<https://www.cdcr.ca.gov/proposition57/>), *supra.*)

By adding this offense to the list of violent felonies in Penal Code section 667.5, subdivision (c), this offense would be subject to the violent felony credit limitations.

- 4) **Increased Penalties and Lack of Deterrent Effect:** The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties. (<https://nij.ojp.gov/about-nij>.) As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior. (“Five Things About Deterrence,” NIJ, May 2016, available at: <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.) The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety. (*Ibid.*) These findings are consistent with other research from national institutions of renown. (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs), [as of Feb. 25, 2022].) Rather than penalty increases, the NIJ, advocates for policies that “increase the perception that criminals will be caught and punished” because such perception is a vastly more powerful deterrent than increasing the punishment. (“Five Things About Deterrence,” *supra.*)
- 5) **Three Strikes Implications:** In general, violent felonies as specified in Penal Code section 667.5 are considered “strikes” for purposes of California’s Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012, specifies that only the crimes that were included in the “violent felonies” list as of November 7, 2012, shall be treated as strikes for purposes of the Three Strikes law.

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to

(g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012.

(Pen. Code, § 667.1; see also Pen. Code, § 1170.125 [“Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after November 7, 2012, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they existed on November 7, 2012].)

This bill would make this offense a strike under California law because this bill would amend the date which defines the list of strikes to include the provisions of this bill.

- 6) **Argument in Support:** According to the *California State Sheriffs' Association*, “Assembly Bill 2470, which would classify felony domestic violence as a violent felony.

“Under existing law, domestic violence is generally not considered a violent felony. The sole exception is if, in commission of an offense, great bodily injury is inflicted. The current statutory configuration ignores the violence inherent in most domestic violence offenses.

“Domestic violence continues to create countless victims across our state. By adding this offense to the state’s list of violent felonies, domestic abusers will face increased penalties that appropriately reflect the severity of their crimes and lifelong harm they inflict upon their victims. Lawmakers should take the long-overdue step of changing California’s Penal Code to classify felony domestic violence as a violent felony.”

- 7) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, “There are several reasons why CACJ opposes this bill.

“First, a violation of PC 273.5 is a “wobbler” under California law, meaning it can be either a misdemeanor or a felony depending on the facts of the case and the accused’s prior criminal history. Currently, PC 667.5(c) does not include any offense that is a “wobbler” under California law. There is no justifiable reason to make a domestic violence crime that is a possible misdemeanor a “violent felony” on a par with murder, rape, child molestation, kidnapping, and other offenses punishable by death or life imprisonment. The “Three Strikes” law has been part of California criminal law for approximately 40 years without having a “wobbler” made part of this very draconian punishment scheme. No good reason exists to change this long history now for this offense.

“Second, adding PC 273.5 to the list of “violent felonies” would make it the 24th such crime on this list. Constantly adding new offenses to the list of what are considered the most heinous of crimes under California law, diminishes the severity of these long-standing crimes and reflects more of a temporary political viewpoint rather than a considered, thoughtful reflection of making the punishment truly reflect the seriousness of the crime.

“Third, PC 273.5 is frequently overcharged initially as a felony offense and often reduced to a misdemeanor as part of plea negotiations as more evidence is gained by both the prosecution and the defense. The overcharging of this offense as a felony has significant immigration consequences and often results in non-citizen defendants taking pleas to a misdemeanor PC 273.5 when they may have a realistic chance of acquittal at trial but cannot risk the potential for deportation or exclusion if they are found guilty of a felony. Threatening an

accused with a felony conviction under the “Three Strikes” law for a violation of PC 273.5 as a felony will without question cause more accused individuals to plead guilty to a lesser charge to avoid the immediate and long term consequences of a conviction under the “Three Strikes” law. It very likely will have the effect of also causing more defendants to go forward with a trial because they do not want to plead to a felony that makes them a ‘Three Strikes’ defendant forever.”

- 8) **Related Legislation:** AB 3231 (Villapudua), adds felony hate crimes, or any felony in which a hate crimes enhancement is imposed, to the list of violent felonies subject to additional penalties. AB 3231 is scheduled for hearing today
- 9) **Prior Legislation:** AB 229 (Joe Patterson) of the 2023 Legislative Session added several felonies too the “Violent Felony” list, including felony domestic violence. AB 229 failed passage in Assembly Public Safety Committee.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Arcadia Police Officers' Association  
 Burbank Police Officers' Association  
 California Baptist for Biblical Values  
 California Narcotic Officers' Association  
 California Police Chiefs Association  
 California Reserve Peace Officers Association  
 California State Sheriffs' Association  
 Claremont Police Officers Association  
 Corona Police Officers Association  
 Culver City Police Officers' Association  
 Deputy Sheriffs' Association of Monterey County  
 Fullerton Police Officers' Association  
 Legal Services for Prisoners With Children  
 Murrieta Police Officers' Association  
 Newport Beach Police Association  
 Novato Police Officers Association  
 Palos Verdes Police Officers Association  
 Peace Officers Research Association of California (PORAC)  
 Placer County Deputy Sheriffs' Association  
 Pomona Police Officers' Association  
 Riverside Police Officers Association  
 Riverside Sheriffs' Association  
 Santa Ana Police Officers Association  
 Upland Police Officers Association

### **Oppose**

ACLU California Action  
 All of Us or None Riverside  
 California Alliance for Youth and Community Justice

California Attorneys for Criminal Justice  
California Coalition for Women Prisoners  
California Public Defenders Association  
Californians United for A Responsible Budget  
Ella Baker Center for Human Rights  
Fair Chance Project  
Felony Murder Elimination Project  
Immigrant Legal Resource Center  
Initiate Justice  
Initiate Justice Action  
LA Defensa  
Pacific Juvenile Defender Center  
San Francisco Public Defender  
Silicon Valley De-bug  
Sister Warriors Freedom Coalition  
Smart Justice California, a Project of Tides Advocacy  
Survived and Punished  
Team Justice  
Uncommon Law  
Vera Institute of Justice  
Young Women's Freedom Center

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