
THIRD READING

Bill No: AB 321
Author: Schultz (D), et al.
Amended: 8/19/25 in Senate
Vote: 21

ASSEMBLY FLOOR: 52-6, 3/13/25 - See last page for vote

SUBJECT: Misdemeanors

SOURCE: San Francisco Public Defender's Office

DIGEST: This bill allows a court to reduce wobbler violations any time prior to trial and allows a subsequent motion to reduce a wobbler only upon a showing of changed circumstances.

Senate floor amendments of 8/19/2025 provide that changed circumstances include, but are not limited to, newly available facts relevant to the charge or to the defendant's personal circumstances, or a change in the applicable law.

ANALYSIS:

Existing Law:

- 1) Recognizes that certain crimes may be punished as either a felony or a misdemeanor. (Penal (Pen.) Code, § 17, subd. (b).)
- 2) 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:
 - a) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail;
 - b) When the court, upon committing the defendant to the Division of Juvenile Justice (DJJ), designates the offense to be a misdemeanor;

- c) 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;
 - d) 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;
 - e) 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).)
- 3) Provides that when a defendant is committed to the 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).)
- 4) 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:

- 1) Allows a court to reduce wobbler violations any time prior to trial, either on its own motion or the motion of a party.
- 2) Allows a subsequent motion to reduce a felony to a misdemeanor only upon a showing of changed circumstances, which include, but are not limited to, newly available facts relevant to the charge or the defendant's personal circumstances, or a change in the law.
- 3) Replaces references to the former Division of Juvenile Justice, which is now closed, with references to now-existing secure youth treatment facilities.

Background

"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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 8/18/25)

ACLU California Action
Alliance San Diego
Asian Prisoner Support Committee
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
Local 148 LA County Public Defenders Union
New Light Wellness
Orale: Organizing Rooted in Abolition Liberation and Empowerment
Orange County Equality Coalition
San Francisco Public Defender
Secure Justice
Sister Warriors Freedom Coalition
Smart Justice California
South Bay People Power
Southeast Asia Resource Action Center
Vera Institute of Justice

OPPOSITION: (Verified 8/18/25)

Riverside County District Attorney
California District Attorneys Association

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

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.

ARGUMENTS IN OPPOSITION: According to the California District Attorneys Association:

The May 29, 2025 amendments to AB 321 do not address CDAA's concerns, either. As amended, the bill would still allow a motion to be brought at any point in time during the lifespan of the felony criminal proceeding. However, once denied, a motion could then only be brought again upon a showing of changed circumstances. But that “changed circumstances” requirement does not address issues with forum shopping and permit judges to make important dispositional decisions without a full

hearing on the facts and circumstances of the case. As such, CDAA remains opposed to these and other amendments in subdivision (b)(5).

Our adversarial justice system is designed to give the judge both sides – all the information – so they may make the most informed, just, and appropriate decisions. For these reasons we oppose AB 321 unless amended to only address the chaptering issues related to the former DJJ and current SYTF.

ASSEMBLY FLOOR: 52-6, 3/13/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Davies, Elhawary, Flora, Fong, Gabriel, Gipson, Mark González, Haney, Harabedian, Jackson, Kalra, Krell, Lowenthal, McKinnor, Muratsuchi, Nguyen, Pacheco, Papan, Patel, Pellerin, Quirk-Silva, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Stefani, Wicks, Wilson, Zbur, Rivas

NOES: Castillo, DeMaio, Macedo, Sanchez, Tangipa, Wallis

NO VOTE RECORDED: Bains, Chen, Dixon, Ellis, Essayli, Gallagher, Garcia, Jeff Gonzalez, Hadwick, Hart, Hoover, Irwin, Lackey, Lee, Ortega, Patterson, Petrie-Norris, Ramos, Soria, Ta, Valencia, Ward

Prepared by: Sandy Uribe / PUB. S. /
8/20/25 23:06:54

**** END ****