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THIRD READING

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Bill No: SB 1173  
Author: Caballero (D)  
Amended: 3/23/26  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 5-1, 4/14/26  
AYES: Arreguín, Caballero, Cortese, Pérez, Wiener  
NOES: Seyarto

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**SUBJECT:** Jury instructions: lesser related offenses

**SOURCE:** California Attorneys for Criminal Justice; Californians for Safety and Justice

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**DIGEST:** This bill restores a criminal defendant's right to a jury instruction on lesser related offenses to the offense charged, and permits a jury, or a judge if a jury trial is waived, to find the defendant guilty of the lesser offense if certain conditions are met.

**ANALYSIS:**

Existing law:

- 1) Provides that after closing arguments in a criminal trial, the judge may then charge the jury, and shall do so on any points of law pertinent to the issue, if requested by either party. (Penal (Pen.) Code, § 1093, subd. (f).)
- 2) Provides that at the beginning of the trial or from time to time during the trial, and without any request from either party, the trial judge may give the jury such instructions on the law applicable to the case as the judge may deem necessary for their guidance on hearing the case. (Ibid.)
- 3) Provides that in any criminal case which is being tried before the court with a jury, all requests for instructions on points of law must be made to the court and all proposed instructions must be delivered to the court before commencement of argument. (Pen. Code, § 1093.5)

- 4) Provides that before the commencement of the argument, the court, on request of counsel, must:
  - a) Decide whether to give, refuse, or modify the proposed instructions.’
  - b) Decide which instructions shall be given in addition to those proposed, if any.
  - c) Advise counsel of all instructions to be given. (Ibid.)
- 5) Provides that if, during the argument, issues are raised which have not been covered by instructions given or refused, the court may, on request of counsel, give additional instructions on the subject matter thereof. (Ibid.)
- 6) Provides that when it appears that the defendant has committed a public offense, or attempted to commit a public offense, and there is reasonable ground of doubt in which of two or more degrees of the crime or attempted crime he is guilty, he can be convicted of the lowest of such degrees only. (Pen. Code, § 1097.)
- 7) Defines a special verdict as that by which the jury finds the facts only, leaving judgment to the court, as specified. (Pen. Code § 1152.)
- 8) Provides that the court must give judgment upon the special verdict as follows:
  - a) If the plea is not guilty, and the facts prove the defendant guilty of the offense charged in the indictment or information, or of any other offense of which he could be convicted under that indictment or information, judgment must be given accordingly. But if otherwise, judgment of acquittal must be given.
  - b) If the plea is a former conviction or acquittal or once in jeopardy of the same offense, the court must give judgment of acquittal or conviction, as the facts prove or fail to prove the former conviction or acquittal or jeopardy. (Pen. Code, § 1155.)
- 9) Provides that whenever a defendant is convicted of a crime or attempt to commit a crime which is distinguished into degrees, the jury, or the court if a jury trial is waived, must find the degree of the crime or attempted crime of which he is guilty. Upon the failure of the jury or the court to so determine, the degree of the crime or attempted crime of which the defendant is guilty, shall be deemed to be of the lesser degree. (Pen. Code, § 1157.)

- 10) Provides that the jury, or the judge if a jury trial is waived, may find the defendant guilty of any offense, the commission of which is necessarily included in that with which he is charged, or of an attempt to commit the offense. (Pen. Code, § 1159.)

This bill:

- 1) Provides that a jury, or a judge if a 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 the court determines that 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.
  - 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 that it is the intent of the Legislature in enacting the provision above to restore the right of a defendant to receive jury instructions on lesser related offenses as originally guaranteed by the California Supreme Court in *People v. Geiger* (1984) 35 Cal.3d.510.

## Comments

California law has long provided that a trial court must instruct a criminal jury on any lesser included offense if there is substantial evidence only the lesser crime was committed. In 1984, however, the California Supreme Court in *People v. Geiger* (1984) 35 Cal.3d 510 ruled that in certain circumstances, and only upon the request of the defendant, the defendant also has a right to have the jury instructed on lesser related offenses that bear some conceptual and evidentiary relationship to the greater offense. The *Geiger* Court rooted its reasoning in the constitutional principles requiring instruction on lesser included offenses:

The necessity for instructions on lesser offenses is founded in the defendant's 'constitutional right to have the jury determine every material issue presented by the evidence.' [...] The requirement of instructions on lesser included offenses is based on the elementary principle that the court should instruct the jury on every material question. The state has no

interest in a defendant obtaining an acquittal where he is innocent of the primary offense charged but guilty of a necessarily included offense. Nor has the state any legitimate interest in obtaining a conviction of the offense charged where the jury entertains a reasonable doubt of guilt of the charged offense but returns a verdict of guilty of that offense solely because the jury is unwilling to acquit where it is satisfied that the defendant has been guilty of wrongful conduct constituting a necessarily included offense. Likewise, a defendant has no legitimate interest in compelling the jury to adopt an all or nothing approach to the issue of guilt.

As such, the Court in *Geiger* opined that “it would be fundamentally unfair to deny the defendant the right to have the court or jury consider the ‘third option’ of convicting the defendant of the related offense,” and that the prosecution would also benefit because “some guilty defendants who would otherwise go free will be punished for a crime which they committed even though it was overlooked by a prosecutor or was not charged because the prosecutor overestimated the strength of the Peoples’ evidence.”

Reasoning that these considerations of due process, fairness, and accuracy should apply to lesser related offenses with equal force, the Court held that, upon the defendant’s request, a trial court must instruct a jury on lesser related offenses, but only when three prerequisites are met. First, there must be some basis, other than an unexplainable rejection of the prosecution evidence on which the jury could find the offense to be less than that charged. Second, although some evidence offered by the prosecution or the defendant may indicate that the defendant committed a crime other than that charged, instructions regarding that crime need not be given “unless the evidence is also relevant to and admitted for the purpose of establishing whether the defendant is guilty of the charged offense.” Finally, the instructions must be justified by the defendant’s reliance on a theory of defense that would be consistent with a conviction for a related offense. That is, if the defense was predicated on a complete denial of criminal culpability, or mistaken identity, a lesser related offense instruction was unnecessary.

A California criminal defendant’s right to have the jury instructed on lesser related offenses lasted until the California Supreme Court overruled its decision in *Geiger* when it handed down *People v. Birks* (1998) 19 Cal.4th 108. In *Birks*, the Court held that a defendant is not entitled to jury instructions on lesser related offenses as a matter of due process, even if he or she requests the instruction and it would have been supported by substantial evidence, and courts may not instruct concerning an uncharged lesser related crimes unless agreed to by both parties. The Court

reasoned that “the Geiger rule contravenes the principle of mutual fairness by giving the defendant substantially greater rights either to require, or to prevent, the consideration of lesser nonincluded offenses than are accorded to the People, the party specifically responsible for determining the charges,” and, moreover “invites the jury to convict the defendant of a crime that no party may have attempted to establish beyond a reasonable doubt.” The Court also suggested that the Geiger rule may raise separation of powers issues under Article 3 of the California Constitution, but refrained from resolving such issues in its opinion.

This bill, reinstating the *Geiger* rule, additionally provides that a jury, or a judge if a jury trial is waived, upon request of the 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. Per the *Geiger* ruling, the bill, prior to an instruction on a lesser related offense, requires the court to determine that all of the following conditions have been met:

- The defendant relies on a theory of defense that is consistent with a conviction for the lesser offense.
- 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.
- 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.

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

**SUPPORT:** (Verified 4/14/26)

California Attorneys for Criminal Justice (co-source)

Californians for Safety and Justice (co-source)

ACLU California Action

California Public Defenders Association

Communities United for Restorative Youth Justice

Courage California

Drug Policy Alliance

Ella Baker Center for Human Rights

Felony Murder Elimination Project

Justice2Jobs Coalition

La Defensa

San Francisco Public Defender

Silicon Valley De-Bug  
Smart Justice California  
The W. Haywood Burns Institute

**OPPOSITION:** (Verified 4/14/26)

California District Attorneys Association

Prepared by: Alex Barnett / PUB. S. /  
4/15/26 19:55:20

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