

Date of Hearing: August 5, 2026

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 1173 (Caballero) – As Amended March 23, 2026

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill restores a defendant's right to a jury instruction on a lesser related offense to the offense charged, if certain conditions are met.

More specifically, this bill:

- 1) Authorizes a jury, or a judge if a jury trial is waived, upon request of a defendant, to find the defendant guilty of a lesser offense closely related to the offense charged, if the court determines all of the following conditions are met:
 - a) The defendant relies on a theory of defense 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 the intent of the Legislature 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.

FISCAL EFFECT:

- 1) Court cost pressures of \$540,000 to \$4.86 million annually (Trial Court Trust Fund) due to increased workload and trial time at both the superior court and appellate court levels. The courts derived this range from trial data in the most recent Court Statistics Report, which reflects approximately 7,000 misdemeanor and felony trials annually, and applied an assumed 25% to 75% share of trials in which a defendant may request a lesser related offense instruction. Additional trial time reflects explaining jury instructions and allowing additional argument. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although trial courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a need for increased General Fund support. The 2025-26 budget includes \$117.3 million General Fund to backfill the Trial Court Trust Fund.
- 2) Minor and absorbable workload to the Judicial Council to adopt or modify jury instructions and develop supplemental hearing materials for judicial officers and court staff.

COMMENTS:

- 1) **Purpose.** The bill is sponsored by California Attorneys for Criminal Justice, the California Public Defenders Association, and Californians for Safety and Justice. According to the author:

SB 1173 restores balance in the criminal courtroom. It allows a judge to include a lesser-related offense in jury instructions if the evidence supports it. This reform strengthens due process, supports fair outcomes, ensures that juries can consider the facts before them, and helps juries connect the evidence with the appropriate offense.

- 2) **Background.** From 1984 to 1998, under *People v. Geiger* (1984), a defendant was entitled to jury instructions on lesser related offenses—offenses sharing common elements with, or arising from the same course of conduct as, the charged offense, but not necessarily included within the charged offense. For example, a defendant charged with burglary could request an instruction on trespass — an offense arising from the same conduct but containing an element (unlawful presence) not required for burglary. In *People v. Birks* (1998) 19 Cal.4th 108, the California Supreme Court overruled *Geiger*, holding that a defendant has no due process right to an instruction on a lesser related offense, and observing that the *Geiger* rule may raise separation of powers concerns by intruding on the prosecution’s exclusive charging discretion. The *Birks* court noted, however, that the Legislature remains free to revise the statutes on which the court’s holding rested. This bill amends Penal Code section 1159 to create an express statutory basis for lesser related offense instructions, subject to the three *Geiger* conditions, which require a consistent defense theory, evidence of the lesser offense already admitted at trial, and a rational basis for the lesser verdict, with the court as gatekeeper. Supporters argue restoring the instruction corrects an all-or-nothing verdict structure that pressures a jury to convict of the charged offense rather than acquit a defendant the jury believes committed some crime, undermining the reasonable doubt standard; permitting a jury to consider a lesser offense the evidence actually supports promotes accurate factfinding and reduces the leverage of over-charging. Opponents contend the bill revives a rule the Supreme Court has repudiated and could invite constitutional challenge on separation of powers grounds; any such litigation would be defended by the Department of Justice at some cost to the General Fund.
- 3) **Prior Legislation.** AB 2435 (Lee), of the 2021-22 Legislative Session, was identical to this bill and failed passage on the Assembly Floor.

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