

SENATE THIRD READING
SB 1173 (Caballero)
As Amended August 20, 2026
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) 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, 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) Requires a defendant seeking a lesser related offense instruction in a jury trial to provide notice of intent to seek this instruction to the prosecution no later than the commencement of jury selection. If a jury is waived, notice must be given before the presentation of evidence.
- 3) States notice may only be waived only with the consent of the prosecution or upon a showing of good cause.

COMMENTS

According to the Author

"In 1998, the California Supreme Court ruled in *People v. Birks*, that there is neither a statutory or constitutional right to have a lesser related offense presented to a jury. This decision reversed the longstanding ability of a defense attorney to request that the jury consider a lesser charge, if the facts presented at trial supported the elements of the lesser offense, but it did foreclose the possibility of restoration, but noted there is no statutory authority.

"Currently, jury deliberations are limited to the charges brought by the prosecution, even when the evidence supports a different, lesser offense. At the height of the war on crime era, the Birks Court reduced judicial discretion to allow for lesser charges to be considered, and narrowed a defendant's ability to ask for lesser related crimes to be heard.

"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."

Arguments in Support

According to the American Civil Liberties Union (*ACLU California Action*), "Under current law, juries are not permitted to consider lesser related offenses at trial, but only the charges brought forth by the prosecution, even when presented evidence does not accurately reflect the charges. For example, if a jury believes the evidence proves the accused has committed a criminal offense, but the prosecutor has only presented the highest level offense, with a longer potential prison sentence than what the evidence supports, the jury must decide whether to convict someone of a crime they did not actually commit, or find the accused not guilty, even though the jury believes that an alternative offense was committed. This procedure comes from a 1998 appellate court case that overturned a previous rule allowing defendants to request jury instructions on a lesser related offense.¹ This ruling has left defendants without the ability to argue that an alternative charge would be more accurate, violating the principle that the evidence should dictate the offense. Prior to 1998, juries were allowed to consider lesser related offenses. SB 1173 restores this legal option.

"This limitation undermines due process and fairness. When juries are not allowed to consider all charges supported by the evidence, there is an increased risk of conviction for offenses that may not accurately align with the facts of the case. For example, someone may be arrested for attempted breaking and entering a business after hours. However, the evidence may show that the individual was recently terminated from the business, and they were vandalizing the exterior of the building out of frustration without the intent to commit burglary. If a prosecutor only presents the breaking and entering (burglary) charge and not the vandalism, a jury may never get the option to even consider the lesser related offense despite the facts supporting such an alternative. SB 1173 addresses this by giving authority to a judge to decide if evidence supports the inclusion of a lesser related offense, ensuring that the charges presented match the facts of the case.

"This legislation offers a balanced approach to criminal trial court, by allowing judges the discretion to include the jury instruction or not only when appropriate. This establishes important safeguards while continuing to allow for judicial authority. SB 1173 promotes critical protections needed to strengthen confidence in California's criminal justice system. Ensuring that juries are fully informed of every charge that is factually supported upholds a more balanced and just process for every individual involved."

Arguments in Opposition

According to the *California District Attorneys Association*, "This bill would go backwards in our approach to criminal law. It also would run afoul of the California Supreme Court's clear language noting a serious constitutional concern. This same bill, introduced four years ago (AB 2435 (Lee), [of] 2021-2022 Sess[ion].), failed to pass the Assembly for the same reasons it is bad policy today. The bill proposes an outdated, unconstitutional, and unworkable rule requiring courts to instruct juries on lesser related offenses. In 1998, the California Supreme Court specifically ruled that courts shall 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 30 years. SB 1173 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:

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 Constitution's separation of powers clause.

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

"[California District Attorneys Association] (CDA) echoes the Supreme Court's concerns that such instructions "promotes inaccurate factfinding." Additionally, SB 1173 in its application would lead to disparate outcomes depending on factors irrelevant to the case such judicial draw and local county practice. The current state of the law is predictable and is applied uniformly across the state."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 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.

VOTES

SENATE FLOOR: 25-10-5

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cortese, Durazo, Grayson, Laird, Limón, McGuire, Menjivar, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Stern, Wahab, Weber Pierson, Wiener

NO: Alvarado-Gil, Choi, Grove, Jones, McNerney, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

ABS, ABST OR NV: Cervantes, Dahle, Gonzalez, Hurtado, Umberg

ASM PUBLIC SAFETY: 6-2-1

YES: Schultz, Mark González, Haney, Harabedian, Ramos, Sharp-Collins

NO: Alanis, Lackey

ABS, ABST OR NV: Nguyen

ASM APPROPRIATIONS: 11-4-0

YES: Wicks, Arambula, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Ta, Tangipa

UPDATED

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