
VETO

Bill No: SB 1173
Author: Caballero (D), et al.
Enrolled: 8/30/26
Vote: 27

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 4/14/26

AYES: Arreguín, Caballero, Cortese, Pérez, Wiener

NOES: Seyarto

SENATE FLOOR: 25-10, 5/27/26

AYES: 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

NOES: Alvarado-Gil, Choi, Grove, Jones, McNerney, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

NO VOTE RECORDED: Cervantes, Dahle, Gonzalez, Hurtado, Umberg

SENATE FLOOR: 28-10, 8/27/26

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

NOES: Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

NO VOTE RECORDED: McNerney, Umberg

ASSEMBLY FLOOR: 44-19, 8/26/26 - See last page for vote

SUBJECT: Jury instructions: lesser related offenses

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

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. (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) Provides that a defendant seeking lesser related offense instruction in a jury trial shall 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 shall be given before the presentation of evidence.
- 3) Specifies that the notice provisions above shall be waived only with the consent of the prosecution or upon a showing of good cause.

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

According to the Assembly Appropriations Committee:

- 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.
- 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.

SUPPORT: (Verified 9/29/26)

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

Drug Policy Alliance 1
Ella Baker Center for Human Rights
Felony Murder Elimination Project
Friends Committee on Legislation of California
Justice2jobs Coalition
LA Defensa
Local 148 Los Angeles County Public Defender's Union
San Francisco Public Defender
San Quentin Skunkworks
Silicon Valley De-bug
Smart Justice California
The W. Haywood Burns Institute

OPPOSITION: (Verified 9/29/26)

California District Attorneys Association
Los Angeles County District Attorney's Office
San Diego County District Attorney's Office

GOVERNOR'S VETO MESSAGE:

I am returning Senate Bill 1173 without my signature.

This bill would authorize a Criminal Court to instruct a jury and convict on a “lesser related offense” of the defendant's choosing, over the objection of the prosecutor.

The propriety of lesser related defense rule contemplated by this bill was considered and rejected by the California Supreme Court more than 25 years ago in *People v. Birks* (1998) 19 Cal.4th 108. The court explained that the lesser related offense rule “can be unfair to the prosecution,” that it “actually promotes fact finding,” and that it may well violate the constitution separation of powers clause. These concerns are equally valid today and I do not support upsetting the balance struck by the California Supreme Court in the Birks decision.

For these reasons, I cannot sign Senate Bill 1173.

ASSEMBLY FLOOR: 44-19, 8/26/26

AYES: Aguiar-Curry, Ahrens, Alvarez, Arambula, Ávila Farías, Bauer-Kahan, Bennett, Berman, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Garcia, Gipson, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Lee, Lowenthal, McKinnor, Ortega, Papan, Petrie-Norris, Quirk-Silva, Ransom, Celeste Rodriguez, Rogers, Schultz, Sharp-Collins, Solache, Soria, Valencia, Wicks, Wilson, Zbur, Rivas

NOES: Alanis, Castillo, Chen, Davies, DeMaio, Dixon, Ellis, Flora, Jeff Gonzalez, Hadwick, Hoover, Johnson, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa, Wallis

NO VOTE RECORDED: Addis, Bains, Boerner, Gabriel, Krell, Muratsuchi, Nguyen, Pacheco, Patel, Pellerin, Ramos, Michelle Rodriguez, Blanca Rubio, Schiavo, Stefani, Ward

Prepared by: Alex Barnett / PUB. S. /

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**** END ****