

**SENATE COMMITTEE ON PUBLIC SAFETY**

Senator Loni Hancock, Chair  
2013-2014 Regular Session

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SB 1310 (Lara)  
As Introduced: February 21, 2014  
Hearing date: April 1, 2014  
Penal Code  
MK:sl

MISDEMEANORS: MAXIMUM SENTENCE

HISTORY

Source: California Attorneys for Criminal Justice

Prior Legislation: None

Support: American Civil Liberties Union; Asian Americans Advancing Justice; California Coalition for Women Prisoners; California Immigrant Policy Center; California Partnership; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Children’s Defense Fund-California; Educators for Fair Consideration; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Latino Coalition for a Healthy California; Legal Services for Prisoners with Children; MALDEF; Services, Immigrant Rights & Education Network (SIREN)

Opposition: None known

KEY ISSUE

SHOULD THE LAW PROVIDE THAT AN OFFENSE PUNISHABLE BY UP TO ONE YEAR IN THE COUNTY JAIL SHALL BE PUNISHABLE BY IMPRISONMENT IN A COUNTY JAIL FOR A PERIOD NOT TO EXCEED 364 DAYS?

*PURPOSE*

*The purpose of this bill is to provide that an offense punishable by up to one year in county jail is punishable by a period not to exceed 364 days.*

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Existing law provides that except in cases where a different punishment is prescribed, the punishment for a felony is 16 months, 2 or 3 years in state prison, unless the offense is punishable under Penal Code 1170(h) in which case the punishment when not specified is 16 months, 2 or 3 years in county jail. (Penal Code §18 and 1170(h))

Existing law provides that except where a different punishment is prescribed every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding \$1,000 or both fine or both. (Penal Code § 19)

Existing federal law, for purposes of deportation, defines an aggravated felony in part as:

- a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment is at least one year; or,
- a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment is at least one year. (8 USD 1101 (a)(43)(F) and (G)).

Existing federal law, provides that for purposes of deportation, provides that a crime involving moral turpitude shall be considered when the maximum possible sentence is at least one year. (8USC § 1227(a)(2)(A)(i))

This bill provides that every offense which is prescribed by any law of the state to be punishable by imprisonment in a county jail up to or not exceeding one year shall be punishable by imprisonment in a county jail for a period not to exceed 364 days.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the last several years, severe overcrowding in California's prisons has been the focus of evolving and expensive litigation relating to conditions of confinement. On May 23, 2011, the United States Supreme Court ordered California to reduce its prison population to 137.5 percent of design capacity within two years from the date of its ruling, subject to the right of the state to seek modifications in appropriate circumstances.

Beginning in early 2007, Senate leadership initiated a policy to hold legislative proposals which could further aggravate the prison overcrowding crisis through new or expanded felony prosecutions. Under the resulting policy, known as "ROCA" (which stands for "Receivership/Overcrowding Crisis Aggravation"), the Committee held measures that created a new felony, expanded the scope or penalty of an existing felony, or otherwise increased the application of a felony in a manner which could exacerbate the prison overcrowding crisis. Under these principles, ROCA was applied as a content-neutral, provisional measure necessary to ensure that the Legislature did not erode progress towards reducing prison overcrowding by passing legislation, which would increase the prison population.

In January of 2013, just over a year after the enactment of the historic Public Safety Realignment Act of 2011, the State of California filed court documents seeking to vacate or modify the federal court order requiring the state to reduce its prison population to 137.5 percent of design capacity.

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The State submitted that the, “. . . population in the State’s 33 prisons has been reduced by over 24,000 inmates since October 2011 when public safety realignment went into effect, by more than 36,000 inmates compared to the 2008 population . . . , and by nearly 42,000 inmates since 2006 . . . .” Plaintiffs opposed the state’s motion, arguing that, “California prisons, which currently average 150% of capacity, and reach as high as 185% of capacity at one prison, continue to deliver health care that is constitutionally deficient.” In an order dated January 29, 2013, the federal court granted the state a six-month extension to achieve the 137.5 % inmate population cap by December 31, 2013.

The Three-Judge Court then ordered, on April 11, 2013, the state of California to “immediately take all steps necessary to comply with this Court’s . . . Order . . . requiring defendants to reduce overall prison population to 137.5% design capacity by December 31, 2013.” On September 16, 2013, the State asked the Court to extend that deadline to December 31, 2016. In response, the Court extended the deadline first to January 27, 2014 and then February 24, 2014, and ordered the parties to enter into a meet-and-confer process to “explore how defendants can comply with this Court’s June 20, 2013 Order, including means and dates by which such compliance can be expedited or accomplished and how this Court can ensure a durable solution to the prison crowding problem.”

The parties were not able to reach an agreement during the meet-and-confer process. As a result, the Court ordered briefing on the State’s requested extension and, on February 10, 2014, issued an order extending the deadline to reduce the in-state adult institution population to 137.5% design capacity to February 28, 2016. The order requires the state to meet the following interim and final population reduction benchmarks:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and
- 137.5% of design bed capacity by February 28, 2016.

If a benchmark is missed the Compliance Officer (a position created by the February 10, 2016 order) can order the release of inmates to bring the State into compliance with that benchmark.

In a status report to the Court dated February 18, 2014, the state reported that as of February 12, 2014, California’s 33 prisons were at 144.3 percent capacity, with 117,686 inmates. 8,768 inmates were housed in out-of-state facilities.

The ongoing prison overcrowding litigation indicates that prison capacity and related issues concerning conditions of confinement remain unresolved. While real gains in reducing the prison population have been made, even greater reductions may be required to meet the orders of the federal court. Therefore, the Committee’s consideration of ROCA bills –bills that may impact the prison population – will be informed by the following questions:

- Whether a measure erodes realignment and impacts the prison population;
- Whether a measure addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;

- Whether a bill corrects a constitutional infirmity or legislative drafting error;
- Whether a measure proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy; and,
- Whether a bill addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Legal immigrants have always been subject to deportation, if they commit specified crimes determined by federal statute. In 1996 Congress enacted the Illegal Immigration Reform and Immigration Responsibility Act, which expanded the list of crimes that a legal immigrant can be deported for to include an aggravated felony. Under immigration law, an aggravated felony is a term of art that can apply to crimes that are neither aggravated or a felony.

Under the U.S. Immigration and Nationality Act, aggravated felonies fall into two categories: specific crimes that federal law has determined trigger deportation and crimes that are deportable if the defendant receives a 365-day sentence, regardless of the time served. The time imposed by the court, irrespective of whether the time is suspended or not, is considered part of the sentence. As a result, a legal immigrant convicted of a crime and sentenced to 365 days with 362 days suspended, who served only 3 days in jail, would have a one year sentence as defined under federal law and face deportation.

Prior to 1996, legal immigrants had the opportunity to challenge their deportation before a judge. Currently, those deported have no legal way to reenter the U.S., even if they were legal residents and have an American spouse. Washington, Nevada, and Illinois have all passed legislation to address this problem.

As a result of the one year sentence deportation policy, thousands of families are torn apart every year due to minor crimes, such as writing a bad check. Those deported often leave behind families and children who depend on them for support. From 2010 through 2012 the U.S. Immigration and Customs Enforcement deported 204,000 immigrant parents from the U.S., which accounted for 23 percent of the total number of deportations during that time period. Many of those deported for minor offenses are longtime legal permanent residents of California, with deep connections to their families and communities.

SB 1310 will reduce the maximum possible misdemeanor sentence from one year to 364 days, so that deportation eligibility will not be triggered for a legal immigrant who commits a misdemeanor punishable by imprisonment for one year.

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This bill will not affect immigration enforcement and people who are in California unlawfully or have committed serious crimes will still face deportation. This bill will preserve judicial discretion and ensure legal residents who have committed minor crimes are not automatically subject to deportation and separated from their families.

## 2. Felonies for the purposes of deportation under Federal Immigration law

In California, the maximum sentence for a misdemeanor is one year while the lowest penalty for a felony is generally no less than 16 months. Because some misdemeanors have a sentence of one year, non-citizens who are in the country legally can face deportation because the definition of aggravated felony under the Immigration and Nationality Act includes sentences of one year, even though these are not considered felonies in California. (INA §101(a)(43)) Individuals who have committed an “aggravated felony” under federal immigration law can face the following consequences:

- Deportation without a Removal Hearing with no appeal (INA § 238)
- Deportation even for long-term legal residents with no eligibility for cancellation of removal (INA § 240A(a)(3), (b)(1)(C), (b)(1)(D))
- Mandatory unreviewable detention following release from criminal custody or upon referral to Immigration Court (INA § 236(c))
- Ineligibility for Asylum (INA § 208(b)(2)(B)(i); INA § 101(a)(42))
- Ineligibility for waivers of inadmissibility based on extreme hardship to a qualifying USC or LPR spouse or parent (INA § 212(h))
- Permanent Inadmissibility following departure/deportation from United States (INA § 212(a)(9)(ii))
- Increased criminal penalties for illegally re-entering the United States after deportation for an aggravated felony (INA § 276(b)(2))
- Ineligibility for Naturalization (Citizenship) (INA § 101(f)(8))

## 3. Redefining a Year

This bill provides that for purposes of any offense for which the punishment is a year or up to a year in county jail the punishment shall be for not more than 364 days. By changing a “year” to “364 days” this would keep those offenses that California considers to be misdemeanors from being considered “aggravated felonies” for federal immigration purposes.

## 4. Human Rights Watch Report

Human Rights Watch (HRW) did a report in 2009 on analyzing ICE data on deportation of non-citizens. While they had some issues with the data they received from ICE, HRW found that “non-citizens who have lived in the United States for decades, including lawful permanent residents (persons with “green cards”), have been summarily deported from the country for criminal conduct, including minor crimes.” According to the HRW report:

Between 1997 and 2007, 897,099 non-citizens were deported from the United States after serving their criminal sentences. Twenty percent were legally in the country, often living legally in the US for decades, before they were deported. It is this group of legally present non-citizens who experience some of the most egregious human rights violations in being deported from the United States. Legally present non-citizens hold the strongest claims against summary deportation as a violation of their fundamental rights to live as a family, to maintain longstanding ties to their country of primary residence, and refugees' rights to protection from return to persecution.

Our analysis of the ICE data also disproves the popular belief that the agency focuses almost exclusively on deporting undocumented (or illegally present) non-citizens with violent criminal histories. In reality, 72 percent of those who were deported between 1997 and 2007 for whom we have crime data were expelled from the United States for non-violent offenses. Of those for whom we have crime data who were legally in the country, the number is even higher: 77 percent of those legally present non-citizens were banished from the United States, often permanently, for non-violent offenses. Only 23 percent of those legally present non-citizens were deported for a violent or potentially violent offense.

When specific crimes are examined, the results are even more telling. The top four crimes forming the basis for deportation of all types of non-citizens from the United States were: entering the United States illegally (comprising 24 percent of all deportees for whom we have crime data), driving under the influence of alcohol (7.2 percent), assault (5.5 percent), and immigration crimes (for example, selling false citizenship papers) (5.5 percent). In addition to these "top four," the relatively minor crimes for which non-citizens were most frequently deported include: marijuana possession (2.2 percent), traffic offenses (1.5 percent), and disorderly conduct (0.4 percent). Of course, non-citizens were also deported for more serious violent crimes, including robbery (2.2 percent) and aggravated assault (1 percent). But contrary to popular belief and fear-mongering about criminal behavior by noncitizens, a tiny minority, just 0.3 percent, were deported for any form of intentional homicide. (Human Rights Watch, *United States Forced Apart (By the Numbers: Non-Citizens Deported for Mostly Nonviolent Offenses* April 2009)

## 5. Support

The Friends Committee on Legislation supports this bill stating:

By limiting the maximum sentence for all misdemeanors to 364 days, SB 1310 will protect the 27 percent of California's population who are immigrants (the vast majority of who are either naturalized or living here under some form of legal status) from having deportation proceedings triggered for a misdemeanor conviction. This will keep countless families from being torn apart by deportation.

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