

AMENDED IN SENATE JANUARY 5, 2016

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AMENDED IN SENATE APRIL 29, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 617

Introduced by Senator Block

February 27, 2015

An act to add Section 19.5 to the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Block. Crimes.

Existing law defines crimes as infractions, misdemeanors, or felonies. Existing law provides that when a crime is punishable in the discretion of the court as a felony or a misdemeanor, it is a misdemeanor for all purposes if certain circumstances are met. Existing law provides that when a defendant is committed to the Division of Juvenile Justice for a crime that is punishable in the discretion of the court as a felony or a misdemeanor punishable by incarceration in a county jail not exceeding one year, upon discharge of the defendant from the division, the crime is a misdemeanor for all purposes.

This bill would, subject to exceptions, allow misdemeanors punishable by a maximum term of confinement not exceeding 6 months in a county jail to be charged as a misdemeanor or an infraction, in the discretion of the prosecuting attorney, as specified. ~~The bill would, for a misdemeanor offense that is charged as an infraction under these provisions, make all statutory provisions of a misdemeanor offense, including fines of up to \$1,000 or penalties, applicable to the infraction as if the offense were charged as a misdemeanor. The bill would require~~

~~the prosecuting attorney, prior to disposition of the case, to notify the person charged with the infraction of specified information, including that there may be penalties, disabilities, or collateral consequences to professional licensing, immigration, or probation or parole status upon conviction. The bill would prohibit a misdemeanor charged as an infraction pursuant to these provisions from being punished by imprisonment and would specify that a person charged with an infraction is not entitled to have appointed counsel, unless specified conditions apply, or a trial by jury. This bill would authorize a person charged with an infraction pursuant to these provisions to elect to have the charge elevated to a misdemeanor, with all the rights and consequences of a misdemeanor charge.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19.5 is added to the Penal Code, to read:
2 19.5. (a) The Legislature finds and declares that there are
3 low-level misdemeanor offenses that, at the discretion of the
4 prosecuting attorney, and based on the facts of the committed
5 offenses, the lack of prior delinquency or criminality of the
6 offender, and the lack of the offender's need for supervision, can
7 be effectively prosecuted as infractions. The Legislature further
8 finds and declares that reducing these misdemeanors to infractions
9 will not compromise public safety, and that diverting low-level
10 misdemeanor offenders away from the criminal justice system and
11 the stigma associated with it will avoid costs associated with
12 protracted court involvement, jury trials, attorney representation,
13 confinement, and probation involvement.
14 (b) Except as provided by express statutory provisions providing
15 an alternative punishment or procedure, a crime punishable as a
16 misdemeanor with a maximum term of confinement not exceeding
17 six months in a county jail may be charged as a misdemeanor or
18 an infraction at the discretion of the prosecuting attorney.
19 (c) A crime charged as a misdemeanor shall not be reduced to
20 an infraction except at the discretion of the prosecuting attorney
21 pursuant to this section, or pursuant to express statutory provisions
22 providing an alternative punishment or procedure. The prosecuting

1 attorney may reduce the misdemeanor charge to an infraction
2 pursuant to this section at any time before trial.

3 (d) A person charged with an infraction pursuant to this section
4 is subject to Section 19.6 and shall not be punished by
5 imprisonment, shall not be entitled to trial by jury, and shall not
6 be entitled to have the public defender or other counsel appointed
7 at public expense to represent him or her unless he or she is arrested
8 and not released on his or her written promise to appear, his or her
9 own recognizance, or a deposit of bail.

10 ~~(e) Before disposition of the case, the prosecuting attorney shall~~
11 ~~notify a person who is charged with an infraction pursuant to this~~
12 ~~section, in person or in writing, of all of the following:~~

13 ~~(1) There may be penalties, disabilities, or collateral~~
14 ~~consequences to professional licensing, immigration status, or~~
15 ~~probation or parole status upon conviction of the infraction.~~

16 ~~(2) The person has the right to have the court consider a fine~~
17 ~~modification by electing a trial by declaration.~~

18 ~~(3) The person has the right to elect that the charge be elevated~~
19 ~~to a misdemeanor and shall have all of the rights, privileges,~~
20 ~~punishments, consequences, fines, penalties, and disabilities~~
21 ~~afforded those charged with a misdemeanor pursuant to this code,~~
22 ~~including the right to trial by jury and a publicly appointed attorney.~~

23 ~~(f) All statutory provisions of a misdemeanor that is charged as~~
24 ~~an infraction pursuant to this section, including, but not limited~~
25 ~~to, fines of up to one thousand dollars (\$1,000) and penalties, apply~~
26 ~~to the infraction and shall be imposed as if the offense had been~~
27 ~~charged as a misdemeanor.~~

28 *(e) Notwithstanding subdivision (d), a person charged with an*
29 *infraction pursuant to this section shall have the right to elect that*
30 *the charge be brought as a misdemeanor and, if that election is*
31 *made, shall have all of the rights, privileges, punishments,*
32 *consequences, fines, penalties, and disabilities afforded those*
33 *charged with a misdemeanor. The person charged shall be notified*
34 *of this right in writing or in person before a disposition of the*
35 *charge is accepted.*

36 *(f) An offense charged as an infraction pursuant to this section*
37 *is punishable by a fine not to exceed two hundred fifty dollars*
38 *(\$250), except where a lesser fine is expressly prescribed.*

39 (g) This section shall not apply to the following offenses:

40 (1) A misdemeanor firearms violation.

- 1 (2) A misdemeanor violation of the requirement to register
- 2 pursuant to Chapter 5.5 (commencing with Section 290) of Title
- 3 9 of Part 1.
- 4 (3) A misdemeanor violation of a crime for which a person is
- 5 required to register pursuant to Section 290.
- 6 (4) A misdemeanor child endangerment or child abuse violation.
- 7 (5) A misdemeanor elder abuse violation.
- 8 (6) A misdemeanor domestic violence violation.
- 9 (7) A misdemeanor driving-under-the-influence violation.
- 10 (8) A misdemeanor sex offense.
- 11 (9) A misdemeanor that is imposed by an initiative statute that
- 12 does not permit a lesser punishment.
- 13 (10) A misdemeanor violation resulting in restitution being
- 14 owed to a victim.

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