

Date of Hearing: March 25, 2025

Chief Counsel: Andrew Ironside

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Nick Schultz, Chair

AB 292 (Patterson) – As Introduced January 22, 2025

SUMMARY: Adds the crime of felony domestic violence to the list of “Violent Felonies” that subject a defendant to additional penalties, including under California “Three Strikes” Law, and reduce the custody credits that a defendant may receive.

EXISTING LAW:

- 1) Provides that willfully inflicting corporal injury resulting in a traumatic condition upon a victim, as specified, is a felony punishable by two, three, or four years in state prison, or a misdemeanor punishable by up to one year in county jail, or by a fine of up to \$6,000, or by both a fine and imprisonment. (Pen. Code, § 273.5, subd. (a).)
- 2) Provides, for purposes of domestic violence, a victim is the offender’s spouse or former spouse; the offender’s cohabitant or former cohabitant; the offender’s fiancé, or someone with whom the offender has, or previously had, and engagement or dating relationship, as specified; or, the mother or father of the offender’s child. (Pen. Code, § 273.5, subd. (b)(1)-(4).)
- 3) Defines “traumatic condition” as a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. (Pen. Code, § 273.5, subd. (c).)
- 4) Defines a "violent felony" as any of the following:
 - a) Murder or voluntary manslaughter;
 - b) Mayhem;
 - c) Rape or spousal rape accomplished by means of force or threats of retaliation;
 - d) Sodomy by force or fear of immediate bodily injury on the victim or another person;
 - e) Oral copulation by force or fear of immediate bodily injury on the victim or another person;
 - f) Lewd acts on a child under the age of 14 years, as defined;
 - g) Any felony punishable by death or imprisonment in the state prison for life;

- h) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice, or any felony in which the defendant has used a firearm, as specified;
 - i) Any robbery;
 - j) Arson of a structure, forest land, or property that causes great bodily injury;
 - k) Arson that causes an inhabited structure or property to burn;
 - l) Sexual penetration accomplished against the victim's will by means of force, menace or fear of immediate bodily injury on the victim or another person;
 - m) Attempted murder;
 - n) Explosion or attempted explosion of a destructive device with the intent to commit murder;
 - o) Explosion or ignition of any destructive device or any explosive which causes bodily injury to any person;
 - p) Explosion of a destructive device which causes death or great bodily injury;
 - q) Kidnapping;
 - r) Assault with intent to commit mayhem, rape, sodomy or oral copulation;
 - s) Continuous sexual abuse of a child;
 - t) Carjacking, as defined;
 - u) Rape or penetration of genital or anal openings by a foreign object;
 - v) Felony extortion;
 - w) Threats to victims or witnesses, as specified;
 - x) First degree burglary, as defined, where it is proved that another person other than an accomplice, was present in the residence during the burglary;
 - y) Use of a firearm during the commission of specified crimes; and,
 - z) Possession, development, production, and transfers of weapons of mass destruction.
 - aa) Rape of an intoxicated person, as specified. (Pen. Code, § 667.5(c)(1)-(24).)
- 2) Provides that when a defendant is convicted on a new felony offense and has a prior conviction for a specified violent felony, the defendant shall receive a consecutive three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified, unless the defendant meets certain conditions. (Pen.

Code, § 667.5, subd. (a).)

- 3) States that a conviction of a violent felony counts as a prior conviction for sentencing under the two and three strike law. (Pen. Code, § 667.)
- 4) Provides that if a defendant is convicted of a felony offense and it is pled and proved that the defendant has been convicted of one prior serious or violent offense as defined, the term of imprisonment is twice the term otherwise imposed for the current offense. (Pen. Code, § 667)
- 5) Specifies that notwithstanding any other law, any person who is convicted of a felony that is contained in the "violent" felony list shall accrue no more than 15% of work-time credit. (Pen. Code, § 2933.1, subd. (a).)
- 6) Defines a "serious felony" as any of the following: murder or manslaughter; mayhem; rape; sodomy; oral copulation; lewd acts on a child under the age of 14; any felony punishable by death or imprisonment for life; any felony in which the defendant inflicts great bodily injury; attempted murder; assault with the intent to commit rape or robbery; assault with a deadly weapon or instrument on a peace officer; assault by a life prisoner on a non-inmate; assault with a deadly weapon by an inmate; arson; exploding a destructive devise with the intention to commit murder or great bodily injury; first-degree burglary; armed robbery or bank robbery; kidnapping; holding of a hostage by a person confined to a state prison; attempting to commit a felony punishable by death or life in prison; any felony where the defendant personally used a dangerous or deadly weapon; selling or otherwise providing heroin, PCP or any type of methamphetamine-related drug; forcible sexual penetration; grand theft involving a firearm; carjacking; assault with the intent to commit mayhem, rape, sodomy or forcible oral copulation; throwing acid or other flammable substance; assault with a deadly weapon on a peace officer; assault with a deadly weapon on a member of the transit authority; discharge of a firearm in an inhabited dwelling or car; rape or sexual penetration done in concert; continuous sexual abuse of a child; shooting from a vehicle; intimidating a victim or witness; any attempt to commit the above-listed crimes except assault or burglary; and using a firearm in the commission of a crime and possession of weapons of mass destruction. (Pen. Code § 1192.7, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "By definition, domestic violence is violent; however, under current California law, in most instances, felony domestic abuse convictions are considered "nonviolent offenders and are eligible for early release under Prop. 57 after serving only 50% of their sentence. Additionally, nonviolent felonies are not considered strikes under California's three strikes law, which limits prosecutors from seeking longer sentences for repeat offenders. This reality has resulted in the perpetuation of domestic abuse, and in some cases the loss of life. According to research compiled by USA Today, the Associated Press, and Northwestern University, more than 68% of mass shooters have a documented history of domestic violence or have killed a family member. Whether you're a Republican, Independent, or Democrat, you can't argue with the data. Statistics show that violent domestic abusers are the individuals most likely to commit mass shootings. If we

hold them accountable, we will reduce mass shootings.”

- 2) **Existing Penalties for Domestic Violence:** Existing penalties for domestic violence can be serious. Domestic violence is currently punishable by imprisonment in the state prison for up to four years or by imprisonment in a county jail. A second offense within seven years of a prior conviction is punishable by up to five years in prison. (Pen. Code, § 273.5, subd. (b).) There is an enhancement of up to five more years if great bodily injury is inflicted. (Pen. Code, § 12022.7, subd. (e).) Under existing law, a felony domestic violence conviction for a person with a prior strike also doubles the maximum term of incarceration. (Pen. Code, § 667, subd. (e)(1).)

Depending on the conduct involved, domestic violence includes or can be charged as other crimes, including strikeable offenses. For example, a husband who punches his wife may be charged with assault likely to produce great bodily injury, even where the victim did not suffer great bodily injury. (Pen. Code, § 245, subd. (a)(4); see *People v. Medellin* (2020) 45 Cal.App.5th 519, 528; *In re Nirran W.* (1989) 207 Cal.App.3d 1157, 1161.) A mother who causes a traumatic injury to her child’s father and prevents him from leaving her residence can be charged with kidnapping, a serious and violent felony, and domestic violence. (See *People v. Delacerda* (2015) 236 Cal.App.4th 282; Pen. Code, § 667.5, subd. (14); Pen. Code, § 1192.7, subd. (c)(20)) A man who threatens to blow up his boyfriend’s car and home can be charged and convicted of criminal threats, a serious felony. (Pen. Code, § 422, subd. (a); Pen. Code, § 1192.7, subd. (c)(38); see *People v. Martinez* (1997) 53 Cal.App.4th 1212.) A person who prevents their partner from calling the police during or after an incident involving domestic violence can be charged with a felony for dissuading or preventing a victim from making a report to law enforcement, also a serious felony. (Pen. Code, § 136.1, subd. (b)(1); Pen. Code, § 1192.7, subd. (c)(38). *People v. McElroy* (2005) 126 Cal.App.4th 874).

Moreover, domestic violence is a wobbler. A “wobbler” is a crime that can be charged as, and result in a conviction for, a felony or a misdemeanor. Wobblers give prosecutors and judges a measure of discretion in case dispositions. A district attorney has the discretion to charge a “wobbler” as a felony or a misdemeanor. If a defendant is charged with a felony for a crime that is a “wobbler,” a judge can, under certain circumstances, reduce the charge to a misdemeanor or sentence the defendant to a misdemeanor. Every offense on the violent felony list is a straight felony. Adding felony domestic violence to that list would be unprecedented.

- 3) **Domestic Violence as a Violent Felony:** This bill would add felony domestic violence to the violent felony list. Domestic violence that results in great bodily injury is already a violent felony. (Pen. Code, § 667.5, subd. (c)(3).) Great bodily injury is a significant or substantial bodily injury—an injury resulting in greater than moderate harm. (Pen. Code, § 12022.7, subd. (f)(1); CALCRIM 3163.) “An examination of California case law reveals that some physical pain or damage, such as lacerations, bruises, or abrasions is sufficient for a finding of ‘great bodily injury.’” (*People v. Washington* (2012) 210 Cal.App.4th 1042, 1047.)

Felony domestic violence, however, does not require great bodily injury. Domestic violence is willfully inflicting corporal injury resulting in a traumatic condition upon a victim, which is defined to include a “[minor] external or internal injury...caused by a physical force.” (PC

273.5(a) & (d).) As one court explained:

“It is *injury* resulting in a traumatic condition that differentiates this crime from lesser offenses. Both simple assault [citation] and misdemeanor battery [citation] are included in a prosecution of section 273.5....

“Some other offenses do require higher degrees of harm to be inflicted before the crime denounced by them is committed: felony battery...requires 'serious bodily injury'; and, felony assault...requires 'force likely to produce great bodily injury.' But, the Legislature has clothed persons of the opposite sex in intimate relationships with greater protection by requiring less harm to be inflicted before the offense is committed. Those special relationships form a rational distinction which has a substantial relation to the purpose of the statute. [Citations.]" (*People v. Abrego* (1993) 21 Cal.App.4th 133, 137, citing *People v. Gutierrez* (1985) 171 Cal.App.3d 944, 952) (internal citations omitted).)

An “injury resulting in traumatic condition” is a lower level of harm than “great bodily injury.” A traumatic condition may be found when the victim suffered “redness about [the] face and nose” and soreness of nose and neck. (*People v. Wilkins* (1993) 14 Cal.App.4th 761, 771.) In other words, the bill would affect felony domestic violence convictions resulting in harms dissimilar from those caused by crimes already on the list, such as murder, mayhem, rape, continuous sexual abuse of a child, or exploding a destructive device with the intent to commit murder. And, as previously noted, domestic violence incidents often already involve conduct for which one can be convicted of a strikeable offense.

- 4) **Credit Limitations for Violent Felonies with State Prison Sentences:** Under Penal Code section 2933.1, a defendant convicted of a violent felony as defined by Penal Code section 667.5, subdivision (c), has their presentence conduct credits limited to 15 percent of actual confinement time. (Cal. Code Regs., tit. 15, § 3043.1; *People v. Brown* (2012) 54 Cal.4th 314, 321.)

A violent felony conviction also affects post-sentence credits. As previously discussed, Proposition 57 gave incarcerated persons in state prison the ability to earn additional, nonstatutory credits for sustained good behavior and for approved rehabilitative or educational achievements. The increased credit-earning opportunities incentivizes incarcerated people to take responsibility for their own rehabilitation.¹ Under the California Department of Corrections and Rehabilitation (CDCR) regulations, a violent felony limits good conduct credits (GCC) to 33.3 percent of the total incarceration time, as opposed to 50 percent for a non-violent felony.² (*Ibid*; 15 Cal. Code of Regs. § 3043.2.)

Additionally, under CDCR regulations, persons convicted of nonviolent crimes earn 66.6 percent GCC while housed in camp or Minimum Support Facility (MSF) settings. People convicted of violent crimes, however, earn 50 percent GCC in fire camp settings and 33.3 percent in MSF settings.

¹ (<https://www.cdcr.ca.gov/proposition57/>, *supra*.)

² (See (<https://www.cdcr.ca.gov/proposition57/>, *supra*.)

By adding this offense to the list of violent felonies in Penal Code section 667.5, subdivision (c), this offense would be subject to the violent felony credit limitations.

- 5) **Three Strikes Implications:** In general, violent felonies as specified in Penal Code section 667.5 are considered “strikes” for purposes of California’s Three Strikes law. However, Proposition 36, which was passed by California voters on November 6, 2012, specifies that only the crimes that were included in the “violent felonies” list as of November 7, 2012, shall be treated as strikes for purposes of the Three Strikes law.

Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after November 7, 2012, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667 (Three Strikes Law), are to those statutes as they existed on November 7, 2012.

(Pen. Code, § 667.1; see also Pen. Code, § 1170.125 [“Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after November 7, 2012, all references to existing statutes in Sections 1170.12 and 1170.126 are to those sections as they existed on November 7, 2012].)

This bill would make this offense a strike under California law because this bill would amend the date which defines the list of strikes to include the provisions of this bill.

- 6) **Proposition 20:** Proposition 20 was a November 2020 ballot initiative election that, among other things, would have defined 51 crimes and sentence enhancements as “violent felony offenses” in order to exclude them from Proposition 57’s nonviolent offender parole program. The list included felony domestic violence. Californians voters overwhelmingly rejected Proposition 20.³ Arguably, this bill would ignore the will of the voters.

- 7) **Increased Penalties and Lack of Deterrent Effect:** This bill would add felony domestic violence to the list of “Violent Felonies” that subject a defendant to additional penalties, including under California’s “Three Strikes” Law. As a result, people convicted of felony domestic violence would receive fewer custody credits while incarcerated, resulting in longer prison terms. However, there is reason to doubt that longer prison terms will meaningfully deter future criminal conduct.

The National Institute of Justice (NIJ) has looked into the concept of improving public safety through increased penalties.⁴ As early as 2016, the NIJ has been publishing its findings that increasing punishment for given offenses does little to deter criminals from engaging in that behavior.⁵ The NIJ has found that increasing penalties are generally ineffective and may exacerbate recidivism and actually reduce public safety.⁶ These findings are consistent with other

3

([https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_\(2020\)](https://ballotpedia.org/California_Proposition_20,_Criminal_Sentencing,_Parole,_and_DNA_Collection_Initiative_(2020)), *supra*.)

⁴ (<https://nij.ojp.gov/about-nij>.)

⁵ (“Five Things About Deterrence,” NIJ, May 2016, available at: <https://www.ojp.gov/pdffiles1/nij/247350.pdf>.)

⁶ (*Ibid.*)

research from national institutions of renown.⁷ Rather than penalty increases, the NIJ, advocates for polices that “increase the perception that criminals will be caught and punished” because such perception is a vastly more powerful deterrent than increasing the punishment.⁸

- 8) **Argument in Support:** According to the *California State Sheriffs Association*, the bill’s sponsor, “Within existing statutes, domestic violence is generally not considered a violent felony despite the inherently violent nature of the offense. The sole exception is if, in commission of an offense, great bodily injury is inflicted. The current statutory composition defies logic and ignores the seriousness and impact of domestic violence offenses.

“Domestic violence continues to create victims across our state. This crime has long-term effects on abused persons, their families, and their communities. It is time that the California criminal justice system re-examine and modify its response to this abhorrent behavior.

“By adding felony domestic violence to the state’s list of violent felonies, domestic abusers can face increased penalties that appropriately reflect the severity of their crimes and lifelong harm they inflict upon their victims.”

- 9) **Argument in Opposition:** According to *Smart Justice*, “We agree that the Legislature must enact new policies and programs to better prevent and respond to domestic violence (DV) and intimate partner violence (IPV). It is urgent that the legislature address the shortfall in funding for domestic violence shelters and sexual assault providers resulting from the reduction in federal funding through the Victims of Crime Act (VOCA). This bill, AB 292, however, will not improve public safety or help survivors of domestic violence.

“California law already provides sufficient and appropriate penalties for domestic violence, calibrated based on the facts of the case. If a domestic violence incident involves a deadly weapon or results in great bodily injury, then **the offense is a violent felony and a strike under California’s Three Strikes Law**. Courts have held that abrasions or bruises are sufficient to constitute great bodily injury. (*People v. Hood* (2014) Cal.App.4th 1356.) The injury need not be permanent, prolonged or protracted to be considered great bodily injury. (*People v. Woods* (2015), 241 Cal.App.4th 461.) It is not necessary for the victim to seek medical treatment. (*People v. Quinonez* (2020) 260 Cal.Rptr.3d 86.) Indeed, one Court of Appeal has even held that physical force or affirmative action on the part of the convicted person is not required to support a finding of great bodily injury. (*People v. Elder* (2014) 227 Cal.App.4th 411.)

“California law provides appropriate punishment for domestic violence, including categorizing the offense as a violent offense and a strike based on the circumstances of the case.”

10) **Related Legislation:**

⁷ (See Travis, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, National Research Council of the National Academies of Sciences, Engineering, and Medicine, April 2014, at pp. 130 -150 available at: https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1026&context=jj_pubs, [as of Feb. 25, 2022].)

⁸ (“Five Things About Deterrence,” *supra*.)

- a) AB 38 (Lackey), would designate specified crimes involving rape or sexual assault of a minor who has a developmental disability as “violent felonies.” AB 38 is pending a hearing in this committee.
- b) AB 568 (Lackey), would add selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give fentanyl to a minor on the list of serious felonies subject to enhanced penalties. AB 568 is scheduled for hearing today in this committee.
- c) AB 1011 (Hoover), would add child abuse offenses to the “serious felonies” list and makes any person convicted of specific child neglect offenses ineligible to earn credits for their service as an inmate firefighter. AB 1011 is pending hearing in this committee.

11) Prior Legislation:

- a) SB 268 (Alvarado-Gil), Chapter 855, Statutes of 2024, made rape of an intoxicated person a “violent” felony where it is pleaded and proved that the defendant caused the intoxication by administering a controlled substance to the victim without their consent and with the intent to sexually assault them.
- b) AB 2470 (Joe Patterson) was identical to this bill. AB 2470 did not receive a hearing in this committee.
- c) AB 3231 (Villapudua), of the 2023-2024 Legislative Session, adds felony hate crimes, or any felony in which a hate crimes enhancement is imposed, to the list of violent felonies subject to additional penalties. AB 3231 did not receive a hearing in the Assembly Public Safety Committee.
- d) AB 229 (Joe Patterson) of the 2023-2024 Legislative Session, would have added several felonies to the “Violent Felony” list, including felony domestic violence. AB 229 failed passage in Assembly Public Safety Committee.
- e) AB 1665 (Seyarto) of the 2022-2023 Legislative Session, would have added trafficking a minor to the “serious” felony list. AB 1665 failed passage in this committee.
- f) AB 1746 (Hoover) of the 2022-2023 Legislative Session, was substantially similar to AB 1011. AB 1746 failed passage in this committee.
- g) SB 75 (Bates), of the 2017-2018 Legislative Session, would have created an additional “violent felony” list that includes 20 felonies that are not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57’s parole provisions and to impose a three-year sentencing enhancement. SB 75 failed passage in the Senate Public Safety Committee.
- h) SB 770 (Glazer), of the 2017-2018 Legislative Session, would have created an additional “violent felonies” list with 30 felonies not on the existing list, including rape of an intoxicated person, in order to exclude offenders from Proposition 57’s parole provisions. SB 770 was held in the Senate Public Safety Committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

California State Sheriffs' Association (Sponsor)
Arcadia Police Officers' Association
Brea Police Association
Burbank Police Officers' Association
California Association of School Police Chiefs
California Baptist for Biblical Values
California Coalition of School Safety Professionals
California District Attorneys Association
California Narcotic Officers' Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Orange County Sheriff's Department
Palos Verdes Police Officers Association
Peace Officers Research Association of California (PORAC)
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
Santa Ana Police Officers Association

Oppose

All of Us or None Los Angeles
Alliance for Boys and Men of Color
Anti Police-terror Project
California Public Defenders Association (CPDA)
Californians United for A Responsible Budget
Ella Baker Center for Human Rights
Freedom 4 Youth
Initiate Justice
Initiate Justice Action
LA Defensa
Legal Services for Prisoners With Children
Local 148 LA County Public Defenders Union
Next Door Solutions to Domestic Violence
Rubicon Programs
Ryse Center
San Francisco Public Defender

Smart Justice California, a Project of Tides Advocacy
Uncommon Law
Universidad Popular
Vera Institute of Justice

Analysis Prepared by: Andrew Ironside / PUB. S. / (916) 319-3744