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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 1960                      **Hearing Date:** June 11, 2024  
**Author:** Soria  
**Version:** May 16, 2024  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Sentencing enhancements: property loss*

## HISTORY

**Source:** Merced County District Attorney  
Orange County District Attorney  
California District Attorneys Association

**Prior Legislation:** AB 1511 (Low), vetoed, 2018  
AB 1705 (Niello), Ch. 420, Stats 2007  
AB 916 (Canciamilla), held in Sen. Approps. Committee, 2005  
AB 293 (Cunneen), 1997 Ch. 551, Stats 1997

**Support:** Arcadia Police Officers' Association; Association for Los Angeles Deputy Sheriffs; Association of California Cities - Orange County (ACC-OC); Boma California; Buena Park, City of; Burbank Police Officers' Association; California Business Properties Association; California Chamber of Commerce; California District Attorneys Association; California Downtown Association; California Police Chiefs Association; California Reserve Peace Officers Association; California Retailers Association; California State District Attorneys Association; California State Sheriffs' Association; City of Artesia; City of Buena Park; City of Concord; City of Crescent City; City of Cypress; City of Fountain Valley; City of Fullerton; City of Lakeport; City of Merced; City of Mission Viejo; City of Oakdale; City of Rancho Palos Verdes; City of San Luis Obispo; City of Stanton; City of Thousand Oaks; City of Whittier; Corona Police Officers Association; County of Orange, Through its Office of The District Attorney/Public Administrator; Culver City Police Officers' Association; Darrell Steinberg, Mayor of Sacramento; Deputy Sheriffs' Association of Monterey County; Downtown Santa Monica; Fullerton Police Officers' Association; League of California Cities, Central Valley Division; Los Angeles County Business Federation (BIZ-FED); Los Angeles County Division, League of California Cities; Los Angeles County Sheriff's Department; Mayor Todd Gloria, City of San Diego; Merced District Attorney; Murrieta Police Officers' Association; NAIOP of California; Newport Beach Police Association; Novato Police Officers Association; Orange County Business Council; Orange County Taxpayers Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; Santa Ana Police Officers Association; Southern California Leadership Council; Target Corporation; United Chamber Advocacy Network; Upland Police Officers Association

Opposition: ACLU California Action; California Public Defenders Association; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice (CURYJ); Ella Baker Center for Human Rights; Initiate Justice; Initiate Justice Action; San Francisco Public Defender; Uncommon Law; Vera Institute of Justice; Young Women's Freedom Center

Assembly Floor Vote: 60 - 5

### PURPOSE

***The purpose of this bill is to create, until January 1, 2030, new sentencing enhancements of 1, 2, 3, or 4 years respectively for taking, damaging or destroying any property in the commission or attempted commission of a felony or commission of a felony violation of receiving stolen property, if the loss or property value exceeds \$50,000, \$200,000, \$1,000,000, or \$3,000,000.***

*Existing law* divides theft into two degrees, petty theft and grand theft. (Pen. Code, § 486.)

*Existing law* defines grand theft as when the money, labor, or real or personal property taken is of a value exceeding \$950 dollars, except as specified. (Pen. Code, § 487.)

*Existing law* states that petty theft is punishable by a fine not exceeding \$1,000, by imprisonment in the county jail not exceeding six months, or both. (Penal Code § 490.)

*Existing law* defines “shoplifting” as entering a commercial establishment with intent to commit larceny while that establishment is open during regular business hours, where the value of the property that is taken or intended to be taken does not exceed \$950 dollars. (Pen. Code, § 459.5, subd. (a).)

*Existing law* states that any act of shoplifting must be charged as such, and that a person charged with shoplifting cannot also be charged with burglary or theft of the same property. (Pen. Code, § 459.5, subd. (b).)

*Existing law* punishes shoplifting as a misdemeanor, except where a person has a prior “super strike” or a registrable sex conviction, in which case the offense is punished as a felony by imprisonment in the county jail pursuant to realignment. (Pen. Code, § 459.5, subd. (a).)

*Existing law* provides that, notwithstanding the punishment for petty theft, if a person is required to register as a sex offender, has a prior “super strike conviction,” or has a conviction for a specified theft-related offense against an elder or dependent adult, and also has been convicted of a specified theft-related offense for which he or she was imprisoned, and is subsequently convicted of petty theft, then the person is to receive an enhanced punishment of imprisonment in the county jail not to exceed one year, or in the state prison. (Pen. Code, § 666.)

*This bill* provides that if a person takes, damages, or destroys property in the commission or attempted commission of a felony, or commits a felony violation of receiving stolen property, the court shall impose an additional and consecutive term of imprisonment as follows:

- If the loss or property value exceeds \$50,000 the shall impose an additional term of one year;

- If the loss or property value exceeds \$200,000 the court shall impose an additional term of two years;
- If the loss or property value exceeds \$1,000,000, the court shall impose an additional term of three years;
- If the loss or property value exceeds \$3,000,000, the court shall impose an additional term of four years;
- For each additional loss or property value of \$3,000,000, the court shall impose a term of one year in addition to the term specified above.

*This bill* provides that the additional terms provided in this section shall not be imposed unless the facts relating to the amounts provided in this section are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

*This bill* states that notwithstanding any other law, the court may impose an enhancement pursuant to this section and another section on a single count.

*This bill* sunsets its provisions on January 1, 2030 and states that it is the intent of the Legislature that the provisions of this section be reviewed within five years to consider the effects of inflation on the additional terms imposed.

## COMMENTS

### 1. Need for This Bill

AB 1960 provides prosecutors the ability to hold criminals accountable by imposing a stiffer sentence for retail theft. The bill reinstates a tiered penalty enhancement system, if the value of the stolen or damaged property is exceptionally high. Specifically, it would provide a sentence enhancement when the property loss is more than \$50,000. Our communities are hurting. Crime, especially retail theft, is not only a problem in my district. This is an issue affecting the entire state. We must address it with urgency and action. This bill will do that and our cities will be safer as a result.

### 2. Background: Enhancements

Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person's sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence.

A recent report on sentencing enhancements found that about 40% of individual prison admissions since 2015 have sentences lengthened by a sentence enhancement. Among the currently incarcerated, the prevalence of enhanced sentences is much higher, impacting the sentences of approximately 70% of people incarcerated as of 2022. Data shows that

enhancements have been applied a total of 167,340 times to new prison admissions since 2015, and have been applied 197,274 times in the cases of those incarcerated as of July 2022. (Mia Bird et al., *Sentence Enhancements in California*, California Policy Lab (Mar. 2023) <<https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>> [as of June 3, 2024].)

According to the report, there are over 100 separate code sections in California law that can be used to enhance a person's sentence and the most common enhancement is for a previous prison or jail sentence. (*Ibid.*) The report noted several recent legislative changes to enhancements that were enacted based on the recommendation of the Committee on the Revision of the Penal Code. (See *Annual Report and Recommendations 2020*, Committee on Revision of the Penal Code [http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC\\_AR2020.pdf](http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2020.pdf) [as of June 3, 2024].)

AB 333 made updates to the gang enhancements which narrowed the definition of gang involvement. SB 483 built on legislation repealing one- and three-year enhancements for prior convictions and applied the repeal to people who were incarcerated and had the enhancements as part of their sentences. Finally, SB 81 provided guidance to judges that allowed them discretion in whether to dismiss sentence enhancements, unless in the judge's perspective, not enhancing a sentence could endanger public safety (PC § 1385)

The enhancement reforms enacted by the legislature since 2018 have curtailed the frequency with which enhancements have been applied to prison terms. We observe this both in overall trends, as well as in analysis of specific reforms on specific enhancement categories. Figure 3 shows the number of admissions with enhancements (the blue line) for each month from the beginning of 2015 through the end of 2022 as well as the total number of enhancements (the orange line) imposed on these terms (each admission may include more than one enhancement). There is a clear drop in admissions with enhancements coinciding with the onset of the COVID-19 pandemic and the corresponding drop in admissions to CDCR. Given the unpredictable nature of the pandemic, and the rates at which people were released from prison to help slow the spread, it is difficult to tease apart which declines after 2020 are due to enhancement reforms or are pandemic related.

### 3. Repealed “Excessive Takings” Enhancement

Until the law sunset in 2018, California had an “excessive takings” enhancement that would apply to taking or damaging of property that exceeded specified value thresholds. (Former Penal Code Section 12022.6.) The law was enacted in 1977 and subsequently a sunset provision was included in the statute for the purpose of allowing the Legislature to consider the effects of inflation on the property value thresholds in the law. The sunset was extended several times through legislation until the law was allowed to sunset in 2018. The law as it read in 2017 required the court to apply an enhancement of 1, 2, 3, or 4 years respectively whenever any person was convicted of a felony involving taking or damaging property that exceeded losses of \$65,000, \$200,000, \$1,300,000 and \$3,200,000.

AB 1511 (Low), of the 2017-2018 legislative session, would have reauthorized the enhancement statute with higher value thresholds, starting at \$75,000 and going up to \$3.7 million in property

loss, and would have made the statute permanent. The bill was vetoed. Then Governor Brown's veto message stated:

AB 1511 now seeks to re-enact this repealed enhancement, but omits any sunset provision similar to those that have been included with this statute since 1990. I see no reason to now permanently re-enact a repealed sentencing enhancement without corresponding evidence that it was effective in deterring crime. As I have said before, California has over 5,000 criminal provisions covering almost every conceivable form of human misbehavior. We can effectively manage our criminal justice system without 5,001.

This bill creates new enhancements that would apply to the same conduct that would have been covered by former Penal Code section 12022.6. This bill requires the court to apply specified additional terms of imprisonment when the loss or property value resulting from a person's taking, damaging or destroying of property in the commission of a felony or commission of a felony violation of receiving stolen property exceeds the following amounts: \$50,000, \$200,000, \$1 million, and \$3 million.

Notably, the threshold value amounts contained in this bill are lower than the values contained in Penal Code section 12022.6 when the law was allowed to sunset in 2018. Specifically, that repealed statute, which was last adjusted for inflation in 2007 for the law to go into effect January 1, 2008, contained the following threshold amounts for the sentence enhancements to apply: \$65,000, \$200,000, \$1.3 million, and \$3.2 million.

#### **4. Renewed Efforts to Combat Property Crimes**

"The Homelessness, Drug Addition, and Theft Reduction Act" is a new initiative that would make specific changes to laws enacted by Proposition 47, also known as the Safe Neighborhoods and Schools Act which was approved by the voters in November 2014. Proposition 47 reduced the penalties for certain drug and property crimes and directed that the resulting state savings be directed to mental health and substance abuse treatment, truancy and dropout prevention, and victims' services. (See Legislative Analyst's Office analysis of Proposition 47 (See <http://www.lao.ca.gov/ballot/2014/prop-47-110414.pdf> [as of June 3, 2024].)

Specifically, the new initiative would reenact felony sentencing for petty theft with two prior thefts, allow multiple petty thefts to be aggregated to meet the \$950 threshold without a showing that the acts were connected, and create new enhancements depending on the amount of property stolen or damaged. The initiative would also increase penalties for certain drug crimes, mandate treatment for certain offenders, and require courts to warn people convicted of drug distribution that they may be charged with murder in the future if someone dies after taking an illegal drug provided by that person.

([https://ballotpedia.org/California\\_Drug\\_and\\_Theft\\_Crime\\_Penalties\\_and\\_Treatment-Mandated\\_Felonies\\_Initiative\\_\(2024\)](https://ballotpedia.org/California_Drug_and_Theft_Crime_Penalties_and_Treatment-Mandated_Felonies_Initiative_(2024)) [as of June 3, 2024].) The initiative is supported by various law enforcement, public officials, district attorneys, small businesses and retail corporations. (*Id.*) To qualify for the November 2024 ballot, the law requires 546,651 valid signatures by June 27, 2024; as of January 25, 2024, the campaign had notified the Secretary of State that 25% of the required signatures had been collected. (*Id.*) The initiative is currently pending signature verification. (<https://www.sos.ca.gov/elections/ballot-measures/initiative-and-referendum-status/initiatives-and-referenda-pending-signature-verification> [as of June 3, 2024].)

On January 9, 2024, Governor Newsom called for legislation to crack down on large scale property crimes committed by organized groups who profit from resale of stolen goods. (<https://www.gov.ca.gov/2024/01/09/property-crime-framework/> [as of June 3, 2024].) The proposals include: 1) creating new penalties targeting those engaged in retail theft to resell, and those that resell the stolen property; 2) clarifying existing arrest authority so that police can arrest suspects of retail theft, even if they didn't witness the crime in progress; 3) clarifying that theft amounts may be aggregated to reach the grand theft threshold; 4) creating new penalties for professional auto burglary, increasing penalties for the possession of items stolen from a vehicle with intent to resell, regardless of whether the vehicle was locked; 5) eliminating the sunset date for the organized retail crime statute; and 6) increasing penalties for large-scale resellers of stolen goods.

Both houses of the Legislature have announced legislative packages that include parts of the Governor's proposals. (See <https://www.latimes.com/california/story/2024-02-26/senate-leaders-respond-to-states-fentanyl-crisis-and-organized-retail-theft-problem-with-new-legislation> [as of June 3, 2024] and <https://www.latimes.com/california/story/2024-02-15/democratic-lawmakers-introduce-legislation-to-target-organized-retail-theft-online-resellers#:~:text=If%20passed%2C%20the%20bill%20would,if%20there%20were%20separate%20victims> [as of June 3, 2024].)

## **5. Amendments to be Taken in Appropriations Committee**

This bill will be amended to contain an urgency clause, allowing the bill's provisions to take effect immediately upon approval of the Governor. Additionally, the bill will be amended to contain an inoperability clause stating that its provisions will become inoperative if the proposed initiative measure titled, "The Homelessness, Drug Addition, and Theft Reduction Act" (Initiative 23-0017A1) is approved by the voters at the statewide general election on November 5, 2024.

## **6. Argument in Support**

According to California Retailers Association:

Over the past several years, we have seen a troubling rise in organized retail theft and other large-scale property crimes across California, undermining the sense of safety and security in our communities. This criminal activity has forced businesses to spend millions annually on security measures, such as guards, cameras, and store redesigns. As businesses have significantly invested in securing their properties, thieves have become increasingly brazen through "smash and grab" incidents. Retail employees and customers are increasingly feeling unsafe, and the simple act of shopping has become burdensome for many. Those who deliberately target and destroy property in the commission of felonies must be held accountable.

Our communities have seen instances of groups using hammers to break jewelry cases, throwing objects through windows, destroying displays and entire aisles, and driving vehicles into buildings. By imposing stricter penalties for individuals damaging property through these acts, AB 1960 serves as a deterrent against "smash and grabs" and retail crime. It sends a clear message that such illicit and dangerous activities will not be tolerated, thereby helping to protect businesses, consumers, and communities from the adverse effects of criminal behavior.

## 7. Argument in Opposition

According to ACLU California Action:

Sentencing enhancements do not prevent crime, and will not will not address violence in any demonstrable way. Enhancements are, however, one of the drivers of mass incarceration, a systematic means of economically and politically disenfranchising Black, Latinx and Indigenous families and communities. Mass incarceration is a human rights and economic disaster for California families, and was built one bad bill at a time.

Extensive research has proven that overly long sentences, and the threat of such sentences do not reduce or prevent crime. In 2014, the National Academy of Sciences published a 444-page review of studies of sentencing policies<sup>1</sup> and their positive and negative effects on crime rates and community safety. Among their conclusions were:

“Given the small crime prevention effects of long prison sentences and the possibly high financial, social, and human costs of incarceration, federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States. In particular, they should re-examine policies regarding mandatory prison sentences and long sentences.”

Additionally, a 2015 report by the Ella Baker Center for Human Rights, Forward Together, and Research Action Design titled “Who Pays, The True Cost of Incarceration on Families” details how incarceration destabilizes entire families and communities. Many people who return from incarceration face extreme barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems.

-- END --