
UNFINISHED BUSINESS

Bill No: SB 285
Author: Allen (D)
Amended: 8/19/24
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: VOTES NOT RELEVANT

SENATE FLOOR: VOTES NOT RELEVANT

SUBJECT: Criminal procedure: sentencing

SOURCE: Author

DIGEST: Provides that an individual who has been convicted of a sexually violent offense and sentenced to death or a term of life without the possibility of parole ("LWOP"), and whose term includes certain specified legally invalid enhancements, is not eligible for certain resentencing.

Assembly Amendments delete the Senate version of the bill and add language regarding criminal resentencing procedures.

ANALYSIS:

Existing law:

- 1) States that any sentence enhancement received prior to January 1, 2018, imposing on a defendant convicted of specified crimes related to controlled substances, an additional three-year term for each prior conviction of specified crimes related to controlled is legally invalid, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance. (Pen. Code, § 1172.7, subd. (a).)
- 2) States that any sentence enhancement received prior to January 1, 2020, imposing an additional one-year term of imprisonment for each prior prison or county jail felony term served by the defendant for a non-violent felony is

legally invalid, except if the enhancement was for a prior conviction of a sexually violent offense. (Pen. Code, § 1172.75, subd. (a).)

- 3) Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term for judgment that includes one of the repealed enhancements and to provide the name of each person, along with the person's date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:
 - a) By March 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first; and,
 - b) By July 1, 2022, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (b).)
- 4) States that upon receiving that information, the court shall review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:
 - a) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement; and,
 - b) By December 31, 2023, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (c).)
- 5) States that the above resentencing shall result in a lesser sentence than the one originally imposed, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(1).)
- 6) Provides that the above resentencing shall not result in a longer sentence than originally imposed. (*Ibid.*)
- 7) States that the court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial

discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(2).)

- 8) Allows a court to consider post-conviction factors at resentencing, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(3).)
- 9) Provides that unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(4).)
- 10) Provides that unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(4).)
- 11) Requires the court to appoint counsel. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(5).)
- 12) Provides that the parties may waive a resentencing hearing, and if the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees. (Pen. Code, §§ 1172.7, 1172.75, subds. (e).)

This bill:

- 1) Provides that commencing on January 1, 2025, an individual who has been convicted of a sexually violent offense, as defined, and sentenced to death or LWOP, who, as of January 1, 2025, has not had their judgement reviewed and verified by the sentencing court to determine that the individual is serving a term that includes a legally invalid sentence enhancement for a specified prior drug conviction or prior prison or felony jail term, is not eligible for recall and resentencing.

2) States that the above prohibition does not apply retroactively.

Comments

According to the author of this bill: "In 2021, SB 483 (Allen, Chapter 728, Statutes of 2021) made retroactive California's elimination of 1- and 3-year sentence enhancements for drug and previous convictions. This created a process by which people could access resentencing for the purposes of removing these legally invalid sentence enhancements. Recently, appeals have been made to the courts arguing that certain people serving sentences for capital and sexually violent offenses qualify for full resentencing under SB 483. This interpretation does not align with the original bill's intent. While courts have been dismissing the appeals, they have unnecessarily wasted court resources and reopened wounds of victims of their families. SB 285 clarifies who is eligible for resentencing under SB 483 to prevent clogging of the courts, limit re-traumatization of victims and their families, and close a loophole in the original drafting."

SB 285 would clarify that persons convicted of the most serious of offenses are not eligible for resentencing under SB 483. Specifically, it states that an individual: 1) sentenced to death or LWOP; 2) who has been convicted of a sexually violent offense; and 3) who, as of January 1, 2025, has not had their judgement reviewed and verified by a sentencing court to confirm that the individual's term includes a specified legally invalid sentence enhancement, is not eligible for recall and resentencing under SB 483.

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

According to the Assembly Appropriations Committee:

- Possible minor workload cost savings to the courts to the extent the bill expedites the courts' dismissal of petitions for resentencing filed by specified defendants sentenced to death or LWOP.
- Possible future fiscal impacts on the California Department of Corrections and Rehabilitation (CDCR), of an unknown amount. The fiscal impact of this bill on incarceration costs cannot be predicted with certainty because the size of the prison population affected by the bill is unknown and any possible future savings to CDCR due to resentencing depend largely on judicial discretion. The annual cost to detain one person in state prison is approximately \$133,000, with an annual marginal rate per person of over \$13,000. Aside from marginal cost savings per person, however, CDCR experiences an institutional cost

savings due to resentencing only if the number of incarcerated people decreases to a level that permits the closure of a prison yard or wing.

SUPPORT: (Verified 8/27/2024)

Crime Victims Alliance

OPPOSITION: (Verified 8/27/2024)

A New Path

California Coalition for Women Prisoners

California Innocence Coalition

California Public Defenders Association

Californians United for A Responsible Budget

Communities United for Restorative Youth Justice (CURYJ)

Community Resource Initiative

Courage California

Ella Baker Center for Human Rights

Felony Murder Elimination Project

Freedom Within Project

Friends Committee on Legislation of California

Initiate Justice

Initiate Justice Action

Prison Yoga + Meditation

San Francisco Public Defender

Silicon Valley De-bug

Theatreworkers Project

Uncommon Law

Universidad Popular

University of San Francisco School of Law | Racial Justice Clinic

Young Women's Freedom Center

Youth Leadership Institute

ARGUMENTS IN SUPPORT: According to Crime Victims Alliance:

SB 285 will correct an oversight in the law that includes the most violent felons to receive privileges of resentencing to remove enhancements from their sentences. This bill would make these provisions inapplicable to any inmate currently sentenced to death, to a term of life without the possibility of parole, or to an indeterminate life sentence, or to any person currently serving a sentence for a

sexually violent offense. We believe this legislation is essential to protecting public safety.

ARGUMENTS IN OPPOSITION: According to Initiate Justice:

The RISE Act represents a meaningful step towards reducing the harm of overly long and unjust sentences, allowing families across California to be restored. Sentencing enhancements have not made our communities safer. Instead, long prison and jail sentences are proven to be injurious to system-impacted folks and destabilizing to their families and communities. More generally, they put significant financial burdens on taxpayers and families statewide — the LAO estimates the annual cost to incarcerate one person in state prison for one year to be in excess of \$133,000. The RISE Act has given hope to incarcerated Californians to have outdated and unjust sentences reviewed, creating a process for the courts to align sentences with the truth of data-driven and lived experiences that show reducing excessive sentences improves community well-being.

SB 285 would partially reverse this landmark victory for those who have been waiting — decades, for some — for their day back in court. People eligible for resentencing under SB 483 are subject to a judge's discretion. Judges retain and continue to use their authority to decline resentencing if they find clear and convincing evidence that resentencing would endanger public safety. Sentencing reform in California has worked, and it has reunited people who were incarcerated under extreme sentences with their families, communities, and our economy. The approach proposed in SB 285 (Allen) removes from judges the ability to determine, based on the information available to them at resentencing, that continued incarceration is no longer in the interests of justice, solely based on the original sentence. The RISE Act should not be amended to include this exclusion, as it would fundamentally undermine the reason that SB 483 was first introduced - to ameliorate the harm suffered by individuals who were sentenced to excessive terms. We should not put a limit on who has access to justice.

**** **END** ****