
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: AB 1474 **Hearing Date:** June 29, 2021
Author: Gabriel
Version: February 19, 2021
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Sentencing: consideration of costs*

HISTORY

Source: Re:Store Justice

Prior Legislation: Not applicable

Support: Bend the Arc; Jewish Action; Blameless and Forever Free Ministries; California Attorneys for Criminal Justice; California Public Defenders Association (CPDA); Communities United for Restorative Youth Justice (CURYJ); Crime Survivors for Safety and Justice; Democratic Party of The San Fernando Valley; Ella Baker Center for Human Rights; Fair and Justice Prosecution (FPJ); Felony Murder Elimination Project; Fuel; Govern for California; Heals Project- Helping End All Life Sentences; Immigrant Legal Resource Center; Initiate Justice; Legal Services for Prisoners With Children; Los Angeles County District Attorney's Office; No Justice Under Capitalism; Prison Policy Initiative; Secure Justice; Silicon Valley De-bug; Smart Justice California; UCSF White Coats for Black Lives; USC Suzanne Dworak Peck School of Social Work's Unchained Scholars; Young Women's Freedom Center; YWCA Berkeley/Oakland

Opposition: California District Attorneys Association

Assembly Floor Vote: 53 - 20

PURPOSE

The purpose of this bill to require prosecutors and judges to state on the record the estimated cost of incarceration or supervision for any proposed sentence in a criminal case.

Existing law requires a superior court to send to DOJ a disposition report regarding every case it disposes of resulting from an arrest that was reported to DOJ. (Penal Code § 13151.)

Existing law mandates that when a disposition report is in regards to a charge that is dismissed, the report shall state whether dismissal was based on one of the following reasons: 1) dismissal in furtherance of justice, 2) case compromised, defendant discharged because restitution or other satisfaction was made to the injured person, 3) court found insufficient cause to believe defendant guilty of a public offense; 4) dismissal due to delay; 5) accusation set aside as specified; 6) defective accusation; 7) defendant became a witness for the people and was discharged; 8) insufficient evidence; 9) judgment arrested; 10) mistrial; or, 11) any other

dismissal by which the case was terminated. In addition to the dismissal label, the court shall set forth the particular reasons for the disposition. (Penal Code § 13151.1.)

Existing law states that the Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. (Penal Code § 1170 (a)(1).)

Existing law requires a court to state the reasons for its sentence choice on the record at the time of sentencing. (Penal Code § 1170 (c).)

Existing law establishes the California Community Corrections Performance Incentives Act, which is a system of performance-based funding to county probation departments when they demonstrate success in reducing the number of individuals on adult felony probation, mandatory supervision, and individuals on post release community supervision, going to state prison because of committing new crimes or violating the terms of probation. (Penal Code §§ 1228 et seq.)

Existing law specifies that the funds provided to each county from the California Community Corrections Performance Incentives Act shall be used for specified purposes relating to supervision and rehabilitative services for adult felony offenders subject to probation and for evidence-based community corrections practices and programs. (Penal Code, § 1230.)

Existing law finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. (Penal Code § 1202.7.)

This bill requires a prosecutor, at the time of sentencing, to state on the record the estimated cost of incarceration or supervision for any proposed sentence.

This bill specifies that if a presentence report is required, the probation department shall, as part of the presentence report, prepare an estimated cost of incarceration or supervision for any proposed sentence and provide that information to the court and to the defendant before sentencing.

This bill states that the estimated cost of incarceration or supervision shall be based on the applicable average annual costs compiled annually by the Legislative Analyst's Office (LAO) or the Board of State and Community Corrections (BSCC), as described in this bill.

This bill requires the court, at sentencing, to state on the record the estimated cost of the imposed sentence and any consideration given to cost in imposing the sentence.

This bill specifies that the Legislative Analyst's Office(LAO) shall, by no later than July 1, 2022, and annually thereafter, compile the average annual costs of incarceration and postcustody supervision for an inmate in the custody of, or under the supervision of, the Department of Corrections and Rehabilitation (CDCR) and shall provide that information to each city, county,

or city and county prosecutor's office and the chief probation officer of each county, and shall make the information available to the public by posting it on the internet website of the LAO.

This bill states that BSCC shall, by no later than July 1, 2022, and annually thereafter, compile the average annual costs of incarceration and supervision for a person in the custody of, or under the supervision of, each county sheriff or probation department, and shall provide that information to each city, county, or city and county prosecutor's office and the chief probation officer of each county, and shall make the information available to the public by posting it on the board's internet website.

This bill specifies that the requirements of this bill regarding documentation of costs by prosecutors, probation officers, and judges shall become operative on July 1, 2022.

COMMENTS

1. Need for This Bill

According to the author:

Over the past decade, the state has taken various actions to reduce the number of incarcerated people under the supervision of the California Department of Corrections and Rehabilitation (CDCR). Notably, multiples pieces of legislation were enacted in 2011 that shifted the responsibility for certain offenders from the state to counties. In the past few years, voters also approved a series of ballot measures that have impacted California's incarcerated population. Since the implementation of these and other policy changes, the state's incarcerated people population has declined by nearly one-quarter and people on parole population by nearly one-half.

Despite the ongoing decline in incarceration, spending on state corrections remains high. Over the past decade, CDCR spending has increased by over \$3 billion, or more than one-third—from about \$9.7 billion in 2010-11 to an estimated \$13.3 billion in 2019-20.

As a result, California currently spends more on corrections than Texas and New York combined. A 2019 report by the California State Auditor evaluated the cost effectiveness of CDCR's budget increase since 2011. The report found that CDCR had done little to verify the performance of its programs and suggested that it receive independent oversight to monitor its progress.

Criminal sentencing is one of the few areas of law where there is very little law that governs how the decision makers can act. Within the bounds of statutory minimums and maximums, judges are free to consider almost anything in handing down a sentence, though they must consider the guideline range.

Prosecutorial discretion exists with few checks from other units of government. Prosecutors are elected by county, and most states have no oversight over them. They are also independent of county governments, elected separately from county supervisors and other officials, with their budget is largely outside their control and unrelated to their performance.

Thus, though the state government foots the bill, it is often county prosecutors who have the most power to send people to prison. “This blank check on admissions creates a tragic paradox,” the policy institute Brennan Center for Justice states in an [article about reducing prison costs](#). “It is easier and cheaper for a prosecutor to send someone to state prison rather than consider local, community-based options.”

Combined with office cultures that reward convictions and long sentences, prosecutors are routinely incentivized to perpetuate mass incarceration. Prosecutors and judges are subject to similar political incentives to push for long sentences: and once the sentence is handed down, they almost never see the result; they are insulated from their decisions.

Modeled after successful protocols currently being practiced in District Attorney offices in Philadelphia County, Pennsylvania, and Loudon County, Virginia, AB 1474 seeks to remedy the stark lack of fiscal transparency that exists in parts of criminal legal and incarceration system by requiring, during sentencing, the prosecuting attorney to state the estimated cost of the recommended sentence (incarceration and/or supervision) and the court to state the estimated cost of the sentence imposed. The estimated cost will also be included on the presentence report if one is required.

Prosecutors will take into account the financial cost to taxpayers of the sentence they recommend in order to provide more information to judges, alongside all other factors in criminal cases. This will not bind judges, but rather, give them an additional, OPTIONAL, consideration. Judges will ultimately decide how they want to address these issues.

In order to simplify the estimates, the Legislative Analyst’s Office each year will report estimates on the average cost of prison and parole supervision per person; and the Board of Sentencing and Community Corrections each year will report the cost of jail and post-custody supervision per person in each respective county.

By putting the costs and justifications on the record, the Justice Department, academics, court watchers, and advocates can build national data sets to better study the effect of sentencing on crime or rehabilitation.

2. County and State Costs of Incarceration and Supervision

Within California, some costs are born by the counties and some costs are born by the state in the administration of the criminal justice and custodial systems. The criminal justice system in California is primarily organized on a county level. Each county has an elected district attorney responsible for prosecuting crimes within the county. The judiciary within that county has jurisdiction exclusively over the crimes committed within that county. The costs of the prosecuting cases are born by the counties. Each county has a jail or jails which are run by the County Sheriff’s Department. The costs of running the jails are largely born by the counties. On the other hand, the state prison system is run by the state and the state bears cost of the housing incarcerated individuals in prison.

In the last decade, there have been Legislative measures which have resulted in more responsibilities and corresponding costs being born by counties in terms of incarcerating and supervising individuals that have been convicted of criminal offenses. For example, SB 678 (Leno), Chapter 608, Statutes of 2009, provided monetary incentives for counties not to send individuals that are supervised on probation, post-release community supervision, or mandatory supervision to prison.

This bill would require prosecutors and judges to state on the record the estimated cost of incarceration or supervision for any proposed sentence in a criminal case. Probation officers would also be required to include the costs of supervision in a probation or other presentence report. The intent is to costs transparency for public and policy makers at the county and state level. This bill would not require prosecutors or judges to use the cost information in any particular manner.

Prosecutors and Judges don't traditionally consider economic costs in making sentencing recommendations (prosecutors) or pronouncing sentence (judges). The theory of punishment usually relies on justification of deterrence, incapacitation, retribution, or rehabilitation, in fashioning a sentence, thus prosecutors and judges considering costs is a novel idea in California.

3. Calculating Costs Can be Complicated

This bill would calculate costs as the average annual costs of incarceration and postcustody supervision for an inmate in the custody of, or under the supervision of the state (prison or parole) or counties (jail, probation, post-release community supervision, and mandatory supervision). However, to truly evaluate costs, one needs to know the full costs/savings of any course of action. It might cost a certain amount to provide mental health treatment to a probationer, but by providing that treatment it could save money in the future because that individual doesn't commit a new crime (savings), doesn't need to be prosecuted or incarcerated in the future (savings), or as able to be productive tax paying member of the community (savings). Unfortunately, to calculate future savings of any sentencing decision is extremely complicated. The cost calculations as described in this bill will be limited to the direct costs of the sentence. Such information is valuable, but it should be recognized that it is not complete.

4. Argument in Support

The Los Angeles District Attorney's Office supports this bill stating:

AB 1474 would require the prosecuting attorney to state the estimated cost of incarceration or supervision on the record at the time of sentencing and would require the court to state the estimated cost of the sentence imposed.

Prosecuting attorneys and judges are not required to consider the costs of incarceration or supervision despite the fact that research has shown that longer periods of incarceration actually increase the rate of recidivism. Given that research has shown that longer periods of incarceration increase taxpayer costs without reducing the crime rate, it is appropriate for the justice system to consider the fiscal impact of their sentencing decisions.

AB 1474 will provide increased transparency to the sentencing decisions made each day in courtrooms across California. Even though our state prison population has significantly decreased over the last ten years, the cost of operating our state

prison system has increased by over \$3 billion during the same period. It is time for prosecutors and judges to consider the fiscal impact of sentencing and consider more cost-efficient alternatives to lengthy prison sentences in appropriate cases.

5. Argument in Opposition

The California District Attorneys Office opposes this bill stating:

AB 1474 requires a prosecutor to state on the record the estimated cost of incarceration or supervision for any proposed sentence. If a presentence report is ordered, the probation department must prepare an estimate of the costs associated with incarceration or supervised release for a proposed sentence.

AB 1474 seeks to codify Philadelphia District Attorney Larry Krasner's experimental policy to have prosecutors state on the record the cost of incarceration and expand it to supervision costs as well. Krasner's approach was criticized by crime victims, who noted that it is impossible to quantify what it is like to be the victim of crime. Celestine Short, the sister of a murder victim, noted that justice should not depend on budget and that the focus on the cost of incarceration was painful. (Allyn, *Philadelphia's New DA Wants Prosecutors to Talk Costs of Incarceration While In Court* (Mar. 31, 2018) NPR [as of May 21, 2021].) While crime victims felt disenfranchised, it was "unstudied" as to whether the policy had any impact on sentencing decisions. (*Id.*)

Similarly, judges felt that Krasner's focus on the cost of incarceration had no place in decisions about punishment and justice. "Choosing a sentence . . . should involve weighing the specific situation and needs of the offender and victim, irrespective of budget." (Michaels, *Should Judges Have to Weigh the Price Tag of Sending Someone to Prison?* (Jan 8, 2020) Mother Jones [as of May 21, 2021].) Judges felt politicized by the policy and the focus on budget over justice. (*Id.*)

Further, the bill is unbalanced as it makes no attempt to quantify the cost of criminality and recidivism. If a defendant is released because of the cost of incarceration but goes on to commit more crimes because he or she is not rehabilitated and ready to follow society's rules, there is a cost to that as well. From therapy for victims to the deterioration of neighborhoods and communities, repeat offenders cause difficult to quantify but very costly and real harm.

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