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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

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**Bill No:** AB 518                      **Hearing Date:** June 15, 2021  
**Author:** Wicks  
**Version:** February 10, 2021  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** SC

**Subject:** *Criminal law: violations punishable in multiple ways*

## HISTORY

**Source:** California Attorneys for Criminal Justice

**Prior Legislation:** AB 2154 (Wicks), never heard in committee, 2020  
SB 914 (Brulte), Ch. 410, Stats. 1997

**Support:** American Civil Liberties Union of California; Asian Solidarity Collective; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Drug Policy Alliance; Ella Baker Center for Human Rights; Initiate Justice; National Association of Social Workers, California Chapter; Pillars of the Community; Francisco Public Defenders; Showing Up for Racial Justice (SURJ) San Diego; SURJ North County San Diego; San Francisco Public Defender; Team Justice; Think Dignity; Uprise Theatre; We the People – San Diego

**Opposition:** California District Attorneys Association

**Assembly Floor Vote:** 41 - 23

## PURPOSE

*The purpose of this bill is to allow an act or omission that is punishable in different ways by different provisions of law to be punished under any of those provisions, rather than requiring the provision that provides for the longest potential term of imprisonment.*

*Existing law* states that an act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other. (Pen. Code, § 654, subd. (a).)

*Existing law* states that a defendant shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation. (Pen. Code, § 654, subd. (b).)

*This bill* deletes the requirement that a defendant shall be punished under the provision that provides for the longest potential term of imprisonment and instead authorizes punishment under any of the applicable provisions.

## COMMENTS

### 1. Need for This Bill

According to the author of this bill:

Today, CA judges are being forced to impose the longest potential term of imprisonment when a person is convicted of committing multiple offenses in a single act, regardless of the circumstances surrounding the offense. The judge is prohibited from analyzing any factors, including a defendant's young age, and deciding to impose the lesser of two or more punishments.

California has since taken steps to reverse the tough on crime policies of the past, which often constrained judges. In the last decade, lawmakers have enacted more than a dozen laws restoring the discretion of a judge. For example, the elimination of five-year enhancements for prior serious felony convictions, punishments for weapons use, and prior offense enhancements for new drug convictions. Unfortunately, the legislature has yet to restore judicial discretion when it comes to multiple offenses stemming from a single act.

### 2. Punishment for Multiple Offenses Arising Out of Single Act

Penal Code section 654 was enacted in 1872 to prohibit double punishment of a single act that violates multiple statutes. The prohibition is on double punishment, not double conviction. (*People v. Johnson* (1966) 242 Cal.App. 2d 870, 876.) The prohibition applies even if the punishments were to be run concurrently. (*People v. Diaz* (1967) 66 Cal.2d 801, 807.)

Prior to 1997, Penal Code section 654 authorized a court to use its discretion to punish the defendant under any provision that applies to the crime. The Legislature amended Penal Code section 654 in 1997 response to *People v. Norrell* (1996) 13 Cal.4th 1, a case where defendants were convicted of multiple offenses including robbery and kidnapping for robbery, both arising out of a single act. The trial court, after considering all of the circumstances, including the severity of the offense and the youthfulness of the defendants, chose to sentence the defendants to robbery, which carried a lower sentence and stay the sentence for kidnapping for robbery which carried a potential sentence of life in prison. (*Id.* at p. 4.)

The case was appealed and ultimately was decided by the California Supreme Court, which held that the trial judge acted within their discretion by staying the more serious sentence and sentencing the defendants to the more lenient charge. The Court reasoned that discretion to sentence on the greater or lesser crime is vital to a trial court's proper exercise of its sentencing mandates, stating:

This case is illustrative of a not unreasonable exercise of discretion. The trial court imposed the maximum punishment for robbery, and stayed the punishment for kidnapping for robbery, in what was, by all accounts, essentially a robbery by

youthful defendants. The trial court did not "reward" them for committing multiple offenses incident to that single objective. It exercised discretion, as Penal Code section 654 permits, in light of the actual circumstances of the crime and the age and juvenile records of defendants; it was not unreasonable in so doing.

(*Id.* at p. 8.) The Court also noted that:

Penal Code section 654 expressly provides that a defendant may be punished for *either* offense: "An act or omission which is made punishable in different ways by different provisions of this code may be punished *under either of such provisions*, but in no case can it be punished under more than one . . ." Although it was free to do so at any time since Penal Code section 654 was enacted in 1872, the Legislature has not limited the trial court's discretion by a requirement that it impose punishment for the offense with the greatest potential term of imprisonment.

(*Id.* at p. 6, emphasis in original.) The dissent argued that the majority's opinion allows a person convicted of multiple crimes to receive a lower sentence than a person convicted of fewer crimes and allows the trial court to manipulate sentences that otherwise require statutory minimum terms of imprisonment. (*Id.* at pp. 21-22.)

Following the *Norrell* decision, the Legislature enacted legislation to amend Penal Code section 654 to require, when a single act is punishable under multiple provisions of law, the court to punish the defendant to the provision that provides for the longest potential term of imprisonment. (SB 914 (Brulte), Ch. 410, Stats. 1997.)

This bill restores the discretion that judges had prior to 1997 to sentence a defendant to any of the convicted crimes rather than the one that carries the highest punishment.

### 3. Argument in Support

According to the San Francisco Public Defender:

AB 518 would amend Penal Code section 654 which governs the court's sentencing when an act or omission is punishable in different ways by different laws. Under existing law, section 654 requires the court to impose punishment under the provision that provides that longest potential term of imprisonment. This amendment would, instead, permit the court to impose punishment under either of those provisions. Other aspects of Penal Code section 654 would not be changed: the person could still be punished under only one of the provisions, and if either provision prohibits probation, the court cannot grant probation.

AB 518 will ensure that courts are not required to impose a greater punishment than is warranted for the crime. By increasing judicial discretion, AB 518 will promote justice in sentencing. AB 518 is a common sense reform that potentially saves taxpayers money by sending fewer individuals to prison for lengthy sentences while protecting the community.

#### 4. Argument in Opposition

According to California District Attorneys Association:

The purpose behind the current version of Penal Code section 654 is to ensure the punishment fits the crime and that a defendant receives neither excessive punishment nor excessive leniency. Indeed, the language AB 518 now seeks to exclude was included in section 654 over 20 years ago by SB 914 to prevent a defendant from receiving a sentencing windfall. (See Stats.1997, c. 410 (S.B.914).)

As the legislative history of that amendment made clear, the legislature was concerned that a defendant who committed a more serious violent offense while simultaneously committing a second less serious offense arising from the same course of conduct could escape proper punishment on the more serious offense whereas a defendant who only committed the more serious offense could not. For example, without the requirement that a person must be punished pursuant to the law that provides for the longest potential term of imprisonment, a defendant convicted of kidnap for the purposes of robbery (which carries a punishment of life with the possibility of parole) and also convicted of the crime of robbery (which carries a punishment of two, three, or five years) could be sentenced only for the robbery. “It defies common sense that a defendant convicted of a string of crimes could avoid being sentenced on the most serious crime for which he or she is convicted.” (California Bill Analysis, S.B. 914 Assem., 9/05/1997.)

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