
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1025 **Hearing Date:** March 13, 2018
Author: Skinner
Version: February 7, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Probation: Eligibility: Crimes Relating to Controlled Substances*

HISTORY

Source: California Public Defender's Association; Drug Policy Alliance

Prior Legislation: AB 1667 (Condit), Ch. 1135, Stats. of 1989
SB 1960 (Seymour), Ch. 1044, Stats. of 1986
SB 268 (Robbins), Ch. 1087, Stats. of 1975

Support: ACLU of California, Center for Advocacy and Policy; Community Oriented Correctional Health Services; Courage Campaign; Ella Baker Center for Human Rights; Fair Chance Project; Friends Committee on Legislation of California; Riverside Temple Beth El; Rubicon Programs; San Francisco Public Defender's Office; Tarzana Treatment Centers, Inc.; Transitions Clinic Network; Individual

Opposition: None known

PURPOSE

The purpose of this bill is to permit a court to grant probation or suspend the imposition of a sentence for specified drug offenses.

Existing law prohibits the court from granting probation to or suspending the imposition of a sentence for any person convicted of specified drug offenses, if the person has previously been convicted of one of several specified drug offenses. (Health & Saf. Code, §11370, subd. (a).)

Existing law prohibits the court from granting probation to or suspending the imposition of the sentence for any person convicted of any of the following offenses:

- (1) Possession for sale of 14.25 grams or more of a substance containing heroin.
- (2) Selling or offering to sell 14.25 grams or more of a substance containing heroin.
- (3) Possession of heroin for sale or offering to sell heroin, and who has one or more prior convictions for either offense.
- (4) Possession for sale of 14.25 grams or more of any salt or solution of phencyclidine (PCP) or any of its analogs, as specified, or any of the precursors of PCP.
- (5) Transporting for sale, importing for sale, or administering, or offering to transport for sale, import for sale, or administer, or by attempting to import for sale or transport for sale, PCP or any of its analogs or precursors.

- (6) Selling or offering to sell PCP or any of its analogs or precursors.
- (7) Manufacturing or offering to perform an act involving the manufacture of PCP or any of its analogs or precursors.
- (8) Using, soliciting, inducing, encouraging, or intimidating a minor to act as an agent to manufacture, compound, or sell any controlled substance, as specified.
- (9) Using a minor as an agent or who solicits, induces, encourages, or intimidates a minor with the intent that the minor be in possession of PCP for sale, sells, distributes, or transports PCP, or manufactures PCP or any of its analogs or precursors.
- (10) Possession of piperidine, pyrrolidine, or morpholine, and cyclohexanone, with intent to manufacture phencyclidine or any of its analogs.
- (11) Possession for sale, selling, or offering to sell cocaine base, cocaine, or methamphetamine, and who has one or more prior drug offense convictions, as specified. (Pen. Code, § 1203.07, subd. (a).)

This bill would remove the above listed drug offenses from the prohibition against granting probation or suspending a sentence except those offenses involving minors.

COMMENTS

1. Need for This Bill

According to the author:

Long prison sentences for nonviolent drug offenses fail to reduce drug use or crime. Yet, California law currently prohibits judges from granting probation to individuals charged with certain nonviolent drug crimes.

Mass incarceration continues to have a devastating effect on California families and our state's budget. Mandatory sentences for nonviolent drug crimes force judges to imprison individuals who would be better treated and supervised in the community. The result is overcrowding in county jails, unnecessary strain on state and local budgets, and a destructive ripple effect throughout California communities and families.

Overwhelming evidence shows that lengthy sentences for drug crimes, do not improve public safety, but exacerbate existing racial disparities in our criminal justice system and disproportionately impact those suffering from mental illness. Current law prohibits a judge from ordering probation for a number of nonviolent drug offenses related to personal use, possession, or sale.

Under current law, judges cannot order probation for any of the following offenses if a person has a prior felony drug conviction:

- Possession for personal use
- Possession for sale
- Sale
- Transportation
- Maintaining a place for the unlawful use of controlled substance
- Forging a prescription

Additionally, current law prohibits probation for the following offenses:

- Possession for sale, selling, or offering to sell cocaine, cocaine base, or methamphetamine if the person has one or more prior convictions for the same offense
- Possession for sale of 14.25 grams or more of heroin
- Possession for sale of 14.25 grams or more of phencyclidine (PCP)
- Selling or offering to sell PCP
- Transporting, importing, administration of, or offering to transport, import or administer PCP
- Possessing specified precursors with intent to manufacture PCP

Excluding probation eligibility for these offenses requires a mandatory term of incarceration ranging from two to seven or more years depending on the offense. This mandatory sentencing prevents judges from playing their appropriate role in weighing the facts of each case before imposing a sentence.

SB 1025 provides an option for judges to weigh the facts of the case in determining the appropriate resolution. SB 1025 addresses undue sentencing inflation and paves the way for California to increase investments in drug prevention efforts, drug use treatment, and mental health treatment.

This bill does not change the maximum penalty or affect sentencing enhancements. It also does not change penalties for drug crimes involving a minor. It simply provides discretion to the courts to grant probation in the interest of justice.

2. History of Prohibiting Probation for Drug Offenses

The prohibition on granting probation or suspending the imposition of a sentence of any person convicted of specified drug offenses can be traced back to the early 1970s. The prohibition on granting probation was initially limited to those cases in which a person had a prior felony drug conviction. This prohibition was expanded to include any person convicted of specified drug offenses with no prior drug convictions through SB 268 (Robbins), Chapter 1087, Statutes of 1975, which made anyone convicted of possessing for sale, selling or offering to sell one-half ounce or more of heroin ineligible for probation. Subsequent legislation further expanded the list of drug offenses for which a person would no longer be eligible for probation.

3. Research on Mandatory Minimum Sentences

The effect of the current prohibition on probation for the above listed drug offenses has been the imposition of mandatory sentences. The legislation that created the current prohibition on probation for these drug offenses arose during the “war on drugs” and a time when mandatory sentences were widely viewed as an effective tool to address crime, particularly drug offenses. However, research indicates that “incarceration has had only a limited impact on crime rates” and “[t]here is little evidence that longer sentences have more than a marginal effect in reducing recidivism.” (<<https://www.prisonpolicy.org/scans/vera/mandatory-sentences-policy-report-v2b.pdf>> (citing several studies and reports) [as of Mar. 7, 2018].)

In addition to examining the efficacy of mandatory sentences on reducing crime and recidivism, researchers have studied the consequences of mandatory sentences, including racial disparities in charging decisions and sentences. One recently published law review article analyzed federal sentencing data and concluded that “racial disparities in recent years have been largely driven by the cases in which judges have the least sentencing discretion: those with mandatory minimums” and that “prosecutors file mandatory minimums twice as often against black men as against comparable white men.” (Starr & Rehavi, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013) 123 Yale L.J. 1, 78.)

This bill seeks to restore judicial discretion in these cases given the growing body of research questioning the efficacy of mandatory minimums and the downstream effects of those policies.

4. Argument in Support

Drug Policy Alliance, a co-sponsor of the bill, writes:

SB 1025 will not change the upper penalty for any offense, but will provide judges the discretion to grant probation or to suspend a sentence in the interests of justice, and consistent with local values and local resources. Current state law ties the hands of judges, prohibiting them from ordering probation or suspending a sentence for a person convicted of nonviolent drug offenses, including possessing or agreeing to sell or transport opiates or opium derivatives, possessing or transporting cannabis, planting or cultivating peyote, and various crimes relating to forging or altering prescriptions, if the person has previously been convicted of any one of an expansive list of drug felonies. Existing law also prohibits judges from granting probation or suspending a sentence for persons convicted of specified nonviolent drug offenses, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, even if it is their first offense.

Precluding probation eligibility for these offenses requires a mandatory term of incarceration ranging from two to seven or more years depending on the offense. By allowing judges the discretion to grant probation, this bill reflects the growing bipartisan consensus that mandatory minimum sentencing has failed to protect or enhance public safety, and robbed judges of their traditional and appropriate role in weighing the facts of each case before imposing a sentence. There is ample evidence that long sentences and mandatory minimums have had no effect on the availability, cost or potency of controlled substances. Controlled substances are cheaper, stronger and more widely available than in any time in our nation’s history.

...It is widely acknowledged that the war on drugs has been disproportionately waged against black and Latino families, separating parents from children and causing long-term collateral consequences, including loss of job opportunities, housing and education benefits. This continues to be true, even in light of evidence that drug use and drug sale rates between whites, blacks and Latinos are approximately equal in our state and in our country. According the California Attorney General’s Office, in 2016 blacks made up 16.5% of felony drug arrests

(while blacks make up only 6.6% of the state population), and Latinos made up 41.3% of felony drug arrests (while Latinos make up 38.9% of the state population).

SB 1025 by Senator Skinner is an incremental step away from a costly, failed, and racist policy of locking up low-level nonviolent drug offenders for long periods of time. A fair and impartial criminal justice system, like all forms of good government, needs checks and balances. While prosecutors have charging discretion, the final say over a person's sentence must come from independent judges who have no personal or institutional stake in the outcome of a case other than to ensure justice is done and rights are respected.

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