
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2019 - 2020 Regular

Bill No: SB 136 **Hearing Date:** March 26, 2019
Author: Wiener
Version: January 15, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentencing*

HISTORY

Source: Ella Baker Center for Human Rights
American Civil Liberties Union (ACLU) of California
California Coalition for Women Prisoners
Californians United for a Responsible Budget
Coalition for Humane Immigrant Rights
Drug Policy Alliance
Friends Committee on Legislation
Legal Services for Prisoners with Children
Tides Advocacy

Prior Legislation: SB 1392 (Mitchell), failed passage on Senate Floor, 2018
SB 1393 (Mitchell), Ch. 1013, Stats. 2018
SB 180 (Mitchell), Ch. 677, Stats. 2017
SB 620 (Bradford), Ch. 682, Stats. 2017
SB 966 (Mitchell), 2015-2016, failed Assembly Public Safety Committee

Support: Access Women's Health Justice; Alliance San Diego; Asian Americans Advancing Justice-California; Bend the Arc: Behavioral Health Services, Inc.; Black American Political Association of California; California Attorneys for Criminal Justice; California Catholic Conference; California Council of Churches IMPACT; California Public Defenders Association; Californians for Safety and Justice; Center on Juvenile and Criminal Justice; Community Justice Action Fund; Courage Campaign; Equal Justice Society; Fair Chance Project; Harm Reduction Coalition; Homeboy Industries; Human Impact Partners; Immigrant Legal Resource Center; Impact Hub Oakland; Indivisible Sausalito; Initiate Justice; JusticeLA; Justice Teams Network; Law Enforcement Action Partnership; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Legal Aid at Work; National Association of Social Workers, California Chapter; NextGen California; Pangea Legal Services; Peninsula Progressives; Pillars of the Community; Prison Law Office; Public Health Justice Collective; San Francisco Peninsula People Power; San Francisco Public Defender's Office; Showing Up for Racial Justice Bay Area;

Showing Up for Racial Justice Marin; Smart Justice California; Starting Over, Inc.; Time for Change Foundation; Transgender, Gender-Variant, Intersex Justice Project; Underground Scholars Initiative; Unite the People; W. Haywood Burns Institute; Young Women’s Freedom Center; 2 individuals

Opposition: California State Sheriffs; Association; Riverside Sheriffs’ Association

PURPOSE

The purpose of this bill is to repeal the one-year sentence enhancement for each prior prison or county jail felony term that applies to a defendant sentenced on a new felony.

Existing law imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code, § 667.5, subd. (a).)

Existing law imposes a one-year sentence enhancement for each prior prison or county jail felony term if the new offense is a felony. (Pen. Code, § 667.5, subd. (b).)

This bill deletes the one-year sentence enhancement for prison or county jail felony priors.

COMMENTS

1. Need for This Bill

According to the author of this bill:

SB 136 (Wiener) would repeal the provision under Penal Code 667.5(b) that requires an additional one-year term for each prior separate felony that resulted in incarceration in jail or prison. The imposition of this enhancement is ineffective in protecting public safety, is wasteful of public resources, and is damaging to the families and communities that disproportionately suffer from these long sentences. Those families and communities are overwhelming Black and Latino. This injustice undermines the public trust in our laws, law enforcement, and our political institutions.

California has some of the most severe sentence enhancements for prior convictions in the nation. According to the Public Policy Institute of California (PPIC), “California has more than 100 separate code sections that enhance sentences” based on a person’s current offense and/or record of prior convictions. As of 2016, 79% of people under California Department of Corrections and Rehabilitation custody had some kind of sentence enhancement attached to their base sentence; 25% had three or more enhancements stacked on. SB 136 would amend the most commonly applied sentencing enhancement that adds one year

for each previous prison or felony jail term, and which impacted one-third of people convicted in 2017. (Fn. omitted.)

This single enhancement, applied wholesale and scattershot, is a massive driver of prison and jail populations and associated costs to taxpayers and to the families of incarcerated Californians. According to data provided by [California Department of Corrections and Rehabilitation] CDCR, as of December 31, 2108, the one-year enhancement authorized by Penal Code 667.5 (b) was applied 15,422 times to persons in state prisons (this is a count of application, not a count of people, as some prisoners have multiple enhancements). Data on application in county jails is not readily available, but it is reasonable to assume an equal or greater number of persons convicted of non-violent, non-serious, non-sex offenses are also burdened with additional time for a prior felony, such as a common drug possession for sale offense.

....

Repealing ineffective sentencing enhancements will save hundreds of millions of dollars, reduce prison and jail populations, mitigate racial and gender disparities in incarceration, and end the double punishment for prior convictions. It will give California the opportunity to divest from expensive and ineffective policies of mass incarceration and instead invest in our communities.

2. Sentencing 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 Public Policy Institute of California (PPIC) publication on enhancements found that, "As of September 2016, 79.9% of prisoners in institutions operated by the California Department of Corrections and Rehabilitation (CDCR) had some kind of sentence enhancement; 25.5% had three or more. Aside from second and third strikes, the most common enhancement adds one year for each previous prison or jail term." (*Sentence Enhancements: Next Target of Corrections Reform?* PPIC (Sept. 2017) < <http://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform/> > [as of Mar. 21, 2018].)

According to data provided by CDCR, as of December 1, 2018, there were 15,422 sentences that had the enhancement that this bill would repeal.

3. Sentence Increases: Research on the Deterrent Effect and Impact on State Prisons

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy.” (National Research Council, *supra*, *The Growth of Incarceration in the United States*, p. 132.)

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.

(*Id.* at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (*Id.* at p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing: putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. The report also explains how California’s sentencing structure and enhancements contributed to a 20-year state prison building boom. (<http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf>.)

4. Argument in Support

According to Initiate Justice:

The One-Year Enhancement Repeal will free state and county funds that could be invested in community-based mental health and substance use treatment, employment services, and housing.

Further, sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities—those with substance use and mental health needs, and those who, after previous contact with police or imprisonment, have struggled to reintegrate into society.

These sentence enhancements have had devastating impacts on families and communities, specifically those most impacted by the punitive policies of the failed war on drugs and tough-on-crime policies. Research shows horrific intergenerational impacts from these failed policies, which disproportionately harm poor communities of color. The rapidly increasing rates of incarceration for women has further worsened the devastation for families and children.

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