
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1392 **Hearing Date:** April 3, 2018
Author: Mitchell
Version: February 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentence Enhancements: Prior Convictions*

HISTORY

Source: American Civil Liberties Union (ACLU) of California
The Advocacy Fund
California Coalition for Women Prisoners
Californians United for a Responsible Budget
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Pillars of the Community
Women's Foundation of California

Prior Legislation: 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 Support Network; Alameda County Public Defender's Office; Alliance San Diego; American Friends Society Committee; California Association of Alcohol and Drug Program Executives; California Catholic Conference; California Immigrant Policy Center; California Public Defenders Association; Center on Juvenile and Criminal Justice; Coleman Advocates for Children and Youth; Contra Costa County Racial Justice Coalition; Courage Campaign; Crossroads, Inc.; Dr. Martin Luther King, Jr. Academic Middle School; Education is a Vital Sign; Felony Murder Elimination Project; Greenlining Institute; Harm Reduction Coalition; Harm Reduction Services; Harm Reduction Services; HealthRIGHT 360; Immigrant Legal Resource Center; Justice Now; Law Enforcement Action Partnership; Lawyers Committee for Civil Rights; Legal Services for Prisoners with Children; Los Angeles Regional Reentry Partnerships; A New Way of Life Reentry Project; Oakland Rising; Prison Renaissance; Public Health Justice Collective; Restaurant Opportunities Centers of California; Riverside Temple Beth El; Root & Rebound; Rubicon Programs; San Diego Immigrant Rights Consortium; San Francisco Public Defenders Office; Showing Up for Racial Justice; St. James Infirmary; Successful Reentry, LLC; Tarzana Treatment Centers; W. Hayward Burns Institute; Western Center on Law and Poverty; White People 4 Black Lives/Showing Up for Racial Justice-Los Angeles; several individuals

Opposition: Association for Los Angeles Deputy Sheriffs; California Code Enforcement Officers; California College and University Police Chiefs Association; California Correctional Supervisors Organization; California District Attorneys Association; California Narcotic Officers Association; California State Sheriffs' Association; Los Angeles Police Protective League; Los Angeles Professional Peace Officers Association; Peace Officers Research Association of California

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:

Existing law imposes an additional one-year term for each prior separate prison term or county jail felony term under the law, except under specified circumstances. Sentencing enhancements have not made the public safer. Instead they place a significant burden on taxpayers and families across California. Each additional year in prison costs more than \$70,000 dollars per person. Long and punitive sentences cripple state and local budgets and shift dollars away from the supportive services that are needed to protect public safety.

SB 1392, the Repeal Ineffective Sentencing Enhancements (RISE) Act of 2018 repeals the provision under Penal Code 667.5(b) that requires an additional one-year term for each prior separate prison term or county jail felony term under the law.

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, 2017, there were 16,177 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 ACLU of California, a sponsor of this bill:

This punishment has failed to protect communities or reduce crime, but has resulted in overcrowded jails and prisons and harsh punishments. By repealing this ineffective, harmful, and costly punishment, the state will also free up funds to invest in community programs that actually improve the quality of life and reduce crime.

....

Counties around the state are building new jails to imprison more people with long sentences, funneling away money that could instead be used for community-based programs and services. Since 2007, California has spent \$2.5 billion on county jail construction (fn. omitted) — not including the costs borne by the counties for construction and increased staffing, or the state's debt service for these high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance use needs. By repealing sentence enhancements for people with prior prison and felony jail terms, SB 1392 will address a key driver of costly jail expansion, allowing state and county funds to be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance use treatment, job programs, and affordable housing.

5. Argument in Opposition

The California Code Enforcement Officers writes in opposition:

These enhancements exist, in part, to allow sentences to appropriately reflect someone's criminal conduct history. A person who has previously been sent to prison, only to commit a new felony upon their release is subject to the one-year enhancement SB 1392 seeks to eliminate. A person who has previously been sent to prison three times would potentially be subject to three one-year enhancements. That is, if the prosecutor alleged and proved the grounds for the enhancement, and a judge chose not to dismiss or strike the enhancement.

The underlying premise of SB 1392 is that a recalcitrant criminal should be sentenced the same as a first time offender, despite a lengthy criminal history and a track record of disregard for the law. We reject that premise.