

ASSEMBLY THIRD READING
AB 1127 (Santiago and Quirk)
As Amended May 4, 2021
2/3 vote

SUMMARY

Prohibits a juvenile adjudication from being considered a prior serious or violent felony conviction for purposes of sentence enhancement under the Three Strikes Law.

Major Provisions

- 1) States that a prior juvenile adjudication does not constitute a prior serious or violent felony.
- 2) States that a person convicted of a felony who had their sentence enhanced because of a prior juvenile serious or violent felony conviction may file a petition with the court that sentenced the petitioner to have the petitioner's prior juvenile conviction enhancement vacated and to be resentenced on any remaining counts when specified conditions apply:
- 3) Requires the petition shall be filed with the court that sentenced the petitioner and served by the petitioner on the district attorney, or on the agency that prosecuted the petitioner, and on the attorney who represented the petitioner in the trial court, or on the public defender of the county where the petitioner was convicted.
- 4) Requires the petition to include a declaration by the petitioner that they are eligible for relief, as specified, the superior court case number and year of the petitioner's conviction, and whether the petitioner requests the appointment of counsel.
- 5) Requires the court to review the petition and determine if the petitioner has made a prima facie showing that the petitioner is eligible. Requires the court to appoint counsel if a prima facie case has been made and authorizes the court to appoint counsel if one has been not.
- 6) Requires the court, upon determining that a prima facie case has been made, to issue an order to show cause why relief should not be granted. Requires the prosecutor to file and serve a response within 60 days of service of the petition and allow the petitioner to file and serve a reply within 30 days after the prosecutor response is served.
- 7) Requires, within 60 days after the order to show cause has been issued, that the court hold a hearing to determine whether to vacate and recall the petitioner's sentence and resentence the petitioner on any remaining counts and enhancements, excluding the enhancement imposed as a result of the juvenile adjudication.
- 8) Specifies that under no circumstances shall the new sentence be greater than the initial sentence.
- 9) States that at the hearing to determine whether the petitioner is entitled to relief, the burden of proof shall be on the prosecution to prove, beyond a reasonable doubt, that the petitioner is ineligible for resentencing. If the prosecution fails to sustain its burden of proof, the prior sentence shall be vacated and the petitioner shall be resentenced on the remaining charges and enhancements.

- 10) Specifies that on resentencing the prosecutor and the petitioner may rely on the record of conviction or offer new or additional evidence.
- 11) States that if the court determines that the petitioner is eligible for relief and the prosecutor does not object, it may grant relief without a hearing on the order to show cause and instead proceed directly to a resentencing hearing.
- 12) States that all of the deadlines shall be extended by the court upon a showing of good cause.

COMMENTS

According to the Author

"The purpose of juvenile delinquency proceedings is to rehabilitate youth, yet when it comes to Three Strikes sentencing, our state doubles down on unjust, punitive punishments for our juveniles, especially our youth of color. It makes no sense that we count juvenile strikes the same as adult strike convictions when in fact juvenile delinquency proceedings are not criminal proceedings. This inconsistency in current law makes our youth suffer harsher and longer sentences when they are convicted of adult strike offenses instead of rehabilitating. AB 1127 we eliminate juvenile strikes so that we create a justice system that emphasizes rehabilitation not incarceration, and that treats all Californians with fairness and dignity, especially people of color."

Arguments in Support

According to the bill's sponsor, the *Los Angeles County District Attorney's Office*: "In 1994, California enacted the Three Strikes and You're Out law which dramatically increases the punishment for persons convicted of a felony who previously were convicted of one or more 'serious' or 'violent' felonies. The Three Strikes law was intended to keep violent murderers, rapists and child molesters in prison. However, today more than half of inmates sentenced under the law are serving sentences for nonviolent crimes.

"California's current Three Strikes law permits specified felonies that are found true in a juvenile court proceeding to be alleged as a 'strike' prior in a future adult criminal proceeding to enhance a defendant's potential length of incarceration. California is the only state that uses juvenile adjudications as strike priors to trigger mandatory third strike sentences of twenty-five years to life.

...

"Even though there is no conviction and the proceeding is not considered criminal, the juvenile adjudication of a juvenile strike can still be used in an adult criminal proceeding to enhance sentencing. In no other area of law can the outcome of a non-criminal case be used to enhance sentencing in a future criminal case. In fact, a prior juvenile strike cannot even be used in a future juvenile case to enhance a sentence.

...

"It is unfair to use a prior adjudication in which a right as fundamental as the right to a jury trial is not protected to enhance a future criminal sentence. Nothing in AB 1127 prevents the transfer

of a juvenile strike case to adult criminal court where all constitutional rights are protected if the People wish to preserve the right to use a strike in a future criminal proceeding. Should a transfer be granted, the minor would have all the rights adult defendants do, not virtually all the rights.

"By rectifying this inconsistency in our juvenile justice system, AB 1127 would take much needed steps to reduce mass incarceration in our state and allow California to lead the nation in addressing the disparate impact that juvenile strikes have on people of color."

Arguments in Opposition

According to the *California District Attorneys Association (CDAA)*, "The retroactive nature of the bill is particularly concerning, as it would apply equally to negotiated settlements/pleas where both the defense and the prosecution agreed to a specific term of imprisonment. In such situations, the prosecution often dismisses charges, enhancements and prior convictions in exchange for a guilty plea and admission. It is simply unfair to the prosecution to allow a defendant to unwind a negotiated plea that included knowing and intelligent admissions to "strike" priors, unless any dismissed charges, enhancements and/or prior convictions are restored.

"We understand that many times enhancing a sentence based on a prior juvenile adjudication is not appropriate. And under existing law courts have the discretion to strike or dismiss juvenile adjudications alleged as "strike" priors. In fact, many times the District Attorney asks the court to dismiss such allegations when warranted. But, there are circumstances when enhancing a sentence based on prior serious and violent conduct -- including conduct committed as a juvenile -- is appropriate. Local judges evaluating the facts of a case and the particulars of an offender are in the best position to make that decision. We should not tie their hands and take discretion away from them."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

Possible cost pressures (Trial Court Trust Fund) in the upper hundreds of thousands of dollars to low millions of dollars annually to the trial courts in increased workload, given this bill requires courts to hear and resolve petitions for resentencing on serious or violent juvenile adjudications. The estimated cost of one court day is approximately \$7,644. It unknown how many petitions may be filed, however, if 100 petitions for resentencing are filed in criminal court requiring 48 total hours (six days) of workload, the cost would be approximately \$764,000.

Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true, given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access to justice.

VOTES

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Quirk, Santiago, Wicks, Lee

NO: Lackey, Seyarto

ASM APPROPRIATIONS: 11-4-1

YES: Lorena Gonzalez, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

ABS, ABST OR NV: Calderon

UPDATED

VERSION: May 4, 2021

CONSULTANT: Matthew Fleming / PUB. S. / (916) 319-3744

FN: 0000559