

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1509 (Lee) – As Amended April 21, 2021

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill reduces the penalty for using a firearm in the commission of specified crimes - from 10 years, 20 years, or 25-years-to-life to one, two or three years - and authorizes recall and resentencing for a person serving a term for specified firearms enhancements.

FISCAL EFFECT:

- 1) Possible cost pressures (Trial Court Trust Fund) in the millions of dollars annually to the trial courts in increased workload, given this bill requires courts to hear and adjudicate new resentencing requests for any person sentenced to a specified firearms enhancement. The estimated cost of one court day is approximately \$7,644. It unknown how many petitions may be filed, however, there are more than 10,000 people currently serving sentences in state prison on firearms enhancements, all of whom may be eligible for relief in accordance with the terms of this bill. If 10% of eligible defendants request resentencing requiring 16 hours (two days) of workload, the cost would be approximately \$15 million dollars. 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.
- 2) Possibly significant cost savings (GF) to the California Department of Corrections and Rehabilitation (CDCR) in reduced incarceration costs. The average annual cost to incarcerate an inmate in state prison is \$84,000. First, this bill reduces the "10-20-Life" firearm enhancement to one, two or three years, which would result in a significantly lower state prison sentence. If 100 defendants are sentenced to two years on a specified firearms enhancement and not 10 years, savings would be \$67 million dollars. Additionally, this bill allows a defendant to seek re-sentencing without one of the specified firearms enhancements. Existing enhancements on the use of a firearm in the commission of a crime range from one year to 25 years to life. If 10 defendants are re-sentenced without a firearms enhancement, resulting in a possible sentence reduction of 5 years for each inmate, cost savings to CDCR would be \$4.2 million dollars annually.

COMMENTS:1) **Purpose.** According to the author:

Firearm enhancements are one of the most commonly used enhancements that add extra years to a person's sentence. The latest available data shows that 40% of the entire incarcerated population are impacted by this specific enhancement – with people of color (Black, Brown, API and Indigenous) representing 89% of those with these enhancements. This is what institutionalized racism looks like. AB 1509 will result in significant state savings without jeopardizing public safety.

2) **Firearms Enhancements.** There are several statutes that require a defendant to be sentenced to longer terms of prison based on whether they used a firearm. Use of a firearm in the commission or attempted commission of a gang crime is punishable by an additional one, two or three years. A person who uses a firearm in the commission of specified drug felonies may be sentenced to an additional term of three, four or five years. The most severe firearms enhancement was enacted in 1997 when the Legislature passed "Use a Gun and You're Done" law or "10-20-Life." Pursuant to this law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. This bill reduces several of those enhancements, including the "10-20-Life" law and allows a defendant to be re-sentenced based on the reduced sentence proposed in this bill.3) **Argument in Support.** According to the Ella Baker Center for Human Rights:

Sentence enhancements are costly, ineffective, and contribute heavily to systemic racism in the criminal legal system. There are more than 150 sentence enhancements on the books across California's Penal Code, however, there is no compelling evidence that their usage improves public safety. Instead, studies show initial incarceration prevents crime through incapacitation, each additional year of incarceration causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.

4) **Argument in Opposition.** According to the California State Sheriffs' Association:

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Eliminating firearm enhancements and reducing time served undercuts the role these laws play in deterring criminal behavior and protecting our communities from those who have violated the law.