
THIRD READING

Bill No: AB 333
Author: Kamlager (D)
Amended: 7/13/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 7/6/21
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 38-27, 5/17/21 (FAIL) - See last page for vote

ASSEMBLY FLOOR: 43-27, 6/3/21 - See last page for vote

SUBJECT: Participation in a criminal street gang: enhanced sentence

SOURCE: Anti-Recidivism Coalition
NextGen California
San Francisco Public Defender's Office
Silicon Valley De-Bug

DIGEST: This bill makes various changes to the California Street Terrorism Enforcement and Prevention (STEP) Act including removing specified offenses that qualify under a "pattern of criminal activity" and requiring bifurcation of gang-related prosecutions from prosecutions that are not gang-related.

ANALYSIS:

Existing law:

- 1) Enacts the STEP Act which seeks the eradication of criminal activity by street gangs by focusing upon patterns of criminal gang activity and upon the

organized nature of street gangs, which together, are the chief source of terror created by street gangs. (Pen. Code, §§ 186.20 & 186.21.)

- 2) States any person who actively participates in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years. (Pen. Code, § 186.22, subd. (a).)

- 3) Provides that any person who is convicted of a felony committed for the benefits of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction, receive a sentence enhancement, as specified below (Pen. Code §186.22, subd. (b)):

a) Felony (other than specified)	additional 2, 3, or 4 years
b) Serious felony	additional 5 years
c) Violent felony	additional 10 years
d) Home invasion	life, 15 years until parole eligibility
e) Carjacking	life, 15 years until parole eligibility
f) Shooting from vehicle	life, 15 years until parole eligibility
g) Extortion or witness intimidation	life, 7 years until parole eligibility

- 4) Defines “pattern of criminal activity” to mean the conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this section and last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:
 - a) Assault with a deadly weapon or by means of force likely to produce great bodily injury;
 - b) Robbery;
 - c) Unlawful homicide or manslaughter;
 - d) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances;
 - e) Shooting at an inhabited dwelling or occupied motor vehicle;
 - f) Discharging or permitting the discharge of a firearm from a motor vehicle;
 - g) Arson;
 - h) Intimidation of witnesses and victims;
 - i) Grand theft;

- j) Grand theft of a firearm, vehicle, trailer, or vessel;
 - k) Burglary;
 - l) Rape;
 - m) Looting;
 - n) Money laundering;
 - o) Kidnapping;
 - p) Mayhem;
 - q) Aggravated mayhem;
 - r) Torture;
 - s) Felony extortion;
 - t) Felony vandalism;
 - u) Carjacking;
 - v) The sale, delivery, or transfer of a firearm;
 - w) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person;
 - x) Threats to commit crimes resulting in death or great bodily injury;
 - y) Theft and unlawful taking or driving of a vehicle;
 - z) Felony theft of an access card or account information;
 - aa) Counterfeiting, designing, using, or attempting to use an access card;
 - bb) Felony fraudulent use of an access card or account information;
 - cc) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information;
 - dd) Wrongfully obtaining Department of Motor Vehicles documentation;
 - ee) Prohibited possession of a firearm;
 - ff) Carrying a concealed firearm; and,
 - gg) Carrying a loaded firearm. (Pen. Code, §186.22, subd. (e).)
- 5) Defines “criminal street” gang to mean any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated, excluding the personal identity fraud violations (these must be combined with one of the other enumerated offenses in order to prove a pattern gang activity), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity. (Pen. Code, § 186.22, subd. (f) & (j).)
- 6) Gives the court broad authority to conduct criminal trials, including the authority to bifurcate offenses into separate trials. (Pen. Code, § 1044.)
- 7) Requires the question of whether a defendant has suffered a prior conviction to be tried separately from the currently charged offense. (Pen. Code, § 1025.)

- 8) Requires, when a defendant pleads not guilty by reason of insanity, the guilt and sanity phase to be tried in separate phases. (Pen. Code, § 1026.)
- 9) Provides for a bifurcated trial process in determining guilt separately from punishment in cases where the death penalty may be imposed. (Pen. Code, § 190.1.)

This bill:

- 1) Revises the definition of “pattern of criminal gang activity” to additionally require that the last of those offenses have occurred within three years of the prior offense and within three years of the current offense, the offenses were committed by two or more members, the offenses commonly benefited a criminal street gang, and the common benefit from the offenses is more than reputational.
- 2) Removes looting, felony vandalism, offenses related to unlawful theft or use of an access card, and unlawful use of personal identifying information from the list of crimes that define “pattern of criminal gang activity.”
- 3) States that the currently charged offense shall not be used to establish the pattern of criminal gang activity.
- 4) Revises the definition of “criminal street gang” to replace “ongoing organization, association” with “ongoing, organized association” and to require that engagement in a pattern of criminal activity must be done by members collectively, not individually.
- 5) States that for purposes of the Act, “to benefit, promote, further, or assist” means “to provide a common benefit to members of a gang where the common benefit is more than reputational. Examples of a common benefit that are more than reputational may include, but are not limited to, financial gain or motivation, retaliation, targeting a perceived or actual gang rival, or intimidation or silencing of a potential current or previous witness or informant.”
- 6) Requires, if requested by the defense in a case where a sentencing enhancement for participation in a criminal street gang is charged shall be tried in separate phases as follows:
 - a) The question of defendant’s guilt of the underlying offense must first be determined.

- b) If the defendant is found guilty of the underlying offense, there shall be further proceedings to the trier of fact on the question of the truth of the enhancement. Allegations that the underlying offense was committed for the benefit of, at the direction of, or in association with, a criminal street gang and that the underlying offense was committed with the specific intent to promote, further, or assist in criminal conduct by gang members shall be proved by direct or circumstantial evidence.
- 7) Requires that a charge for active participation in a criminal street gang be tried separately from all other counts that do not otherwise require gang evidence as an element of the crime. This charge may be tried in the same proceeding with an allegation of an enhancement for participation in a criminal street gang.
- 8) States that its provisions shall be known, and may be cited, as the STEP Forward Act of 2021.
- 9) Extends until January 1, 2023, the requirement that the court, when applying an enhancement, to select the sentence that best serves the interest of justice.

Comments

California's gang enhancements are one of the many sentencing enhancements used to extend a person's sentence. The vague definitions and weak standards of proof that characterize gang enhancements have made their use one of the most devastating drivers of mass incarceration in the state.

They are notoriously racially motivated, applied inconsistently and disproportionately against people of color— 92% of people who receive gang enhancements are people of color. These enhancements are responsible for the collective trauma of countless families and communities. AB 333 seeks to address these harms by making changes to the law in order to reduce their harmful and racist application in criminal cases, and making the standards for applying a gang enhancement more rigorous.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- 1) *Courts:* Unknown, potentially-major workload cost pressures in the low millions of dollars annually to the courts to bifurcate gang-related and non-gang related charges in a prosecution. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount

appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)

- 2) *State prisons*: Unknown, potentially-significant savings annually in reduced state incarceration costs for individuals whom the courts sentence to a shorter term of imprisonment and/or are not sentenced to prison as a result of the narrowing of what constitutes a “pattern of criminal gang activity” under this bill. Additionally, AB 333 may lead to an unquantifiable but potentially-significant increase or decrease in future state prison costs to the extent that the splitting of gang- and non-gang-related charges results in longer or shorter prison terms than what would be imposed under the existing determinate sentencing law (DSL) scheme. The FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. If AB 333 leads to shorter terms of incarceration, aside from marginal cost savings per individual, the Department of Corrections and Rehabilitation would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

SUPPORT: (Verified 8/26/21)

Anti-Recidivism Coalition (co-source)
 NextGen California (co-source)
 San Francisco Public Defender’s Office (co-source)
 Silicon Valley De-Bug (co-source)
 ACLU California Action
 Asian Americans Advancing Justice - California
 Asian Solidarity Collective
 CAIR California
 California Attorneys for Criminal Justice
 California Catholic Conference
 California for Safety and Justice
 California Public Defenders Association
 Californians United for a Responsible Budget
 Ceres Policy Research
 Change Begins With ME Indivisible Group
 Chrysalis Center
 Communities United for Restorative Youth Justice

County of San Diego
Courage California
Del Cerro for Black Lives Matter
Democratic Club of Vista
Democratic Woman's Club of San Diego County
Drug Policy Alliance
Fresh Lifelines for Youth
Fresno Barrios Unidos
Friends Committee on Legislation of California
Hillcrest Indivisible
Initiate Justice
Kern County Participatory Defense
Legal Services for Prisoners with Children
Los Angeles County District Attorney's Office
Mission Impact Philanthropy
National Association of Social Workers, California Chapter
Partnership for the Advancement of New Americans
Pillars of the Community
Prosecutors Alliance of California
Racial Justice Coalition of San Diego
Re:Store Justice
Riseup
Rubicon Programs
San Diego Progressive Democratic Club
San Mateo County Participatory Defense
SD QTPOC Colectivo
Secure Justice
Showing Up for Racial Justice at Sacred Heart in San Jose
Showing Up for Racial Justice North County San Diego
Showing Up for Racial Justice San Diego
Smart Justice California
Social Workers for Equity & Leadership
Starting Over, INC.
Team Justice
The A. L. Costa Community Development Center
The W. Haywood Burns Institute
Think Dignity
Uncommon Law
Uprise Theatre
Urban Peace Institute

We the People - San Diego
Young Women's Freedom Center

OPPOSITION: (Verified 8/26/21)

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Coalition of School Safety Professionals
California State Sheriffs' Association
City of Placentia
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Fullerton Police Officers' Association
Inglewood Police Officers Association
Kern County District Attorney's Office
Los Angeles Association of Deputy District Attorneys
Los Angeles County Sheriff's Department
Los Angeles School Police Officers Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Bernardino County Sheriff's Department
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association
Santa Ana Police Officers Association
Upland Police Officers Association

ASSEMBLY FLOOR: 38-27, 5/17/21 (FAIL)

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Burke, Carrillo, Chiu, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk, Reyes, Luz Rivas, Robert Rivas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Fong, Frazier, Gallagher, Irwin, Kiley, Lackey, Mathis, Muratsuchi, Nguyen, O'Donnell, Patterson, Petrie-Norris, Ramos, Rodriguez, Salas, Seyarto, Smith, Valladares, Voepel

NO VOTE RECORDED: Arambula, Boerner Horvath, Calderon, Cervantes, Chau, Chen, Flora, Grayson, Mayes, Quirk-Silva, Blanca Rubio, Villapudua, Waldron

ASSEMBLY FLOOR: 43-27, 6/3/21

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Carrillo, Chiu, Cooley, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cooper, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier, Gallagher, Irwin, Kiley, Lackey, Mathis, Mayes, Muratsuchi, Nguyen, Patterson, Petrie-Norris, Ramos, Rodriguez, Salas, Seyarto, Smith, Valladares, Voepel

NO VOTE RECORDED: Arambula, Calderon, Cervantes, Chau, Daly, O'Donnell, Blanca Rubio, Villapudua, Waldron

Prepared by: Stella Choe / PUB. S. /
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