
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair

2021 - 2022 Regular Session

SB 81 (Skinner) - Sentencing: dismissal of enhancements

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Urgency: No

Hearing Date: May 3, 2021

Policy Vote: PUB. S. 4 - 0

Mandate: No

Consultant: Shaun Naidu

Bill Summary: SB 81 would require a court to dismiss an enhancement if it is in furtherance of justice to do so, except as specified, and would create a rebuttable presumption of circumstances that are in the furtherance of justice.

Fiscal Impact:

- Department of Justice (DOJ): Unknown, potentially-significant workload cost pressures for Deputy Attorneys General (DAGs) to litigate on appeal the applicability of this measure to defendants. (General Fund)
- Department of Corrections and Rehabilitation: Unknown, potentially-major out-year savings annually in reduced state incarceration costs for individuals for whom the court dismisses enhancements. The proposed 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. Actual savings would depend on the number of individuals for whom the court dismisses enhancements pursuant to this measure and the length of incarceration for each of the dismissed enhancements. Aside from marginal cost savings per individual, however, the department 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)

Background: According to the analysis of this bill by the Senate Committee on Public Safety:

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 to doubling a person's sentence to converting a determinate sentence into a life sentence.

Existing law allows a court, either on its own motion or upon the application of the prosecuting attorney, to dismiss an action (including striking or dismissing the punishment to an enhancement that the court has authority to dismiss) in the furtherance of justice. The reasons for the dismissal must be stated orally on the record and must be set forth in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or

reported by a court reporter. A dismissal cannot be made for any cause that would be ground of demurrer to the accusatory pleading.

Proposed Law: This bill would require a court to dismiss an enhancement if it is in the furtherance of justice to do so, except (i) when the dismissal of an enhancement is prohibited by an initiative statute or (ii) upon a showing of clear and convincing evidence that dismissal of the enhancement would endanger public safety. It also would provide a rebuttable presumption that dismissal of an enhancement is in the furtherance of justice upon a finding that any of the following circumstances are true:

- Application of the enhancement would result in a disparate racial impact.
- Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement must be dismissed.
- The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement must be dismissed.
- The current offense is connected to mental illness, as specified.
- The current offense is connected to prior victimization or childhood trauma, as those terms are defined.
- The current offense is not a violent felony, as defined.
- The defendant was a juvenile when they committed the current offense or prior offenses.
- The enhancement is based on a prior conviction that is over five years old.
- Though a firearm was used in the current offense, it was inoperable or unloaded.

This list of circumstances is not exclusive, and SB 81 would provide that the court maintains authority to dismiss or strike an enhancement in accordance with existing law. The presumption may be overcome only by a showing of clear and convincing evidence that dismissal of the enhancement would endanger public safety.

Lastly, the provisions of SB 81 would not be retroactive.

Staff Comments: Appellate litigation costs to DOJ related to this measure is unknown; however, it costs the department \$271,000 (in personal services, operating expenses, and equipment) for 1.0 ongoing DAG III annually. Using the standard state employment work hours for full-time employees, to the extent that SB 81 leads to more than 326 hours of work performed by DAGs in any given year, the cost pressures of this measure would surpass the General Fund Suspense File threshold.

On December 31, 2020, individuals incarcerated in state prison were serving a sentence that included 139,239 counts of enhancements (90,244 counts of conduct enhancements and 49,015 counts of status enhancements) of various lengths. The proposed per capita costs to detain a person in state prison in FY 2021-2022 is \$112,691, with an annual marginal rate per person of over \$13,000. If SB 81 resulted in 10 fewer counts of one-year enhancements every year, this measure would result in marginal state incarceration cost savings of about \$130,000 each year. If this bill results in the dismissal of longer-term enhancements (e.g., a five-year enhancement), cost savings would compound yearly and result in even greater savings. If this measure results in a large enough reduction of the state prison population to effectuate the

closing of a yard or wing of a prison, incarceration cost savings to the state could reach in the millions of dollars annually. If, however, a person who, absent this measure, would be sentenced with one or more enhancements going forward is paroled under Proposition 57 (2016) after serving the sentence for the base term, SB 81 would have no impact in that case.

Recommended Amendments: Proposed Penal Code section 1385, subdivision (c)(1) references paragraph (4). The reference should be to paragraph (6).

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