
THIRD READING

Bill No: SB 81
Author: Skinner (D)
Amended: 4/27/21
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 3/16/21
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Sentencing: dismissal of enhancements

SOURCE: California Attorneys for Criminal Justice
Californians for Safety and Justice

DIGEST: This bill provides guidance to courts by specifying circumstances for a court to consider when determining whether to apply an enhancement.

ANALYSIS:

Existing law:

- 1) Authorizes a court, either on its own motion or upon the application of the prosecuting attorney, to dismiss an action in the furtherance of justice. The reasons for the dismissal shall be stated orally on the record and those reasons shall 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 shall not be made for any cause that would be ground of demurrer to the accusatory pleading. (Pen. Code, § 1385, subd. (a).)

- 2) States that if the court has the authority to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice. (Pen. Code, § 1385, subd. (b).)
- 3) Provides that the above provisions do not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed. (Pen. Code, §1385, subd. (b)(2).)

This bill:

- 1) States that the court shall dismiss an enhancement if it is in the interests of justice to do so.
- 2) Provides that there shall be a presumption that it is in the furtherance of justice to dismiss an enhancement upon a finding that any of the following circumstances are true:
 - a) Application of the enhancement would result in a disparate racial impact.
 - b) Multiple enhancements are alleged in a single case. In this instance, all enhancements beyond a single enhancement shall be dismissed.
 - c) The application of an enhancement could result in a sentence of over 20 years. In this instance, the enhancement shall be dismissed.
 - d) The current offense is connected to mental illness.
 - e) The current offense is connected to prior victimization or childhood trauma.
 - f) The current offense is not a violent felony as defined in subdivision (c) of Section 667.5.
 - g) The defendant was a juvenile when they committed the current offense or prior offenses.
 - h) The enhancement is based on a prior conviction that is over five years old.
 - i) Though a firearm was used in the current offense, it was inoperable or unloaded.
- 3) Provides that this presumption shall only be overcome by a showing of clear and convincing evidence that dismissal of the enhancement would endanger public safety.

- 4) Clarifies that the above list is not exhaustive and that the court maintains authority to dismiss or strike an enhancement in the interests of justice.
- 5) Provides the following definitions apply:
 - a) A mental illness is a mental disorder as identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, including, but not limited to, bipolar disorder, schizophrenia, schizoaffective disorder, or post-traumatic stress disorder, but excluding antisocial personality disorder, borderline personality disorder, and pedophilia. A court may conclude that a defendant's mental illness was connected to the offense if, after reviewing any relevant and credible evidence, including, but not limited to, police reports, preliminary hearing transcripts, witness statements, statements by the defendant's mental health treatment provider, medical records, records or reports by qualified medical experts, or evidence that the defendant displayed symptoms consistent with the relevant mental disorder at or near the time of the offense, the court concludes that the defendant's mental illness substantially contributed to the defendant's involvement in the commission of the offense.
 - b) "Childhood trauma" means that as a minor the person experienced physical, emotional, or sexual abuse, physical or emotional neglect, or had a household member who experienced mental illness, a substance use disorder, intimate partner violence, absence due to divorce or separation, or incarceration.
 - c) "Prior victimization" means the person was a victim of intimate partner violence, sexual violence, or human trafficking, or the person has experienced psychological or physical trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.
- 6) Specifies that this bill's provisions do not apply to an enhancement if dismissal of that enhancement is prohibited by any initiative statute.
- 7) States that this bill's provisions do not apply retroactively.

Background

According to the author of this bill:

California's penal code has multiple sentence enhancements that can be added to a criminal charge. Sentence enhancements are not elements of the crime, they are additional circumstances that increase the penalty, or time served, of the

underlying crime. While the application of an enhancement may appear straightforward, research reviewed last year by the Committee on the Revision of the Penal Code revealed inconsistency in their use.

Current law allows judges to dismiss sentencing enhancements “in furtherance of justice.” This standard lacks clarity and does not provide judges clear guidance on how to exercise this discretion. A ruling by the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an “amorphous concept,” with discretion inconsistently exercised and underused because judges did not have adequate guidance.

Data indicates that in about 20% of cases, judges chose not to apply sentence enhancements. Conversely, in about 80% of cases, individuals had their terms lengthened by sentence enhancements, in many cases with two, three or more enhancements assigned. Thus for the committing the same crime some individuals receive only the base sentence while others have five, ten or more years added to their time.

Building on the California Rules of Court that guide judges in certain sentencing decisions, SB 81 aims to provide clear guidance on how and when judges may apply sentence enhancements. By clarifying the parameters a judge must follow, SB 81 codifies a recommendation made by the Committee on the Revision of the Penal Code to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime.

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

According to the Senate Appropriations Committee:

- *Department of Justice:* Unknown, potentially-significant workload cost pressures for Deputy Attorneys General to litigate on appeal the applicability of this bill 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 bill 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)

SUPPORT: (Verified 5/20/21)

California Attorneys for Criminal Justice (co-source)
Californians for Safety and Justice (co-source)
A New Way of Life Reentry Project
American Civil Liberties Union of California
Asian Solidarity Collective
Bend the Arc: Jewish Action
California Catholic Conference
California Public Defenders Association
California Religious Action Center of Reform Judaism
Communities United for Restorative Youth Justice
Community Advocates for Just and Moral Governance
Democrats of Rossmoor
Drug Policy Alliance
Ella Baker Center for Human Rights
Fresno Barrios Unidos
Friends Committee on Legislation of California
Initiate Justice
Legal Services for Prisoners with Children
Pillars of the Community
Prosecutors Alliance of California
Re:store Justice
Rubicon Programs
San Francisco Public Defender
Showing Up for Racial Justice - Bay Area
Showing Up for Racial Justice - North County
Showing Up for Racial Justice - San Diego
Smart Justice California
Team Justice
Think Dignity
Time for Change Foundation
We the People – San Diego

OPPOSITION: (Verified 5/20/21)

California Narcotic Officers' Association
California Police Chiefs Association

California State Sheriffs' Association
Peace Officers Research Association of California
San Diego County District Attorney's Office

ARGUMENTS IN SUPPORT: According to Smart Justice California:

California's penal code has a multitude of sentence enhancements that can be added to a person's term of incarceration. Current law allows judges to dismiss sentencing enhancements "in furtherance of justice." This standard lacks clarity and does not provide judges clear guidance on how to exercise this discretion. Research examined by the Committee on the Revision of the Penal Code [CRPC] revealed that sentence enhancements were applied disproportionately to women, people of color, and those exhibiting mental health issues. Many states have reformed sentence enhancement processes and provided more guidance – for example, by limiting the use of enhancements to convictions that occurred within 5 years.

SB 81 establishes a presumption that judges would only apply sentence enhancements when there is clear and convincing evidence that not using the enhancement would endanger the public. By clarifying the parameters a judge must follow, SB 81 codifies a recommendation made by the CRPC to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime.

ARGUMENTS IN OPPOSITION: According to the California State Sheriffs' Association:

SB 81 seeks to limit the application of many enhancements, including in circumstances in which multiple enhancements are alleged in a single case or the total sentence is over 20 years, the current offense is connected to mental health issues, the current offense is connected to prior victimization or childhood trauma, the current offense is nonviolent, or the enhancement is based on a prior conviction that is over five years old. Some of these conditions are subjective and potentially difficult to demonstrate or prove. Others, including the circumstances wherein multiple enhancements are alleged or a prior conviction is more than five years old, do not necessarily provide enough information as to whether an enhancement enacted by the Legislature or California voters should ultimately be imposed.

Unfortunately, this bill creates several conditions under which otherwise appropriate sentence enhancements that would be imposed based on the nature

of the offense and the actions taken by the offender are negated. Instead, a court would be permitted to decline to dismiss a charged sentencing enhancement upon a showing by clear and convincing evidence that dismissal of an enhancement would endanger public safety. This showing would be in addition to existing law that not only requires a defendant to be found guilty beyond a reasonable doubt but also requires enhancements to generally be pled and proved.

Prepared by: Stella Choe / PUB. S. /
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