

Date of Hearing: July 14, 2021

**ASSEMBLY COMMITTEE ON APPROPRIATIONS**

Lorena Gonzalez, Chair

SB 81 (Skinner) – As Amended July 1, 2021

Policy Committee: Public Safety

Vote: 6 - 2

Urgency: No

State Mandated Local Program: No

Reimbursable: No

**SUMMARY:**

This bill creates a presumption that it is in the furtherance of justice to dismiss an enhancement based on the court's finding that one of the listed circumstances is true. Specifically, this bill:

- 1) Creates a presumption that it is in the furtherance of justice to dismiss an enhancement upon the court's finding that any of the following circumstances is true:
  - a) Application of the enhancement would result in a disparate racial impact.
  - b) Multiple enhancements are alleged in a single case. In this case, 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 which case 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 specified.
  - 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 commission of the current offense, it was inoperable or unloaded.
- 2) Requires a court to dismiss an enhancement in the furtherance of justice except in the following circumstances:
  - a) A showing, by clear and convincing evidence, that dismissal of the enhancement would endanger public safety.
  - b) Where dismissal of the enhancement is prohibited by initiative.

**FISCAL EFFECT:**

- 1) Costs (Trial Court Trust Fund) possibly in the upper hundreds of thousands of dollars to low millions of dollars to the trial courts to hear and determine whether an enhancement filed by a prosecutor must be dismissed. This bill creates a new process for which the parties must litigate whether an enhancement is appropriately applied. Although existing law currently allows a court to dismiss any enhancement or criminal charge in the furtherance of justice, this bill creates a presumption that may only be overcome through a showing of clear and convincing evidence. As a result, a prosecutor will likely need to submit evidence demonstrating that dismissal of the enhancement may threaten public safety. One hour of court time costs approximately \$1,000 in staff workload. Prosecutors statewide file thousands of enhancements annually. If a court is required to spend two hours determining whether it is in the furtherance of justice to dismiss an enhancement based on one of the enumerated factors in this bill, in 500 cases annually, the cost would be approximately \$1 million dollars. Courts are not funded on the basis of workload, however, 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 Budget Act of 2021 allocates \$118.3 million from the GF to backfill continued reduction in fine and fee revenue for trial court operations and \$72 million in ongoing GF revenue for trial courts to continue addressing the backlog of cases caused by the pandemic.
- 2) Cost savings (GF) likely in the hundreds of millions of dollars to the California Department of Corrections and Rehabilitation (CDCR) in reduced incarceration. If this bill results in the dismissal of at least one two-year enhancement for 500 defendants sentenced to state prison, at an average annual cost per inmate of \$112,691, CDCR would see a savings of \$113 million dollars. 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.

**COMMENTS:**

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

SB 81 codifies a recommendation developed with the input of the judges who serve on the Committee on the Revision of the Penal Code for the purpose of improving fairness in sentencing while retaining a judge's authority to apply an enhancement to protect public safety.

- 2) **Background.** This bill adopts a recommendation from the California Penal Code Revision Commission. According to the Committee:

[Our] recommendation builds on existing California Rules of Court that guide judges on what circumstances they should consider in aggravation and mitigation in imposing a felony sentence, such as

prior abuse, ...prior crimes, and the mental or physical condition of the defendant. The Committee recommendations are also informed by the California Surgeon General's recent annual report, which recommends that the criminal legal system implement policies and practices that address trauma in justice-involved youth and adults.

California Rules of Court 4.428 currently provides judges with some direction when imposing enhancements, including consideration of the defendant's criminal history, the seriousness of the current charge and "any other relevant considerations." This bill lists several factors for a court to consider when deciding whether to dismiss an enhancement, however, it creates a presumption in favor of dismissal unless the prosecutor demonstrates, by clear and convincing evidence, that dismissal would risk public safety. A "clear and convincing evidence" standard requires a showing that something is substantially likely to be true. This is a higher standard of proof than proof by a preponderance of the evidence, but it does not require proof beyond a reasonable doubt.

3) **Argument in Support.** According to the California Attorneys for Criminal Justice:

Penal Code section 1385 generally authorizes trial judge to dismiss sentencing enhancements 'in the furtherance of justice.' But the statute provides no standards to guide a court's exercise of discretion. Consequently, grave sentencing disparities occur among defendants convicted of identical offenses – even when they have comparable criminal histories, and their crimes are committed under similar circumstances.

4) **Argument in Opposition.** According to the California District Attorneys Association:

Judges should be permitted to consider various factors when evaluating whether to impose or dismiss an enhancement, but SB 81 essentially prohibits enhancements in multiple circumstances. The bill creates a presumption in favor of dismissing an enhancement unless overcome by clear and convincing evidence, thus taking discretion away from judges who are in the best position to evaluate the facts of the case and the particulars of the offender.

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