

SENATE THIRD READING  
SB 81 (Skinner)  
As Amended August 30, 2021  
Majority vote

## **SUMMARY**

Requires the court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal is prohibited by an initiative statute.

### **Major Provisions**

- 1) Requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if its dismissal is prohibited by an initiative statute.
- 2) Requires the court, when exercising discretion to dismiss an enhancement, to give great weight to any evidence offered by the defendant to prove any of the following mitigating circumstances:
  - a) Application of the enhancement would result in a discriminatory 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, as defined;
  - f) The current offense is not a violent felony, as specified;
  - g) The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement;
  - h) The enhancement is based on a prior conviction that is over five years old; or,
  - i) Though a firearm was used in the commission of the current offense, it was inoperable or unloaded.
- 3) Specifies that these provisions apply prospectively.

## **COMMENTS**

According to the Assembly Appropriations Committee, cost pressures (Trial Court Trust Fund) possibly in the mid- to-upper hundreds of thousands of dollars to the trial courts to consider whether mitigating circumstances are present to support dismissing an enhancement. 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 to perform existing duties.

### **According to the Author**

"California's penal code has over 150 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 has a standard for dismissing sentence enhancements that 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.

"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 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."

### **Arguments in Support**

According to the *California Attorneys for Criminal Justice*, a co-sponsor of this bill, "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.

"In addition to these disparities, case law precludes a court from exercising its discretion to dismiss enhancements unless 'extraordinary' circumstances exist. (See, e.g., *People v. Mayfield* (2020) 50 Cal.App.4th 1096, 1105.) This standard has contributed to California's mass incarceration crisis. Indeed, a significant portion of inmates serving sentences where the period imposed for an enhancement is greater than the time imposed for the crime itself. As an example, robbery is punishable by imprisonment for two, three, or five years. But a gun enhancement imposed under Penal Code Section 12022.53 will increase that sentence by ten, twenty, or 25 years to life.

"SB 81 seeks to rectify the issues. It does this by ensuring that enhancements will not be imposed if various conditions are met, unless there is proof – by clear and convincing evidence – that dismissal of the enhancement would jeopardize public safety. This approach simultaneously encourages uniformity of sentencing, and the imposition of enhancements only when necessary to protect the public."

### **Arguments in Opposition**

According to the Monterey County District Attorney, "I oppose SB 81 because it would severely limit the use of sentencing enhancements. Status enhancements are just because a person with a record deserved a longer sentence than a person who commits the exact same crime but does not have a prior record. And conduct enhancements directly relate to the underlying offense and derive from the defendant's conduct during the crime, such as the use or discharge of a firearm, the infliction of great bodily injury, or the victim's vulnerable status (as, for example, an elder,

child, or racial minority). A person who commits the exact same crime with a gun or who inflicts great bodily injury on a victim should not receive the same sentence as a person who commits the same crime but does neither. Persons who commit crimes because of racial animus should not be treated the same as those who did not. Enhancements are both just and logical.

Further, SB 81 prohibits enhancements if the crime is not a violent crime, and prohibits them even for violent felonies if the sentence exceeds 20 years. It prohibits enhancements for prior convictions older than five years, even if the person was in prison the whole time. The list goes on."

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, cost pressures (Trial Court Trust Fund) possibly in the mid- to-upper hundreds of thousands of dollars to the trial courts to consider whether mitigating circumstances are present to support dismissing an enhancement. 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 to perform existing duties.

## **VOTES**

### **SENATE FLOOR: 27-9-4**

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Wieckowski, Wiener

**NO:** Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Caballero, Glazer, Hurtado, Umberg

### **ASM PUBLIC SAFETY: 6-2-0**

**YES:** Jones-Sawyer, Bauer-Kahan, Lee, Quirk, Santiago, Wicks

**NO:** Lackey, Seyarto

### **ASM APPROPRIATIONS: 11-4-1**

**YES:** Lorena Gonzalez, Bryan, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Kalra

**NO:** Bigelow, Megan Dahle, Davies, Fong

**ABS, ABST OR NV:** Calderon

## **UPDATED**

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