
UNFINISHED BUSINESS

Bill No: SB 81
Author: Skinner (D), et al.
Amended: 8/30/21
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

SENATE FLOOR: 27-9, 5/26/21
AYES: 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
NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh,
Wilk
NO VOTE RECORDED: Caballero, Glazer, Hurtado, Umberg

ASSEMBLY FLOOR: 46-24, 9/8/21 - See last page for vote

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.

Assembly Amendments:

- 1) Remove the presumption that it is in the interests of justice to dismiss an enhancement when specified circumstances are found to be true and instead provides that the court shall, in exercising its discretion to dismiss an enhancement in the interests of justice, consider and afford great weight to evidence of those specified circumstances.
- 2) Clarify and add definitions for the specified circumstances.
- 3) Apply this bill's provisions to sentencings occurring after the effective date of this bill.

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, in exercising its discretion to dismiss an enhancement in the interests of justice, consider and afford great weight to evidence offered by the defendant to prove that any of the specified mitigating circumstances are present.

- 2) Provides that the presence of one or more of the following circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety:
 - a) Application of the enhancement would result in a discriminatory racial impact as described in the California Racial Justice Act of 2020.
 - 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 any prior juvenile adjudication that triggers the enhancement or enhancements applied in this case.
 - 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) 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.
- 4) Defines “endanger public safety” to mean there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others.
- 5) States that while the court may exercise its discretion at sentencing, nothing in the bill shall prevent a court from exercising its discretion before, during, or after trial or entry of plea.
- 6) Provides that 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. A court may conclude that a defendant's childhood trauma 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, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's childhood trauma substantially contributed to the defendant's involvement in the commission of the offense.
 - 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. A court may conclude that a defendant's prior victimization 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, medical records, or records or reports by qualified medical experts, the court concludes that the defendant's prior victimization substantially contributed to the defendant's involvement in the commission of the offense.
- 7) Specifies that this bill's provisions do not apply to an enhancement if dismissal of that enhancement is prohibited by any initiative statute.
 - 8) States that this bill's provisions apply to sentencings occurring after the effective date of this bill.

Background

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 dismiss sentencing enhancements and other allegations that would lengthen a defendant's sentence. 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.

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

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.

SUPPORT: (Verified 9/8/21)

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
Community Reflections Inc.
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 9/8/21)

California Narcotic Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Monterey County District Attorney's Office

ASSEMBLY FLOOR: 46-24, 9/8/21

AYES: Aguiar-Curry, Bauer-Kahan, Bennett, Berman, Bloom, Mia Bonta, Bryan, Burke, Calderon, Carrillo, Chau, Chiu, Daly, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-

Sawyer, Kalra, Lee, Levine, Low, Mayes, McCarty, Medina, Mullin, Nazarian, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Santiago, Stone, Ting, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier, Gallagher, Gray, Kiley, Lackey, Mathis, Nguyen, Patterson, Rodriguez, Seyarto, Smith, Valladares, Voepel, Waldron

NO VOTE RECORDED: Arambula, Boerner Horvath, Cervantes, Maienschein, Muratsuchi, O'Donnell, Quirk-Silva, Ramos, Salas, Villapudua

Prepared by: Stella Choe / PUB. S. /
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