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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 1511                      **Hearing Date:** May 15, 2018  
**Author:** Low  
**Version:** March 15, 2018  
**Urgency:** Yes                                      **Fiscal:** Yes  
**Consultant:** GC

**Subject:** *Sentencing Enhancements: Property Loss*

### HISTORY

**Source:** California District Attorneys Association; Los Angeles County District Attorney's Office

**Prior Legislation:** AB 1705 (Niello), 2007, Ch. 420, Stats 2007  
AB 916 (Canciamilla), 2005, held in Sen. Appr. Committee  
AB 293 (Cunneen), 1997 Ch. 551, Stats 1997

**Support:** California Attorney General's Office; California State Sheriffs' Association; California Department of Insurance; Riverside Sheriff's Association

**Opposition:** None known

**Assembly Floor Vote:** Not relevant

### PURPOSE

***The purpose of this bill is to re-impose sentence enhancements that lapsed by operation of a sunset provision when a person commits specified theft or property loss offenses.***

*Existing law, prior to January 1, 2018* provided that when any person takes, damages, or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows: (Pen. Code § 12022.6; repealed January 1, 2018)

- If the loss exceeds sixty-five thousand dollars (\$65,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.
- If the loss exceeds two hundred thousand dollars (\$200,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.
- If the loss exceeds one million three hundred thousand dollars (\$1,300,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.

- If the loss exceeds three million two hundred thousand dollars (\$3,200,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

*This bill* provides that if a person takes, damages, or destroys property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

- If the property loss exceeds seventy-five thousand dollars (\$75,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.
- If the property loss exceeds two hundred thirty-five thousand dollars (\$235,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.
- If the property loss exceeds one million five hundred thousand dollars (\$1,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.
- If the property loss exceeds three million seven hundred thousand dollars (\$3,700,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

*This bill* states it is the intent of the Legislature that the penalties of this section be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason this section shall remain in effect only until January 1, 2028, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2028, deletes or extends that date.

## COMMENTS

### 1. Need for This Bill

According to the author:

Penal Code Section 12022.6 sunset on January 1, 2018. AB 1511 will re-insert the code section while updating the statute to reflect inflation. Many “white collar” crimes are especially difficult to prosecute because the perpetrators are often sophisticated criminals who have attempted to conceal their activities through a series of complex transactions. Originally enacted in 1977, the legislature overwhelmingly supported law enforcement and the judicial process for prosecuting these “white collar” crimes. Penal Code Section 12022.6 imposes a penalty that punishes these acts and helps deter criminals from causing significant economic damage during the commission, or attempted commission, of a felony. The excessive takings statute is extremely important in the prosecution of “white collar” crime in California because the penalties for the theft of property worth millions of dollars are the same as the theft of property worth a few hundred dollars.

Crimes in which Penal Code Section 10222.6 is used include:

- Organized fraud
- Identity theft
- Ponzi schemes
- Burglary conspiracies

Enhanced penalties are justified for a crime that involves the intentional taking, damage, or destruction of property valued over \$75,000 during the commission or attempted commission of a felony. AB 1511 extends the sunset on an important code section that is an important tool used by law enforcement in the most sophisticated fraud schemes.

There are open cases throughout California where Penal Code Section 12022.6 is alleged and, without the code section, the criminals will not serve a proportional sentence to their crime. Penal Code Section 12022.6 allows proportionality between the offense and the sentence. Without the code section, courts are limited to the same sentencing options of the criminal causes a loss of \$950 or several hundred million dollars. In one open case in San Mateo County, a defendant inflicted damage on his victim of over \$2 million. If the defendant is convicted and sentenced without Penal Code Section 12022.6, he will be sentenced the same as an individual who stole \$950. In Ventura County, a single prosecutor currently has 10 open cases where Penal Code Section 12022.6 is charged. In San Diego County, a single prosecutor has 10 separate open cases where Penal Code Section 12022.6 is charged and has closed 55 cases that used Penal Code Section 12022.6.

## 2. Sunset Provisions in Penal Code § 12022.6

The so-called excessive takings enhancement<sup>1</sup> in Penal Code Section 12022.6 became effective in 1977, essentially contemporaneous with the Determinate Sentencing Law. It appears that a sunset provision became effective in 1990. The sunset clause was rewritten through legislation in 1992. The provision was designated subdivision (f) in 1996. The sunset was extended from 1998 to 2008 by AB 293 (Cunneen), Chapter 551, Statutes of 1997. The existing sunset provision states that the purpose of the provision is to allow the Legislature to consider the effects of inflation on the enhancement thresholds in the law.

## 3. Inflation

According to the United States Department of Labor's Bureau of Labor Statistics CPI Inflation Calculator<sup>2</sup> the following amounts as calculated on January 1, 2008 would have inflated to the following amounts as of March 1, 2018:

- \$65,000.00 in 2008 is \$76,847.69 in 2018
- \$200,000.00 in 2008 is \$236,454.42 in 2018

<sup>1</sup> The enhancement applies to taking, damaging or destroying property.

<sup>2</sup> [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)

- \$1,300,000.00 in 2008 is \$1,536,953.76 in 2018
- \$3,200,000.00 in 2008 is \$3,783,270.80 in 2018

This bill imposes the following penalties based on inflation:

- If the property loss exceeds seventy-five thousand dollars (\$75,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year.
- If the property loss exceeds two hundred thirty-five thousand dollars (\$235,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years.
- If the property loss exceeds one million five hundred thousand dollars (\$1,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.
- If the property loss exceeds three million seven hundred thousand dollars (\$3,700,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

#### 4. Lack of Judicial Discretion

California Penal Code § 12022.6 imposes a mandatory prison sentence of up to 4-years consecutive to any underlying offense. The provisions of this section fail to give judges discretion to depart from the mandatory consecutive sentences imposed in the Penal Code if they find there are facts and circumstances which warrant departure.

When the excessive takings enhancements were imposed in 1977 the State of California was not suffering from both prison and jail overcrowding, and under federal receivership. Permitting judicial discretion would allow courts to impose the additional penalties when necessary to further justice and depart if necessary.

The author and committee may consider granting discretion in the following manner:

Pen Code Section 12022.6.

(a) If a person takes, damages, or destroys property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court ~~shall~~ **may** impose an additional term as follows:

(1) If the property loss exceeds seventy-five thousand dollars (\$75,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, ~~shall~~ **may** impose an additional term of **up to** one year.

(2) If the property loss exceeds two hundred thirty-five thousand dollars (\$235,000), the court, in addition and consecutive to the punishment prescribed

for the felony or attempted felony of which the defendant has been convicted, ~~shall~~ **may** impose an additional term of **up to** two years.

(3) If the property loss exceeds one million five hundred thousand dollars (\$1,500,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, ~~shall~~ **may** impose an additional term of **up to** three years.

(4) If the property loss exceeds three million seven hundred thousand dollars (\$3,700,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, ~~shall~~ impose an additional term of **up to** four years.

## 5. Argument in Support

According to the *California District Attorneys Association*:

This bill would reinstate the excessive takings enhancement in Penal Code section 12022.6, with a sunset date of January 1, 2027.

As you know, many “white collar” crimes are especially difficult to prosecute because the perpetrators are often sophisticated criminals who have attempted to conceal their activities through a series of complex transactions. Penal Code section 12022.6 imposes penalty enhancements that punish these acts and help deter criminals from causing significant economic damage during the commission or attempted commission of a felony.

Penal Code section 12022.6, enacted 40 years ago, is one of California’s original determinate sentencing enhancements. The excessive takings enhancements are extremely important in the prosecution of “white collar” crime in California. Without these enhancements, the penalties for the theft of property worth \$4 million are the same as the theft of property worth \$951. By enacting the economic crime enhancements in Penal Code section 12022.6 in 1977 and adding several amendments and sunset extensions thereafter, the Legislature has repeatedly expressed overwhelming support for this statute. Undeniably, stronger penalties are justified for a crime that involves the intentional taking, damage, or destruction of property valued over \$75,000 during the commission or attempted commission of a felony.

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