
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1279 **Hearing Date:** April 17, 2018
Author: Bradford
Version: April 2, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentencing: Double the Base Term*

HISTORY

Source: American Civil Liberties Union of California
Anti-Recidivism Coalition

Prior Legislation: SB 721 (Lockyer), Ch. 750, Stats. 1997
Ch. 1139, Stats. 1976

Support: The Advocacy Fund; California Public Defenders Association; Californians for Safety and Justice; Ella Baker Center for Human Rights; Friends Committee on Legislation of California

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to reinstate the double-the-base-term limitation on consecutive terms of imprisonment, with specified exceptions, which was repealed in 1997.

Existing law provides, except as otherwise provided by law and subject to the prohibition against multiple punishment for the same act, when a person is convicted of two or more felonies, as specified, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements. (Pen. Code, § 1170.1, subd. (a).)

Existing law states that the principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. (*Id.*)

Existing law states that the subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. (*Id.*)

Existing law provides that for any violation of an offense specified in 667.6, the number shall not be limited and shall be a fully and separately served term. (Pen. Code, § 1170.1, subd. (h).)

This bill states that the maximum term of imprisonment that may be imposed on a person convicted of two or more felonies for consecutive terms of imprisonment shall not exceed twice the number of years imposed by the trial court as the base term, except as specified.

This bill excludes from the maximum term limitation the following crimes:

- Crimes committed for the benefit of a gang;
- Enhancement on a conviction for a failure to register on the gang registry;
- Enhancements applicable to human trafficking offenses;
- Aggravated sexual assault of a child under the age of 14;
- Communicating with a minor for the purpose of engaging in lewd and lascivious acts;
- Three strikes enhancements;
- Enhancements for prior sex offenses;
- One-strike sex offenses;
- Enhancement for kidnapping to permanently deprive the parent of custody of child;
- Enhancement for the administration of a controlled substance against a victim's will; and,
- Enhancement where injury to the victim results in termination of pregnancy.

This bill provides that, notwithstanding the imposition of a sentence for an enhancement or additional and consecutive term specified as excluded, the double the base term limitation is applicable to all portions of a sentence not including the above exclusions.

This bill states that it is the intent of the Legislature to reenact the double the base term limitation to ensure that prison terms for specified enhancements will not be confined by the double the base term limitation, and to clarify that the existence of an exception does not render sentencing enhancements limitless and to clarify that the holding of *People v. Magill* (1986) 41 Cal.3d 777 not be applied to the double the base term limitation as reenacted by this act.

COMMENTS

1. Need for This Bill

According to the author of this bill:

California has one of, if not the most, complex sentencing structures in the nation. So convoluted, even judges are often uncertain with the interplay between various sentencing schemes – base terms, principal terms, subordinate terms, aggregate terms, special circumstances – and not to mention, over 150 sentence enhancements under existing law. To make matters worse, beyond the complexity of sentencing law lies the question of whether or not the policies we have enacted effectively serve their intended purpose and appropriately sanction individuals for the crimes they were convicted of.

SB 1279 will help simplify California's intricate and confusing web of sentencing laws by ensuring that a full term of imprisonment does not exceed double the number of years imposed by the trial court as the base term for the offense. This rule would not apply to the most heinous, violent and sex crimes in current law. Ultimately, this bill will maximize the public safety purpose of sentencing and restore greater proportionality in sentencing.

2. Background on Sentencing

Under California's Determinate Sentencing Law, most felony offenses carry a specified base term, also known as a triad. Specially, a statute will provide three possible terms – the low, middle, or high term – from which a court has discretion to choose the most appropriate term (Pen. Code, § 1170, subd. (b)). For example, first degree burglary is punishable by two, four, or six years in prison.

If the defendant is convicted of multiple crimes, the court must first decide whether the proscription against multiple punishments (Penal Code Section 654) requires a stay of imposition of sentence on any count. For counts not subject to Penal Code Section 654, in most instances, the judge has discretion to order that the terms be served either concurrently or consecutively. (Pen. Code §§ 669 and 1170.1, subd. (a).) However, in some instances, consecutive terms are statutorily mandated. If the court chooses to impose consecutive sentences, the total term or aggregate sentence includes the sum of the principal term, which is the longest term imposed for any of the crimes calculated by the base term (either low, middle or high term) plus any applicable conduct specific enhancements, and each consecutive offense calculated at one-third the middle term plus one-third the term specified for any specific conduct enhancements applicable to that count, plus any enhancements for prior convictions.

3. Legislative History

The double-the-base-term limitation was enacted in 1976. (Ch. 1139, Stats. 1976.) The effect of this limitation was that when a defendant was sentenced consecutively for multiple felonies or enhancements, the total prison sentence may not exceed twice the base term selected by the court for the principal offense, unless the defendant was convicted of a violent felony or other specified enhancements applied.

In *People v. Magill* (1986) 41 Cal.3d 777, the California Supreme Court held that “the presence of any of the specified enhancements makes the double-base term limitation entirely inapplicable.” (*Id.* at p. 780.) Essentially, the ruling meant that if any of the listed exceptions applied to a defendant, the double-the-base-term limitation did not apply to the defendant's sentence at all.

In 1997, this limitation was repealed. (SB 721 (Lockyer) Ch. 750, Stats. 1997.) According to a committee analysis on SB 721, “Statutory and judicial exceptions to the “twice base” lid are numerous. (See Penal Code Sections 1170.1(g), 1170.95; *People v. Prather* (1990) 50 Cal.3d 428; *People v. Pieters*, (1991) 52 Cal.3d 894).” (Sen. Comm. on Public Safety, Analysis of Sen. Bill No. 721 (1997-1998 Reg.Sess.) as introduced Feb. 25, 1997.) According to the analysis, “As noted above, the rules that are proposed to be eliminated already have numerous exceptions. Generally, the defendants to whom the rules still apply are the less serious offenders.” (*Id.*)

When SB 721 was being considered, prosecutors and the defense bar disagreed about whether elimination of the double-the-base-term limit would greatly increase sentences. (*Id.*) In *Magill*, the court acknowledged defendant's argument that it is possible that the court's interpretation of 1170.1 may, in certain cases, lead to harsh results possibly not contemplated by the Legislature, and thus invited the Legislature to investigate this claim amend the statute if it determines that to be necessary or desirable. (*People v. Magill, supra*, 41 Cal.3d at 781, fn. 4.)

4. Ongoing Prison Population Concerns

In January 2010, a three-judge panel issued a ruling ordering the State of California to reduce its prison population to 137.5% of design capacity because overcrowding was the primary reason that CDCR was unable to provide inmates with constitutionally adequate healthcare.

(*Coleman/Plata vs. Schwarzenegger* (2010) No. Civ S-90-0520 LKK JFM P/NO. C01-1351 THE.) The United State Supreme Court upheld the decision, declaring that “without a reduction in overcrowding, there will be no efficacious remedy for the unconstitutional care of the sick and mentally ill” inmates in California’s prisons. (*Brown v. Plata* (2011) 131 S.Ct. 1910, 1939; 179 L.Ed.2d 969, 999.)

After continued litigation, on February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows: 143% of design bed capacity by June 30, 2014; 141.5% of design bed capacity by February 28, 2015; and, 137.5% of design bed capacity by February 28, 2016.

The court also ordered California to implement the following population reduction measures in its prisons:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- Release inmates who have been granted parole by BPH but have future parole dates.
- Expand the CDCR’s medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- Increase its use of reentry services and alternative custody programs.

(Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court’s population cap in December 2015. (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown*.) CDCR’s February 2018 monthly report on the prison population notes that the in-state adult institution population is currently 113,975 inmates, which amounts to approximately 134% of design capacity. This represents a marginal .1% improvement from February of last year. Additionally, there are still 3,823 prisoners being housed out of state. (CDCR, Office of Research, Weekly Population Report for April 4, 2018, <https://www.cdcr.ca.gov/Reports_Research/Offender_Information_Services_Branch/WeeklyWed/TPOP1A/TPOP1Ad180404.pdf>.)

Thus, while CDCR is currently in compliance with the three-judge panel’s order on the prison population, the state needs to maintain a “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).)

Addressing the impact of enhancements is one approach to maintain a durable solution to prison overcrowding. According to findings and declarations in this bill:

On June 30, 2011, 31 percent of inmates had an enhancement as part of his or her sentence. Two years later, on June 30, 2013, 34.7 percent of inmates had an enhancement as part of his or her sentence.

On February 10, 2014, a federal court ordered California to reduce its in-state adult institution population to 137.5 percent of design capacity by February 28, 2016.

In fiscal year 2016–17, CDCR recorded more than 5,000 enhancements associated with offenders admitted to serve a determinate sentence.

CDCR continues to house inmates in numbers beyond its maximum capacity at an average of 130 percent of capacity. As of February 14, 2018, 113,939 inmates were housed in the state’s 34 adult institutions and 4,211 inmates were housed in out-of-state facilities.

This bill will reenact the double-the-base-term limitation and specify certain exceptions to the rule. This bill will also state the intent of the Legislature that the holding of *Magill* not be applied to the double-the-base-term limitation as reenacted by this act.

5. Argument in Support

According to Anti-Recidivism Coalition, a co-sponsor of this bill:

The “double the base term” limitation was developed with the understanding that individuals can be held accountable for their crimes without being imprisoned for unreasonably long sentences due to seemingly limitless sentence enhancements. Unfortunately, during the “tough on crime” era the double the base term limitation became riddled with exceptions that led to an explosion in California’s prison population and undermined California’s commitment to accountability. In 2013, over one-third of incarcerated Californians were serving a sentence that was lengthened by a sentence enhancement.

SB 1279 will help return California to a common sense and effective sentencing scheme by requiring that the maximum term of imprisonment imposed shall not exceed twice the number of years imposed by the trial court as the base term. Important, yet limited, exceptions will remain. Still, under a reinstated double the base term limitation, jurisdictions in California will still be able to maintain safe communities, hold individuals accountable for breaking the law, while helping California reduce its unsafe and unconstitutionally large prison population.

6. Arguments in Opposition

The California District Attorneys Association writes:

As you know, under existing law, when a person is convicted of multiple crimes, he or she is sentenced to a principal term (the longest term imposed by the court for any one conviction) and all other subordinate terms are served at 1/3 of the

middle term sentence. The practical effect of SB 1279 is to give a volume discount to criminals who victimize four or more individuals, or those who would otherwise be subject to a significant enhancement.

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