SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No:	SB 481	**Hearing Date:**	April 27, 2021
Author:	Durazo		
Version:	April 19, 2021		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Sentencing: special circumstances***

HISTORY

Source: Anti-Recidivism Coalition
Healing Dialogue and Action
Human Rights Watch
Post-Conviction Justice Project
Young Women's Freedom Center

Prior Legislation: AB 965 (Stone), Ch.577, Stats. 2019
AB 1308 (Stone), Ch. 675, Stats. 2017
SB 394 (Lara), Ch. 684, Stats. 2017
SB 1084 (Hancock), Ch. 867, Stats. 2016
SB 261 (Hancock), Ch., Stats. 2015
SB 260 (Hancock), Ch., Stats. 2013
SB 9 (Yee), Ch. 828, Stats. 2012

Support: All of Us or None – San Diego; Art of Yoga Project; California Alliance for Youth and Community Justice; California Public Defenders Association; Californians for Safety and Justice; Californians United for a Responsible Budget; Cat Clark Consulting Services; Children's Defense Fund – California; Dream Corps; Drug Policy Alliance; Ella Baker Center for Human Rights; Essie Justice Group; Fair Chance Project; Families United to End LWOP; Felony Murder Elimination Project; Fresno Barrios Unidos; Heals Project – Helping End All Life Sentences; Initiate Justice; Jesuit Restorative Justice Initiative; Legal Services for Prisoners with Children; National Association of Social Workers, California Chapter; Onesimus Prison Ministry; Re:store Justice; San Francisco Public Defender; Silicon Valley De-Bug; Smart Justice California; W. Haywood Burns Institute; Underground Grit; 1 private individual

Opposition: California District Attorneys Association; California Narcotic Officers' Association; San Diego County District Attorney's Office

PURPOSE

The purpose of this bill is to authorize a judge, in the furtherance of justice, to dismiss a special circumstance in cases in which the sentence is life imprisonment without the possibility of parole (LWOP) and to create a presumption in favor of dismissal for people who were 25

years of age or younger at the time of the offense and have been incarcerated for at least 15 years.

Existing law states that the penalty for a defendant who is found guilty of murder in the first degree is death or LWOP if one or more of the following special circumstances has been found under Section 190.4 to be true:

- The murder was intentional and carried out for financial gain;
- The defendant was convicted previously of first- or second-degree murder;
- The defendant, in the present proceeding, has been convicted of more than one offense of first- or second-degree murder;
- The murder was committed by means of a destructive device planted, hidden or concealed in any place, area, dwelling, building or structure;
- The murder was committed to avoid arrest or make an escape;
- The murder was committed by means of a destructive device that the defendant mailed or delivered, or attempted to mail or deliver;
- The victim was a peace officer who was intentionally killed while performing his/her duties and the defendant knew or should have known that; or the peace officer/former peace officer was intentionally killed in retaliation for performing his/her duties;
- The victim was a federal law enforcement officer who was intentionally killed;
- The victim was a firefighter who was intentionally killed while performing his/her duties;
- The victim was a witness to a crime and was intentionally killed to prevent his/her testimony, or killed in retaliation for testifying;
- The victim was a local, state or federal prosecutor murdered in retaliation for, or to prevent the performance of, official duties;
- The victim was a local, state, or federal judge murdered in retaliation for, or to prevent the performance of, official duties;
- The victim was an elected or appointed official of local, state or federal government murdered in retaliation for, or to prevent the performance of, official duties;
- The murder was especially heinous, atrocious, or cruel, "manifesting exceptional depravity." "Manifesting exceptional depravity" is defined as "a conscienceless or pitiless crime that is unnecessarily torturous";
- The defendant intentionally killed the victim while lying in wait;

- The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin;

- The murder was committed while the defendant was engaged in, or was an accomplice to, the commission of, attempted commission of, or immediate flight after, committing or attempting to commit the following crimes: robbery; kidnapping; rape; sodomy; lewd or lascivious act on a child under the age of 14; oral copulation; burglary; arson; train wrecking; mayhem; rape by instrument; carjacking; torture; poison; the victim was a local, state or federal juror murdered in retaliation for, or to prevent the performance of his/her official duties; and, the murder was perpetrated by discharging a firearm from a vehicle;

- The murder was intentional and involved the infliction of torture;

- The defendant intentionally killed the victim by the administration of poison;

- The victim was a juror and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's duties as a juror;

- The murder was intentional and committed by discharging a firearm from a motor vehicle; and,

- The defendant intentionally killed the victim while actively participating in a criminal street gang and the murder was carried out to further the activities of the gang.

(Pen. Code, § 190.2.)

Existing law prohibits the imposition of the death penalty shall upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant. (Pen. Code, § 190.5.)

Existing law provides that the penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances has been found true, who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be sentenced to LWOP or, at the discretion of the court, 25 years to life. (Pen. Code, § 190.5.)

Existing law allows an inmate serving a sentence of LWOP for an offense that was committed when the inmate was under 18 years of age to petition the court to have that sentence recalled and to be resentenced if the inmate has served at least 15 years of their sentence and meets certain other specified criteria. (Pen. Code, § 1170, subd. (d)(2).)

Existing law creates the youth offender parole hearing which is a hearing by the Board of Parole Hearings for the purpose of reviewing the parole suitability of any prisoner who was under 25 years of age at the time of their controlling offense. (Pen. Code, § 3051.)

Existing law provides that the timing for the youth offender parole hearing depends on the sentence: (1) if the controlling offense was a determinate sentence the offender shall be eligible for release during the person's 15th year of incarceration; (2) if the controlling offense was a life term less of than 25 years then the person is eligible for release during the person's 20th year of

incarceration; (3) if the controlling offense was for a life term of 25 years or more then the person is eligible for release after during the person's 25th year of incarceration; and (4) if the person was convicted of the controlling offense before the person turned 18 years of age and the sentence was LWOP, the person is eligible for release on the first day of the person's 25th year of incarceration. (Pen. Code, § 3051, subd. (b).)

Existing law requires a person's youth offender parole hearing to occur within 6 months of the first year they become eligible for a youth offender parole hearing. (Pen. Code, § 3051, subd. (a)(2)(C).)

Existing law provides that in reviewing a prisoner's suitability for parole in a youthful offender parole hearing, the Board of Parole Hearings shall give great weight to the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law. (Pen. Code, § 4801, subd. (c).)

Existing law provides that a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in Sections 190.1 to 190.5, inclusive. (Pen. Code, § 1385.1; Proposition 115, enacted by California voters on June 5, 1990.)

This bill repeals Penal Code section 1385.1.

This bill instead authorizes the court, either on the court's own motion or upon the motion of either party, and in the furtherance of justice, to hold a hearing and may strike or dismiss any special circumstance found to be true, whether by jury, a court, admission by a guilty plea, or by plea of nolo contendere, in all cases in which the sentence is LWOP.

This bill specifies that if the trial court judgement has become final and the sentence has been executed or the imposition of sentence has been suspended, this bill's provisions shall apply retroactively to enable the judge to dismiss a special circumstance finding or admission.

This bill provides that there shall be a presumption in favor of striking or dismissing special circumstance findings and admissions in cases in which the person was 25 years of age or younger at the time of the offense that was the basis of the special circumstance finding or admission and the person has been incarcerated for 15 years or more.

This bill states that in all cases, in exercising its discretion whether to strike or dismiss a special circumstance finding or admission, the court shall consider all relevant circumstances, regardless of whether those circumstances were presented at any time during the previous proceedings, and the court shall place great weight on the following factors, which shall mitigate in favor or striking or dismissing any special circumstance:

- The person has demonstrated growth and maturity since the offense, including, but not limited to, acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, maintaining prosocial relationships, or showing evidence of remorse;

- The hallmark features of youth, including, but not limited to, any of the following:
    - Lack of maturity;
    - Underdeveloped sense of responsibility;
    - Limited ability to appreciate risks and consequences of behavior;
    - Impulsivity; or,
    - Increased vulnerability or susceptibility to negative influences and outside pressures, particularly from family members or peers;
- Prior to the offense, the person experienced abuse, trauma, or significant stress;
- The person was a victim of intimate partner violence, commercial sex trafficking, commercial sexual exploitation, or human trafficking; or,
- The person has cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense to the offense, but influenced the person's involvement in the offense.

This bill states that its provisions does not change the public safety consideration required for release on parole for an indeterminately sentenced person. In any case where striking a dismissal or special circumstance finding or admission results in a sentence that does not require a determination that person does not pose an unreasonable risk to public safety by the Board of Parole Hearings prior to release, the court shall not strike or dismiss the special circumstance if the court finds by a preponderance of the evidence that the person would pose an immediate threat to public safety.

This bill requires the survivors of the crime and surviving family members of a deceased victim to be notified of the dismissal and to retain their rights.

This bill states that upon dismissal of a special circumstance, the court shall offer the survivor or survivors and surviving family members information about existing services to address their needs as related to the crime and case process. This information shall include, but is not limited to, information about all of the following:

- Counseling or treatment opportunities;
- Contact information for peer support groups and community-based organizations that support survivors and family members, including accompaniment or support at a parole hearing;
- Options for receiving letters of remorse from the offender, if available;
- Information about what to expect of the parole hearing process and the survivor or family member role.

This bill requires the reasons for the dismissal or denial of dismissal or striking of special circumstance finding or admission to be stated orally on the record and requires the court to set forth the reasons in an order entered upon the minutes if requested by either party or when the proceedings are not being recorded electronically or reported by a court reporter.

This bill states that any order denying dismissal or striking of a special circumstance finding or admission shall be appealable.

This bill contains a severability clause to ensure that if any provision of the bill is held invalid, the unaffected provisions can be go into effect.

COMMENTS

1. Need for This Bill

California law permits young people between the ages of 18 and 25 years old to be sentenced to life in prison without the possibility of parole. The California legislature has taken steps in recent years to align public policy with advances in scientific research supporting Youth Offender Parole hearings (YOP) for young people under 25. Most recently, California Supreme Court Justice Goodwin Liu stated in his concurring opinion of *People v. Montelongo* that , "there is good reason for legislative reconsideration" of the Youth Offender Parole statute, expanding it to allow individuals sentenced to LWOP at or before age 25. Justice Liu stated that the current YOP eligibility scheme – which excludes individuals sentenced to life without the possibility of parole for offenses committed between ages 18 and 25 – may "stand in tension" with *Miller v Alabama* (2012).

Research and evidence on adult development and neuroscience have established that certain areas of the brain, particularly those affecting decision making and judgment, do not fully develop until the early-to-mid-twenties. These reasons have led to the adoption of laws that acknowledge both a youthful offender's diminished criminal culpability and their potential for growth and rehabilitation.[3] This includes the expansion of the Youth Offender Parole process to individuals that received indeterminate life sentences for crimes committed when they person was 25 years of age or younger through AB 1308 (Stone) in 2017.

SB 481 provides individuals sentenced to LWOP for crimes committed when the person was 25 years of age or younger, the right to petition for a resentencing hearing after serving 15 years of their original sentence. . . .

SB 481 would also give Judges the authority to strike a person's special circumstances, while also providing instruction to judges to give weight to mitigating factors with a presumption in favor of dismissal for people who were 25 years of age or younger at the time of the offense.

Under SB 481, if the court dismisses special circumstances, a person may be eligible for the Youth Offender Parole hearing, which can determine whether a

person's growth and maturity can be assessed and a meaningful opportunity for the release can be established.

Youth Offender parole gives great weight to juveniles and young adults' diminished culpability compared to fully formed adults. Youth Offender Parole also considers the hallmarks of youth and any subsequent growth and increased maturity of the person. Youth offender parole is a cautious and careful process. People paroled under the Youth Offender Parole process are much less likely to reoffend and return to prison than other people. For the overall population of people released from prison, the vast majority of those who return to prison do so within the first year.

In California, 86% of those who return to prison within three years of release are sent back during the first year. Yet, during this time period, the recidivism rates for those paroled under YOP is less than 1.0%. Furthermore, only 32% of those with scheduled YOP hearings have been granted (2019 – 2020).

2. Relevant Case Law

In 2005, the United States Supreme Court ruled that persons who were under the age of 18 at the time of the offense are ineligible for the death penalty. (*Roper v. Simmons* (2005) 543 U.S. 551.) Penal Code Section 190.5 codified the holding of Roper and stated the penalty for a person 16 to 18 years of age convicted of first-degree murder with special circumstances is either LWOP or 25-years-to-life. (Pen. Code, § 190.5, subd. (b).)

In 2010, the United States Supreme Court ruled that it is unconstitutional to sentence a youth who did not commit homicide to LWOP. (See *Graham v. Florida* (2010) 560 U.S. 48.) The Court discussed the fundamental differences between a juvenile and adult offender and reasserted its findings from *Roper*, *supra*, that juveniles have lessened culpability than adults due to those differences. The Court stated that "life without parole is an especially harsh punishment for a juvenile," noting that a juvenile offender "will on average serve more years and a greater percentage of his life in prison than an adult offender." (*Graham*, *supra*, 560 U.S. at 70.) However, the Court stressed that "while the Eighth Amendment forbids a State from imposing a sentence of life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life. Those who commit truly horrifying crimes as juveniles may turn out to be irredeemable, and thus deserving of incarceration for the duration of their lives. The Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life. It does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." (*Id*. at 75.)

In 2012, the United States Supreme Court in *Miller v. Alabama* (2012) 567 U.S. 460, held that it is unconstitutional for states to mandate a sentence of LWOP for juveniles convicted of homicide. "Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other--the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile . . . will receive the same sentence as the vast majority of adults committing similar homicide offenses--but really, as *Graham* noted, a greater sentence than those adults will serve. (*Miller*, *supra*, 567 U.S. 476-477.)

Relying on *Miller*, the California Supreme Court in *People v. Caballero* (2012) 55 Cal. 4th 262, concluded that sentencing a juvenile offender for a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment. (*Id*. at p. 268.) The Court stated that "the state may not deprive [juveniles] at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." (*Ibid*.) While the court in *Caballero* pointed out that these inmates may file petitions for writs of habeas corpus in the trial court, the court also urged the Legislature to establish a parole eligibility mechanism for an individual sentenced to a de facto life term for crimes committed as a juvenile.

These cases establish that minors are constitutionally different from adults for sentencing purposes and emphasized that the distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit the most serious crimes.

3. Resentencing and Parole Process for Youthful Offenders

In 2012, SB 9 (Yee) was signed into law to address cases where a juvenile was sentenced to LWOP by providing a mechanism for recall and resentencing. Pursuant to SB 9, a person who was under 18 years of age at the time of committing an offense for which the person was sentenced to LWOP could, after serving at least 15 years in prison, petition the court for re-sentencing. If a re-sentencing hearing is granted, the court would have the discretion whether to re-sentence the petitioner to a lower sentence or let the life without parole sentence remain. If granted a lower sentence, the petitioner must still serve the minimum sentence and obtain approval of the parole board and the Governor prior to parole.

A few years later, SB 1084 (Hancock), Ch. 867, Stats. 2016, modified the resentencing law to clarify when a youthful offender could petition for recall and resentencing, the standard by which the court is to review the petition, and that a petitioner who does not have their sentence recalled or is resentenced to LWOP can submit another petition after a specified number of years.

After creating the judicial mechanism to resentence youthful offenders from LWOP to a life sentence where parole is authorized, the Legislature established Youthful Offender Parole, which provides a parole process for inmates sentenced to lengthy prison terms for crimes committed when they were under 18 years of age. (SB 260 (Hancock), Ch. 312, Stats. 2013.) This process applies to inmates serving both indeterminate sentences and determinate sentences. In 2015, youthful offender parole was amended to apply to inmates who were under the age of 23 at the time those crimes were committed based on neurological research that "shows that cognitive brain development continues well beyond age 18 and into early adulthood. For boys and young men in particular, this process continues into the mid-20s. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability." (SB 261 (Hancock), Ch. 471, Stats. 2015; Assem. Com. on Public Safety, Analysis of Sen. Bill 261 (2015-2016 Reg. Sess.) as amended June 1, 2015, p. 2.) In 2017, youthful offender parole was amended to apply to inmates who were 25 years of age or younger at the time of the offense. (AB 1308 (Stone), Ch. 675, Stats. 2017.) Also in 2017, youthful offender parole was amended to apply to persons sentenced to LWOP for crimes committed prior to turning 18 years of age. (SB 394 (Lara), Ch. 684, Stats. 2017.)

The inconsistency that exists in current law that makes eligible a person who was 25 years of age or younger and sentenced to a life term and a person who was under 18 years of age sentenced to LWOP for youth offender parole was recently discussed in a concurring opinion written by Justice Liu in denying review of a case decided by the Court of Appeal. (*People v. Montelongo* (2020) 55 Cal. App. 5th 1016.) Justice Liu noted:

> The Legislature has recognized that *Miller's* observations about juveniles also apply to young adults up to age 25. (Stats. 2017, ch. 684, § 2.5.) Yet it has excluded certain youth offenders from parole hearings based on the type of crime they committed. In particular, section 3051 does not allow for resentencing of 18- to 25-year-old offenders convicted of special circumstance murder and sentenced to life in prison without the possibility of parole. . . In light of the high court's clear statement that the mitigating attributes of youth are not "crime-specific" (*Miller*, *supra*, 567 U.S. at p. 473) and our Legislature's recognition that those attributes are found in young adults up to age 25, it is questionable whether there is a rational basis for section 3051's exclusion of 18 to 25 year olds sentenced to life without parole.

(*Id*. at p. 1041.)

This bill would allow a court to dismiss a special circumstance in cases where a person was sentenced to LWOP and thus be eligible for a life sentence instead. Once the special circumstance is dismissed, a person who committed their crime while they were 25 years of age or younger, would be eligible for a youth offender hearing after the person has served the specified minimum number of years required under existing law depending on the length of the sentence imposed.

4. Youth Offender Parole Data

In general, youth offenders released through the youth parole process have low recidivism rates. According to data provided by the California Department of Corrections and Rehabilitation (CDCR), three-year conviction rates for this population ranges from 0.9 percent for youth offenders released in FY 2016-17 to a high of 3.6 percent with youth offender released in FY 2015-16.

According to data provided by CDCR, in 2019, of the 2,251 inmates eligible for a youth offender parole hearing, 697 were granted parole. In 2020, of the 1,928 inmates eligible for a youth offender parole hearing, 645 were granted parole. The percentage of grants of parole were 31 percent and 33.5% respectively.

5. Proposition 115's Prohibition on Striking Special Circumstances

In 1990, voters approved Proposition 115, the "Crime Victims Justice Reform Act." Current law, added by Proposition 115 prohibits a judge from striking or dismissing any special circumstance admitted by plea or found true by a jury or court, as specified.

Special circumstances are used to determine when a conviction of first-degree murder will result in the most serious sentences—LWOP or the death penalty. It is entirely within a prosecutor's discretion to charge a special circumstance, and imposing a special circumstance requires a jury

finding that the "special circumstance" exists beyond a reasonable doubt. Otherwise, first-degree murder is punished by a state prison term of 25 years to life.

This bill would amend Proposition 115 by repealing the provision prohibiting a judge from striking a special circumstance and by, instead, authorizing a judge, on the judge's own motion or upon the application of either party, and in the furtherance of justice, to order the dismissal of a special circumstance finding or admission. Existing law provides for amendment of these provisions by a 2/3 vote of each house of the Legislature.

Because this bill amends Proposition 115, this bill requires a 2/3 vote.

6. Argument in Support

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

> Denying youth the opportunity to go before the board of parole hearings does not make us safer. Our organizations have first-hand knowledge of the importance of hope when it comes to rehabilitation and the health and safety of our communities. The opportunity to eventually go in front of the board of parole hearings incentivizes young people to being their healing and rehabilitative process as soon as possible, promoting safety within prisons and in our communities at large. Further, research shows that people age out of crime and that those who commit more serious offenses are the least likely to recidivate. It is also not in alignment with the wants and needs of survivors of crime, who overwhelmingly believe we send too many people to prison, for too long.
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> Under this bill, judges have the authority to strike or dismiss one's special circumstance (i.e. that which qualified them for LWOP), with a presumption in favor for those who have served 15 years in prison and were 25 or younger at the time of the crime. If the judge decides to do so, the person would be resentenced to life and would eventually be eligible for Youth Offender Parole Hearing. The Board of Parole Hearings is composed of professionals – primarily law enforcement – appointed by the governor. It examines every aspect of that person's time in prison to ensure that they will not be a public safety risk and is very rigorous, denying about 81% of people who go before it per year. Under this law, victims will not only have notice of the upcoming hearing, as California law currently provides, but will also be provided services to prepare them for hearing and address their unique needs.

6. Argument in Opposition

According to the San Diego County District Attorney's Office:

> SB 481 seeks to extend lenity to the most violent and dangerous adult offenders in California's criminal justice system – those convicted of murder with special circumstances who are currently serving a sentence of life without parole for crimes committed while they were under the age of 26. . . .
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> . . . Originally, youth offender parole was only intended for inmates who committed their offense while under the age of 18. Currently, an inmate who

committed first degree murder when the inmate was under the age of 26 and was sentenced to 25 years to life in prison is eligible for parole after serving 25 years in prison. AB [1308] did not extend youth offender parole eligibility to inmates who committed the most serious violent crimes in California – murder with special circumstances – while they were under the age of 26. SB 481 is a radical expansion that seeks to extend avenues for release for some of the most violent and dangerous adult offenders. SB 481 seeks to do what AB [1308] did not -- provide an avenue to shorten prison commitment for an inmate who committed a crime while under the age of 26 and was sentenced to life without the possibility of parole.

The underlying rational for SB 481 is flawed. The rationale for SB 481 is that offenders sentenced to life without the possibility of parole have no incentive to pursue any efforts at rehabilitation according to the author's fact sheet. This argument fails to appreciate the ability to receive a commutation from their life without the possibility of parole sentence if the inmate demonstrates an exemplary life while incarcerated. In the last two years, there have been many instances where inmates serving a sentence of life without the possibility of parole have had their sentence commuted by the Governor.

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