
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair
2021 - 2022 Regular

Bill No: SB 483 **Hearing Date:** April 27, 2021
Author: Allen
Version: March 3, 2021
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Sentencing: resentencing to remove sentencing enhancements*

HISTORY

Source: Ella Baker Center for Human Rights

Prior Legislation: SB 136 (Wiener), Ch. 590, Stats. 2019
SB 1392 (Mitchell), failed passage on Senate Floor, 2018
SB 180 (Mitchell), Ch. 677, Stats. 2017

Support: A New Path; ACLU California Action; Asian Prisoner Support Committee; Bend the Arc; Jewish Action California; California Public Defenders Association; Californians United for a Responsible Budget; Californians for Safety and Justice; Center for Living and Learning; Children’s Defense Fund – California; Courage California; Dignity and Power Now; Drug Policy Alliance; Fair Chance Project; Friends Committee on Legislation of California; Harm Reduction Coalition; Human Impact Partners; Immigrant Legal Resource Center; Initiate Justice; John Burton Advocates for Youth; Justice LA; Kehilla Community Synagogue; Legal Services for Prisoners with Children; Prevention At the Intersection; Prison Law Office; Prison Policy Initiative; Prosecutors Alliance of California; Re:store Justice; Root and Rebound; San Francisco Peninsula People Power; San Francisco Public Defender; Secure Justice; Showing Up for Racial Justice (SURJ) – Bay Area; Smart Justice California; Starting Over Inc.; The W. Haywood Burns Institute; Uncommon Law; Women’s Foundation California

Opposition: California Narcotic Officers’ Association

PURPOSE

The purpose of this bill is to apply retroactively the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances.

Existing prior law, in effect until January 1, 2020, required a sentencing court to impose an additional one-year term of imprisonment for each prior prison or county jail felony term served by the defendant for a non-violent felony. (Former Pen. Code, § 667.5, subd. (b), repealed Jan. 1, 2020.)

Existing prior law, in effect until January 1, 2018, required a sentencing court to impose on a defendant convicted of specified crimes related to controlled substances, an additional three-year term for each prior conviction of specified crimes related to controlled substances. (Health & Saf. § 11370.2, repealed Jan. 1, 2018.)

This bill states that any sentence enhancement that was imposed prior to January 1, 2020 for a prior separate prison or county jail felony term, except if the enhancement was for a prior conviction of a sexually violent offense, is legally invalid.

This bill states that any sentence enhancement imposed prior to January 1, 2018 for a prior conviction for specified crimes related to controlled substances, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance, is legally invalid.

This bill requires, by no later than March 1, 2022, the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term for judgment that includes one of the repealed enhancements and to provide the name of each person, along with the person's date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement.

This bill states that upon receiving the information from the Secretary of CDCR or the county correctional administrator, the court shall, no later than July 1, 2022, review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall administratively amend the abstract of judgement to delete the enhancement.

This bill states that the Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply Senate Bill 180 of the 2017–18 Regular Session and Senate Bill 136 of the 2019–20 Regular Session to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements.

COMMENTS

1. Need for This Bill

According to the author of this bill:

In recognition of the harms that long periods of incarceration have on community safety and well-being, the California Legislature prospectively eliminated two automatic criminal sentencing enhancements for prior convictions. As recommended by the state's Committee on Revision of the Penal Code, SB 483 will retroactively apply the elimination of those enhancements to people currently held in prisons and jails, ensuring that no one is serving time based on outdated rules.

A robust body of research finds that long prison and jail sentences have no positive impact on public safety, yet are documentably injurious to families and

communities—particularly Black, Latino, and Native Americans in the United States and in California.

People returning from incarceration face significant barriers to finding jobs and housing. Family members of incarcerated people struggle with crushing debt from court costs, visitation and telephone fees, and diminished income. The longer the sentence, the more severe these problems tend to be, and the tougher it is for societal reintegration.

In 2017 and 2019, the Legislature and Governor repealed ineffective sentence enhancements (laws called RISE Acts) that added three years of incarceration for each prior drug offense (SB 180, Mitchell) and one year for each prior prison or felony jail term (SB 136, Wiener). However, the reforms applied only prospectively to cases filed after these important bills became law. People in California jails and prisons who were convicted prior to the RISE Acts are still burdened by mandatory enhancements. These burdens fall particularly hard on communities destabilized by decades of mass incarceration. Of those in prison because of ineffective enhancements, three-fourths are people of color.

Recent studies by the U.S. Sentencing Commission found retroactive application of sentence reductions in the federal system had no measurable impact on recidivism rates; an analysis of the prison populations in Maryland, Michigan, and Florida came to similar conclusions.

In light of this research, and following the guidance of a wide array of stakeholders, the California Committee on Revision of the Penal Code unanimously recommended the retroactive elimination of California’s one- and three- year enhancements.

SB 483 applies the law equally by retroactively applying California’s elimination of ineffective three-year and one-year sentence enhancements.

Recommended by numerous experts and reform advocates, it will modestly reduce prison and jail populations and advance fairness in our criminal legal system.

2. Sentencing Enhancements

Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Enhancements add time to a person’s sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person’s sentence, or doubling a person’s sentence or even converting a determinate sentence into a life sentence.

A Public Policy Institute of California (PPIC) publication on enhancements found that, “As of September 2016, 79.9% of prisoners in institutions operated by the California Department of Corrections and Rehabilitation (CDCR) had some kind of sentence enhancement; 25.5% had three or more. Aside from second and third strikes, the most common enhancement adds one

year for each previous prison or jail term.” (*Sentence Enhancements: Next Target of Corrections Reform?* PPIC (Sept. 2017) < <http://www.ppic.org/blog/sentence-enhancements-next-target-corrections-reform/> > [as of Mar. 1, 2021].)

According to the PPIC publication, there are over 100 separate code sections in California law that can be used to enhance a person’s sentence and the most common enhancement is for a previous prison or jail sentence. (*Ibid.*)

3. Sentence Increases: Research on Deterrent Effect and Impact on State Prisons

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press. (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy.” (National Research Council, *supra*, *The Growth of Incarceration in the United States*, p. 132.)

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.

(*Id.* at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (*Id.* at p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing: putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. The report also explains how California's sentencing structure and enhancements contributed to a 20-year state prison building boom. (<http://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf>.)

4. Recent Criminal Justice Reforms: Sentencing Enhancements

As noted above, California has over 100 separate code sections that can be used to enhance a person's sentence. In recent years, California has made significant steps to mitigate the impact of individual enhancements by either repealing certain enhancements or allowing judicial discretion to dismiss specified enhancements. SB 180 (Mitchell) of 2017 repealed the enhancement for prior convictions related to controlled substances, while leaving intact its application to a prior conviction of using a minor in the commission of specified controlled substance offenses. SB 620 (Bradford) of 2017 deleted the prohibition on striking an enhancement for personal use of firearm during the commission of a felony so that the court would have discretion to dismiss the enhancement in the interests of justice. Similarly, SB 1393 (Mitchell) of 2018 deleted the prohibition on striking an enhancement for any prior serious felony conviction thereby giving the court discretion to dismiss the enhancement in the interests of justice. SB 136 (Wiener) of 2019 repealed the enhancement for prior prison or county jail felony terms for nonviolent felonies.

This bill gives retroactive effect to SB 180 (Mitchell) and SB 136 (Wiener) by providing that a person whose sentence includes one of these enhancements imposed prior to their repeal are legally invalid. The bill provides a mechanism for persons currently incarcerated to have their cases brought before the sentencing court so that the court can delete the affected enhancements from the person's sentence.

5. Argument in Support

According to Prison Law Office:

In 2017 and 2019, the Legislature repealed sentence enhancements that added three years of incarceration for each prior drug offense (SB 180 Mitchell) and one year for each prior prison or felony jail term (SB 136 Wiener). However, these reforms apply only to cases filed after these bills became law. Those who were convicted prior to their enactment continue to be separated from their families and communities. SB 483 would ensure the retroactive repeal of these sentence enhancements, ensuring that no one is serving time based on rulings that California has already deemed unfair and ineffective.

SB 483 continues to undo the decades of harm perpetrated by the sustaining ideology that excessive sentences deter crime. Sentencing enhancements have not made our communities safer. Instead, they put significant financial burdens on taxpayers and families statewide—each additional year in prison costs over \$112,600 per person. Retroactively eliminating sentence enhancements would decrease spending currently crippling state and local budgets, and allow for the meaningful reinvestment in desperately needed community services and programs.

Moreover, long prison and jail sentences have been proven injurious to system-impacted people and destabilizing to their families and communities—particularly for Black, Latinx, and Native Americans in the US and California. Sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities. The longer the sentence, the more severe these problems.

The retroactive RISE Act is another step forward in sustaining legislative momentum to eliminate unjust sentence enhancements and end wasteful incarceration spending in favor of community reinvestment.

6. Argument in Opposition

California Narcotic Officers Association opposes this bill stating:

The California Narcotic Officers Association regrets that they must oppose Senate Bill 483. Senate Bill 483 would undermine the ability to hold career drug traffickers accountable. Career drug dealers are the equivalent of someone who makes a career of poisoning the community with life threatening substances.

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