DISCLAIMER: The following analysis is a professional staff recommendation and does not necessarily represent the formal opinion of all the members of the Senate Republican Caucus.

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Transportation **SB 898 (Skinner)**
Oppose

Vote requirement: 21
Version Date: 08/23/2024

Summary

Commencing July 1, 2025, allows an inmate that has term of at least 15 years in state prison and has not exceeded their parole eligibility date to file a petition with the court seeking relief if there have been any changes in judicial sentencing rules or any sentencing laws enacted that would make the defendant eligible for a reduced sentence. Limits petitions to once every three years. Additionally adds sexual assault as a considering for Juvenile Parole Hearings. Requires the Department of Corrections to monitor persons that allege sexual assault for retaliation for 90 days.

NOTE: This bill was "gutted and amended" to a different subject in the Assembly. When the bill left the Senate it required every new truck trailer, motor truck, and bus, except trailer buses and pickup trucks, that manufactured or sold in the California, to have their front driver-side window filtered to block ultraviolet radiation, beginning with the 2032 model year.

This bill has been identified by the Senate Rules Committee as being subject to Senate Rule 29.10. Therefore, it should have a committee hearing prior to a Senate Floor vote.

Vote History

Senate Floor: 26-9 (05/21/2024)
(NO: Alvarado-Gil, Dahle, Grove, Jones, Nguyen, Niello, Ochoa Bogh, Seyarto, Wilk;)
Assembly Floor: xx-xx (x/x/xx)
(AYE:; NO:; ABS:)

Support & Opposition Received

Support: Prior Version: Amnesty International USA; California Catholic Conference; California Public Defenders Association; Ella Baker Center for Human Rights; FAMM; Freedom 4 Youth; Friends Committee on Legislation of California; Glide; Initiate Justice Action; Project Rebound; San Francisco Public Defender; Sister Warriors Freedom Coalition; Smart Justice California, A Project of Tides Advocacy; Valorous; Western Center on Law & Poverty, Inc.; Youth Forward.

Opposition: California District Attorneys Association; California State Sheriffs' Association; Crime Victims United of California.

Prior Version: California Association of Highway Patrolmen; California Correctional Peace Officers Association; Peace Officers Research Association of California (PORAC).

Fiscal Effect

POTENTIALLY MAJOR STATE COSTS

> Unknown General Fund costs, potentially in the hundreds of thousands to low millions of dollars per year, for the Department of Corrections and Rehabilitation (CDCR) to monitor specified inmates after a report of sexual assault on an inmate by staff.
> Unknown General Fund costs, potentially in the hundreds of thousands to low millions of dollars per year, for CDCR to produce documents and provide transportation to and from court for inmates who petition for resentencing based on claims of sexual abuse or violence while incarcerated.
> Unknown costs, likely in the millions to low tens of millions of dollars per year (General Fund, Trial Court Trust Fund) for the courts to conduct additional felony recall/resentencing proceedings and to adjudicate additional civil actions for sexual assault brought against a public entity or public employee by a formerly incarcerated person that, absent this bill, would not have been eligible due to the statute of limitations running out.

Fiscal Consultant: *Matt Osterli*

Arguments in Support

1) This bill addressed the fact that there are individuals who are languishing in state prisons with long sentences. If those individuals were convicted and sentenced today, they would receive a shorter, more just sentence. Over the past decade, the Legislature has enacted numerous reforms that shorten terms, eliminate enhancements, and generally restore judicial discretion. This includes important considerations of the acts that brought individuals to a place where they would commit these types of crimes including whether the person was a victim of intimate partner violence or human

trafficking or had experienced childhood trauma, exploitation or sexual abuse."

Research shows that it is not the length of sentence that deters individuals but the certainty of punishment. As a result, we should reconsider inmates who have a record model behavior, participation in rehabilitative programs and have devoted themselves reintegration society upon release. This bill does not guarantee resentencing or release, it only requires a court to review each case where an individual could be resentenced based on changes to law or judicial rules. Any individual who is actually granted resentencing will have demonstrated to a judge that a lower sentence is in the interest of justice.

2) Last year when AB 600 was passed (see related legislation), inmates were unfairly excluded from directly petitioning the court. This bill fixes that exclusion in order to allow the thousands of individuals who are currently incarcerated in our overcrowded state prisons with long terms to have a court review their sentence and adjust it with current sentencing practices. We shouldn't leave these individuals chance for freedom to the whims of CDCR, judges, prosecutors or the courts. Instead they should have the ability themselves to seek a change in sentence.

Arguments in Opposition

1) First, this bill is mislabeled by Legislative Counsel as a bill primarily dealing with "sexual assault resentencing". That title remains from the prior version and while is has some remaining provisions on that topic, the most important changes the bill makes to sentencing law have nothing to do with sexual assault, other than to potentially let individuals who have committed sex crimes out of prison earlier.

That point aside, the underlying goal of this bill now appears to be to reduce the sentences for individuals who have committed very serious and troubling crimes (e.g. those requiring an indeterminate sentence such as "25 to life") or have sentence enhancements (i.e. firearm, gang, etc.) that generate a longer determinate sentences that result in a term exceeding 15 years in state prison. This would likely apply to a significant number of persons because, among other changes, the Democrats have passed many bills that alter sentence enhancements impacting this group of inmates. For example SB 81 (Skinner) which allows (and in most cases requires) the dismissal of enhancements of all types; SB 628 (Bradford) which changed the 10/20/life firearm enhancement from required to discretionary; and SB 1393 (Mitchell) which made the five year prior serious felony enhancement optional.

The language of the bill requires the court to hear every petition that qualifies regardless of the inmates behavior or efforts at rehabilitation. As a result, the courts will likely be flooded with petitions for resentencing by inmates serving long sentences for the type heinous crimes that generate these sentences: murders, sex crimes and other violent acts. On top of the lack of cause for such resentencing the bill allows inmates to repeatedly file a petition every three years regardless of any change in circumstance or

prior court denials. This is highly problematic for court workload and, more importantly, for victims and survivors who will need to be noticed and forced to hear about and participate in a never ending stream of judicial proceedings. It is important to note that these inmates receive a fair trial and just sentence based on the law at the time they committed the crime. Victims and our communities were similarly promised that they would serve a specific term of incarceration and the state should keep that promise. If the individuals in question are innocent or there is a truly magnificent change in their behavior and rehabilitative efforts there are existing statutes which address those situations and allow for a review of their sentence.

2) According to the California State Sheriffs Association, "SB 898 now expands the circumstances under which a broad swath of convicted felons, who have been sentenced to at least 15 years in custody, and possibly to much longer terms, to seek resentencing. Existing law allows such motions to be brought by a court, a prosecutor, or even the Board of Parole Hearings. This expansion will not only likely result in untold numbers of sentences being reduced and victims being subjected once again to the pain caused by the perpetrators, but also in potentially huge numbers of frivolous petitions being filed and having to be addressed in some way by a court, even if it is to summarily deny them. This language exempts itself from current law, added just a year ago, that specifically provides that a defendant is not entitled to file a petition seeking this relief."

3) According to the California District Attorneys Association, "…The recent amendments would create a right for persons incarcerated for homicides and the most heinous sexual assault crimes – to petition for resentencing every three years."

"The most recent amendments appear to place some guardrails on last year's AB 600, but the critical point is that under AB 600 judges are not ever required to hold a hearing. SB 898, on the other hand, would mandate a hearing every three years for persons incarcerated for lengthy sentences, who have necessarily committed the most heinous of offenses. These hearings are mandated regardless of whether the incarcerated person can show evidence of rehabilitation."

"SB 898 is not a mere restatement of last years' AB 600 which granted the courts' jurisdiction to resentence at any time if sentencing laws have been changed. To help guard against an overwhelming onslaught of frivolous motions, AB 600 did not provide a mechanism for an incarcerated person to file a recommendation. AB 600 expressly precluded defendants from filing petitions seeking relief. (Pen. Code, § 1171.2, subd. (c).) SB 898 will essentially repeal this critical provision and provide an entirely new avenue for defense-initiated petitions."

"…First, the provision permitting petitions every three years must be deleted. Renewed petitions every three years subvert finality for victims. Survivors of child molest, rape, and surviving family of murder victims, as well as victims of many other horrendous criminal acts, will never have closure if they are forced to face a resentencing hearing every three years. Moreover, such repeated hearings would require the courts to step

into the role of a parole board, essentially reviewing in-prison conduct over and over again…"

Digest

Extension of civil actions:
Tolls civil actions, other than for property, for an action for sexual assault brought against a public entity or public employee by a person who is imprisoned on a criminal charge, or in execution under the sentence of a criminal court, during the period of imprisonment and until one year after the release from actual custody.

Resentencing for Youth Parole Hearings:
Adds the allegation that "The defendant has been a victim of sexual abuse or sexual violence at any time during their incarceration" to the list factors that the court may consider when determining whether to resentence a youth defendant who received LWOP to a term of imprisonment with the possibility of parole at 15, 20 or 25 years of incarceration.

Criminal resentencing:
Provides that beginning on July 1, 2025, a defendant may file a petition seeking relief and resentencing from the court, if all of the following are true:
1) The defendant's conviction and sentence is final.
2) The application of the current sentencing rules of the Judicial Council and any changes in sentencing laws enacted since the defendant was last sentenced would make the defendant eligible for a reduced sentence if applied to the defendant.
3) The defendant is currently committed to the custody of the Secretary of the Department of Corrections and Rehabilitation.
4) The sentence that the defendant is currently serving has a minimum term of at least 15 years.
5) The person's controlling parole eligible date is not in the past.
6) The defendant has not petitioned under this subparagraph in the last three years.

Provides that the court may summarily deny a petition upon a finding that it does not make a prima facie showing that all of the conditions are true, including a specific showing of the change or changes in sentencing law. Otherwise, the court shall hold a hearing on the petition. The court may rely on cases, files, or other records maintained by a state or local agency in determining whether the petition has made a prima facie showing that any condition is true.

Requires "sentencing rules" and "sentencing laws" to be interpreted to mean only those rules or laws that directly affect the sentence imposed based on the crime of conviction or any enhancement and shall not be interpreted to encompass rules or laws that define elements of crime or rules of procedure, even if application of such rules might result in imposition of a shorter sentence.

CDCR Monitoring:
Provides that for 90 days following an allegation of sexual abuse brought on behalf of an incarcerated person against a staff person at a Department of Corrections and Rehabilitation facility, the department shall monitor the person who made the report, and the person who is reported to have suffered the sexual assault, for possible retaliation.

Background

Existing law related to this measure:
Existing law provides that an employee or officer of a public entity detention facility, or an employee, officer, agent of a private person or entity that provides a detention facility or staff for a detention facility, a person or agent of a public or private entity under contract with a detention facility, a volunteer of a private or public entity detention facility, or a peace officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense. Sexual battery in this case is a misdemeanor. All other violations are wobblers punished by imprisonment in a county jail not exceeding one year, or in the state prison, and/or by a fine of up to ($10,000). (Penal Code § 289.6)

Existing law provides that that when a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing. The court must consider specified factors. The defendant may petition again at 20 years and 25 years if initially denied. (Penal Code § 1170)

Existing law provides that the court may recall and resentence at any time upon the recommendation of the Secretary of the CDCR or the Board of Parole Hearings (BPH) in the case of persons incarcerated in state prison, the county correctional administrator in the case of persons in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) if the Department of Justice (DOJ) initially prosecuted the case. The court, in recalling and resentencing, shall apply the sentencing rules of the Judicial Council and many changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity and to promote uniformity of sentences. The court shall consider post-conviction factors, including, but not limited to, the incarcerated person's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced their risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that the person's continued incarceration is no longer in the interest of justice. It may reduce the term or apply a lesser included sentence. The new sentence cannot be greater than the initial sentence. (Penal Code § 1172.1)

Existing law provides that a judge (over the objection of the prosecutor), the Secretary

of CDCR, or a prosecutor can petition for a resentencing for a prison inmate. With narrow exceptions, at such hearings there is a presumption that the inmate should be resentenced. (Penal Code § 1170.03.)

Existing law created by SB 81 (Skinner, 2021):
Existing law provides that the judge or magistrate may, either on motion of the court or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons 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. (Penal Code § 1385(a))

Existing law provides that the court shall dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute. In exercising its discretion, the court shall consider and afford great weight to evidence offered by the defendant to prove that any of the mitigating circumstances are present. Proof of the presence of one or more of these circumstances weighs greatly in favor of dismissing the enhancement, unless the court finds that dismissal of the enhancement would endanger public safety. “Endanger public safety” means there is a likelihood that the dismissal of the enhancement would result in physical injury or other serious danger to others. (Penal Code § 1385(c))

Existing law provides that the factors in mitigation are (note the specific exceptions in bold):
(A) Application of the enhancement would result in a discriminatory racial impact.
(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.
(G) The defendant was a juvenile when they committed the current offense or any prior juvenile adjudication that triggers the enhancement(s).
(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.
(Penal Code § 1385(c)(3))

Letter to the Journal:
In a September 10, 2021 letter to the journal the author of the measure stated the following:

As the Senate author of SB 81, I respectfully request the following letter be printed in the Senate Daily Journal expressing our intent with respect to this measure:

As the author of Senate Bill (SB) 81, I wish to provide some clarity on my intent regarding two provisions of the bill.

First, amendments taken on August 30, 2021 remove the presumption that a judge must rule to dismiss a sentence enhancement if certain circumstances are present, and instead replaces that presumption with a "great weight" standard where these circumstances are present. The retention of the word "shall" in Penal Code §1385(c)(3)(B) and (C) should not be read as a retention of the previous presumption language – the judge's discretion is preserved in Penal Code §1385(c)(2).

Second, I wish to clarify that in establishing the "great weight" standard in SB 81 for imposition or dismissal of enhancements [Penal Code §1385(c)(2)] it was my intent that this great weight standard be consistent with the case law in California Supreme Court in People v. Martin, 42 Cal.3d 437 (1986).

Relevant Case and definition of "great weight" per the authors stated intent:
This case concerns the standards and procedures to be followed by the trial court when the Board of Prison Terms notifies it that its sentence is disparate when compared to the sentences imposed in other cases. More importantly the case defines "great weight" by stating the following, "We said that such a recommendation was entitled to "great weight" Carl B., supra, 24 Cal.3d 212, 214; (Javier A., supra, 38 Cal.3d 811, 819), and went on to explain what that meant. Such a recommendation, we said, must be followed in the absence of 'substantial evidence of countervailing considerations of sufficient weight to overcome the recommendation.'"

Related Legislation

AB 2483 (Ting, 2024) Requires the presiding judge of each county superior court to convene a meeting to develop a plan for fair and efficient handling of postconviction proceedings on or before March 1, 2025. These meetings must include a representative from the district attorney, the public defender or other representative of indigent defense services, probation, sheriff, Department of Corrections and Rehabilitation (CDCR), and the clerk of the court's office. Sets minimum procedures for postconviction resentencing proceedings that would apply unless a more specific statute is available. Prohibits plea bargains from being rescinded upon resentencing. It initially passed the Assembly 64-0 (AYE: Alanis, Davies, Dixon, Flora, Gallagher, Hoover, Lackey, Joe Patterson, Ta, Waldron, Wallis; ABS: Chen, Megan Dahle, Essayli, Vince Fong, Mathis, Jim Patterson, Sanchez)
and is pending in the Senate.

AB 600 (Ting)(Chapter 446, Statutes of 2023), allows a court to recall a sentence at any time if applicable sentencing laws are subsequently changed due to new statutes or case law, and makes changes to the procedural requirements to be followed when requests for recall are made. It passed the Senate 28-10 (NO: All Republicans) and the

Assembly 50-17 (NO: All Republicans except; AYE: Waldron)

SB 81 (Skinner)(Chapter 721, Statutes of 2021) Provides that a court is required to dismiss a sentencing enhancement if it is in the "furtherance of justice." Requires the court to give "great weight" to evidence that any of specified (broadly defined) circumstances enumerated in the bill are true unless it finds the dismissal of the enhancement would endanger public safety. Defines "endanger public safety" as "a likelihood that dismissal would result in physical injury or other serious danger to others." Includes circumstances that may exist in nearly every criminal case and requires enhancements to be struck if more than one apply or they would result in a sentence greater than 20 years. It passed the Senate 23-11 (NO: All Republicans) and the Assembly 46-24 (NO: All Republicans).

AB 124 (Kamlager)(Chapter 695, Statutes of 2021) Creates a presumption that criminal defendants who experienced psychological, physical, or childhood trauma, were victims of human trafficking or intimate partner violence, or were under the age of 26 at the time of the offense must receive the lower term sentence of a criminal sentence triad (e.g. 2 years where the judge has the option of imposing a sentence of 2, 3 or 4 years). Allows a person who committed a "nonviolent" crime while the victim of intimate partner violence or sexual violence to have their arrest and conviction vacated if the crime was the direct result of their being a victim that violence (this is similar to the existing exemption for human trafficking). Expands the human trafficking affirmative defense to include serious felonies and human trafficking (current law exempts violent and serious crimes as well as human trafficking) and creates a new, identical defense for victims of sexual violence and intimate partner violence. It passed the Senate 23-9 (NO: All Republicans except; ABS: Ochoa Bogh) and the Assembly 55-16 (AYE: Waldron; NO: All other Republicans except; ABS: Choi, Nguyen)
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AB 1540 (Ting)(Chapter 719, Stats. 2021) Provides that, except where the court makes a decision to recall the sentence within the first 120 days, there is a strong presumption favoring recall and resentencing of the defendant, which may only be overcome if the court finds the defendant is "an unreasonable risk of danger to public safety," a term with a very narrow technical definition which would require the court to find that the defendant would commit homicide, solicitation to commit murder, a sex offense, assault with a machine gun on a peace officer or firefighter, or a weapon of mass destruction-related offense. Requires judges, in most circumstances, to grant petitions for recall and resentencing of prison inmates. It passed the Senate 23-9 (NO: All Republicans except; ABS Grove) and the Assembly 47-24 (NO: All Republicans)

SB 1393 (Mitchell and Lara)(Chapter 1013, Statutes of 2018) Eliminates a provision of law which states that judges do not have discretion to strike a prior conviction of a serious felony in circumstances where a person is eligible to receive a five-year sentence enhancement for being convicted of a serious felony when the person has a prior conviction for a serious felony.

SB 620 (Bradford)(Chapter 682, Statutes of 2017) Provides that the current

enhancements for the use of a firearm during the commission of a felony and the 10-20-Life penalty enhancements for the use, discharge, or infliction of great bodily injury during the commission of a particularly serious felony are not mandatory and they may be waived by the judge in the interests of justice. (They are mandatory when the relevant facts are proven by the prosecution under current law.)

Senate Republican Policy Office/ *Eric Csizmar*