

CONCURRENCE IN SENATE AMENDMENTS

AB 124 (Kamlager)

As Amended September 3, 2021

Majority vote

SUMMARY

Requires courts to consider whether specified trauma to a defendant and other factors contributed to the commission of an offense when making sentencing and resentencing determinations and expands the affirmative defense of coercion for human trafficking victims and extends it and vacatur relief to victims of intimate partner violence and sexual violence.

Senate Amendments

- 1) Delete the provision, which would have allowed evidence of mental state to be admitted on the issue of whether or not the accused actually formed the required mental state for the crime charged. Leave in place the rule that mental state evidence may be admitted solely on the issue of whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.
- 2) Restore the limitation excluding violent felonies from vacatur relief for victims of human trafficking. Make similar changes to vacatur relief for victims of intimate partner violence and sexual violence.
- 3) Restore the prohibition against applying the affirmative defense of coercion for victims of human trafficking to violent felonies and make the prohibition applicable to the affirmative defense of coercion for victims of intimate partner and sexual violence.
- 4) Remove the presumption against imposing consecutive terms of imprisonment for two or more felonies where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
- 5) Remove the presumption against imposing a term of imprisonment for any enhancement found true where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
- 6) Limit the mandate on imposing the lower term at sentencing to when the aggravating circumstances outweigh the mitigating circumstances, instead of when they so outweigh the mitigating circumstances.
- 7) Double joint this bill with both AB 1540 (Ting) and SB 567 (Bradford) of the current legislative session to avoid chaptering out issues.

COMMENTS

- 1) *As Passed by the Assembly*, this bill:
- 2) Required the court to impose the lower term where any of the following was a contributing factor in the commission of the offense, unless the court finds that the aggravating circumstances so far outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice:

- a) The person has experienced psychological, physical, or childhood trauma, including but not limited to abuse, neglect, exploitation, or sexual violence (hereinafter "trauma");
 - b) The person is a youth, or was a youth, as defined, at the time of the commission of the offense (hereinafter "youthfulness"); or,
 - c) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.
- 3) Defined youthfulness as including any person under 26 years of age at the time of the offense.
 - 4) Specified this does not prohibit the court from imposing the lower term even if none of these contributing factors is present.
 - 5) Required the court, when recalling and resentencing an inmate, to consider whether trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.
 - 6) Allowed the court, when recalling and resentencing a defendant who was under 18 years of age at the time of the offense, was sentenced to life without the possibility of parole (LWOP), and who has been incarcerated for at least 15 years, to impose a term less than the original sentence if trauma, youthfulness, or being a victim of intimate partner violence or human trafficking was a contributing factor in the commission of the offense.
 - 7) Prohibited the court, except as otherwise provided by law and unless contrary to the interests of justice, from imposing consecutive terms of imprisonment for two or more felonies where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
 - 8) Prohibited the court, unless contrary to the interest of justice, from imposing a term of imprisonment for any enhancement that is found true where trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense. This section does not apply if an initiative requires the court to impose a term of imprisonment for the enhancement.
 - 9) Stated that in the interest of justice, and in order to reach a just resolution during plea negotiations, the prosecutor must consider, among other factors in support of a mitigated sentence, whether trauma, youthfulness, or having been a victim of intimate partner battering or human trafficking was a contributing factor in the commission of the alleged offense.
 - 10) Made the affirmative defense for victims of human trafficking applicable to all crimes the defendant was coerced to commit, deleting the provision which excluded serious and violent crimes.
 - 11) Created a new affirmative defense for victims of intimate partner violence or sexual violence which mirrors the human trafficking affirmative defense.

- 12) Provided that the defendant may present evidence relevant to their identification as a victim of human trafficking or intimate partner violence or sexual violence that is contained in government reports, as specified, even if the peace officer did not identify them as a victim.
- 13) Made evidence that an individual suffers from a mental disease, mental defect, or mental disorder admissible on the issue of whether or not the accused actually formed the required mental state for the crime that is charged, including whether or not the accused committed a willful act, premeditated, deliberated, harbored malice aforethought, acted knowingly, acted maliciously, or acted with conscious disregard for human life.
- 14) Made vacatur relief for victims of human trafficking applicable to all crimes, rather than just nonviolent crimes.
- 15) Created vacatur relief for victims of intimate partner violence or sexual violence which mirrors the vacatur relief for victims of human trafficking.

According to the Author

"We know that survivors of sexual violence, intimate partner violence, and other severe forms of trauma are more likely to be incarcerated. In fact, according to the ACLU, nearly 60% of female state prisoners nationwide and more than 90% of certain female prison populations experienced physical or sexual abuse before being incarcerated. Yet, California's legal system currently lacks any consideration for the relevant experiences of survivors in the sentencing or resentencing process.

"AB 124 would provide a path for courts to consider the full context of the trauma that contributed to a survivor's actions or inactions. It would create a trauma-informed response to sentencing that provides just outcomes for survivors. Currently, the societal trauma caused by criminalizing these individuals spans generations and perpetuates cycles of abuse and trauma. can end. AB 124 ensures that survivors of sexual violence are able to receive justice through our legal system."

Arguments in Support

According to the *National Center for Youth Law*, a co-sponsor of this bill: "According to the ACLU, nearly 60% of female state prisoners nationwide and as many as 94% of certain female prison populations have a history of physical or sexual abuse before being incarcerated (The American Civil Liberties Union, "Prison Rape Elimination Act of 2003"). Black women make up 25% of the incarcerated population in California, which when considered alongside the reality that Black women are only 5% of the adult population yet are incarcerated at five times the rate of white women, demonstrates a deplorable overrepresentation of Black women in prison (Public Policy Institute of California, "California's Prison Population"). Similar disparities exist for other individuals of color, including Latinx, Asian and Pacific Islander, and indigenous communities. Also, transgender, lesbian, and bisexual women, trans men, and gender non-conforming people are disproportionately survivors of violence and overrepresented in prisons, though little quantitative research is available to highlight these disparities.

"Despite the body of research showing that the effect of trauma and abuse drives girls into the juvenile and criminal justice systems, the system itself typically overlooks the context of abuse when determining whether to arrest or charge a girl. Many trafficking survivors are incarcerated for crimes committed to protect themselves from further violence. Numerous studies show that survivors of coerced into participating in illegal activities by their abusive partners (Survived and

Punished, "Research Across the Walls: A Guide to Participatory Research Projects and Partnerships to Free Criminalized Survivors"). Additionally, many survivors may be hesitant to disclose their experiences of abuse or exploitation, due to distrust of systems, fear of how an abusive partner may respond, or a belief that they are not a survivor (Institute of Medicine and National Research Council, *Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States: A Guide for the Health Care Sector*).

"When law enforcement does not identify trauma victims as victims in cases, and instead labels them and treats them as the perpetrators, it compounds the existing trauma instead of healing it. Further, when cases aren't dismissed or diverted, but instead enhanced with more punitive sentences, a twofold injustice occurs: their abusers are shielded from accountability, and the trauma that is the underlying cause of their behavior is left unaddressed. The choice to punish instead of support sets in motion a cycle of abuse and imprisonment that has harmful consequences for victims of trauma and their families as well as society more broadly (Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women, "The Sexual Abuse to Prison Pipeline: The Girls' Story").

"Moreover, judges often lack the discretion to dismiss charges, reduce harsh sentences, and strike sentence enhancements to tailor court responses to adequately serve vulnerable populations in the interest of justice. Too often, limited opportunities to present relevant mitigating evidence and limited judicial discretion to make fair and balanced decisions lead to inequitable outcomes for trauma victims.

"AB 124 would create just outcomes moving forward, provide full context of the experiences that contributed to a survivor's actions or inactions, and use a more humanizing and trauma-informed response to criminal adjudication...."

Arguments in Opposition

According to the *California District Attorneys Association*, "AB 124 requires the court, when determining sentencing, to consider if the inmate experienced intimate partner violence, commercial sex trafficking, and if the trauma of those experiences was a contributing factor to the defendant's criminal behavior that would make a sentence other than the lowest possible sentence unduly harsh. While we support this consideration, there is no mention of the evidence required to prove the inmate's experience and whether the trauma was a contributing factor to their crime."

FISCAL COMMENTS

According to the Senate Appropriations Committee:

- 1) The Department of Justice reports ongoing annual costs ranging from roughly \$1.7 million (and 12.0 new personnel years (PY)) to \$128,000 (and 1.0 new PY) associated with this measure, depending on how many records related to a grant of vacatur relief the department would need to seal and destroy. (General Fund)
- 2) The Judicial Council estimates ongoing annual workload cost pressures ranging from \$600,000 to \$800,000 for clerk processing and court hearing time associated with vacatur petitions. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative

purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund*)

- 3) Unknown costs to the Department of Corrections and Rehabilitation to supervise and transport individuals in state custody to attend hearings to the extent that remote/video appearances at the proceedings are not exercised. (General Fund)
- 4) Unknown potential savings annually in reduced state incarceration costs for individuals because of shorter or avoided term of imprisonment. The fiscal year 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. Actual savings associated with this measure would depend on the number of individuals who avoid a sentence to, or are sentenced or resentenced to a shorter term of incarceration in, state prison than under existing law. Aside from marginal cost savings per individual, however, California Department of Corrections and Rehabilitation would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

VOTES:

ASM PUBLIC SAFETY: 6-2-0

YES: Jones-Sawyer, Bauer-Kahan, Quirk, Santiago, Wicks, Lee

NO: Lackey, Seyarto

ASM APPROPRIATIONS: 12-4-0

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Bigelow, Megan Dahle, Davies, Fong

ASSEMBLY FLOOR: 54-12-13

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Cooley, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Petrie-Norris, Quirk, Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Blanca Rubio, Salas, Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO: Cunningham, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Patterson, Seyarto, Smith, Valladares

ABS, ABST OR NV: Bigelow, Chen, Choi, Cooper, Megan Dahle, Gray, Mayes, Muratsuchi, Nguyen, O'Donnell, Ramos, Rodriguez, Voepel

SENATE FLOOR: 28-8-4

YES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Kamlager, Laird, Leyva, Limón, McGuire, Min, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

NO: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Wilk

ABS, ABST OR NV: Hurtado, Newman, Ochoa Bogh, Stern

SENATE FLOOR: 39-0-1

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Stern

UPDATED

VERSION: September 3, 2021

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FN: 0001845