
THIRD READING

Bill No: AB 124
Author: Kamlager (D), et al.
Amended: 9/3/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 7/6/21
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/26/21
AYES: Portantino, Bradford, Kamlager, Laird, McGuire
NOES: Bates, Jones

ASSEMBLY FLOOR: 54-12, 6/2/21 - See last page for vote

SUBJECT: Criminal procedure

SOURCE: Black Futures Lab Public Policy Institute
California Coalition of Women Prisoners
Free to Thrive
Human Rights Watch
National Center for Youth Law
Survived and Punished
USC School of Law Post-Conviction Justice Project
Young Women's Freedom Center

DIGEST: This bill requires courts to consider whether specified trauma to the defendant or other circumstances contributed to the commission of the offense when making sentencing and resentencing determinations and to expand access to vacatur relief and the affirmative defense of coercion currently available to victims of human trafficking to victims of intimate partner violence and sexual violence.

Senate Floor Amendments of 9/3/21 add double-jointing language from SB 567 and AB 1540 to avoid chaptering out issues.

ANALYSIS:

Existing law:

- 1) States that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances. (Pen. Code, § 1170, subd. (a)(1).)
- 2) Provides, until January 1, 2022, that when a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code § 1170, subd. (b).)
- 3) States that the court shall select the term which, in the court's discretion, best serves the interests of justice and the court shall set forth on the record the reasons for imposing the term selected. The court may not impose an upper term by using the fact of any enhancement upon which the sentence is imposed. (*Ibid.*)
- 4) Authorizes a sentencing court, within 120 days of the date of a defendant's commitment into custody, on its own motion, or at any time upon the recommendation of the secretary of the Board of Parole Hearings, the county correctional administrator, or the county district attorney, to recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. (Pen. Code, § 1170, subd. (d)(1).)
- 5) Provides that a court resentencing under the above paragraph may reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. (*Ibid.*)

- 6) States that for youthful offenders, the court shall have discretion to resentence the defendant in the same manner as if the defendant had not been previously sentenced, provided that the new sentence, if any, is not greater than the initial sentence. The discretion of the court shall be exercised in consideration of the criteria that specifically applies to resentencing of youthful offenders. Victims, or victim family members if the victim is deceased, shall be notified of the resentencing hearing and shall retain their rights to participate in the hearing. (Pen. Code, § 1170, subd. (d)(2)(F)-(G).)
- 7) Authorizes a person arrested for or convicted of any nonviolent offense committed while the person was a victim of human trafficking, including, but not limited to, prostitution as described in subdivision (b) of Section 647, to petition the court for vacatur relief of their convictions and arrests. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking. (Pen. Code, § 236.14.)
- 8) Defines “vacate” to mean that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed. (Pen. Code, § 236.14, subd. (t)(2).)
- 9) Defines “nonviolent offense” for purposes of the vacatur law to mean any offense not listed as a “violent felony.” (Pen. Code, § 236.14, subd. (t)(1).)
- 10) Provides in addition to any affirmative defense, it is a defense to a charged of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a serious felony, a violent felony, or a violation of human trafficking. A defendant has the burden of establishing the affirmative defense by a preponderance of the evidence. (Pen. Code, § 236.23.)
- 11) States that if the defendant prevails on the affirmative defense the defendant is entitled to specified relief including having the records of the case sealed as specified and being released from all penalties and disabilities resulting from the charge as specified. (Pen. Code, § 236.23, subd. (e).)
- 12) Defines “plea bargaining” as any bargaining, negotiation, or discussion between a criminal defendant, or their counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by

the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant. (Pen. Code, § 1192.7, subd. (b).)

This bill:

- 1) States that unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:
 - a) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence;
 - b) The person is a youth, or was a youth under the age of 26 at the time of the commission of the offense; 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.
- 2) Requires the court, for purposes of resentencing, to additionally consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a person under the age of 26 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.
- 3) Provides that the court, for purposes of resentencing a youthful offender, shall discretion to resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:
 - a) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence;
 - b) the person is a youth, or was under 26 years old at the time of the commission of the offense; 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.
- 4) Creates provisions for vacatur relief similar to existing provisions for victims of human trafficking for a person convicted of any non-violent offense committed while the person was a victim of intimate partner violence or sexual violence.
- 5) Expands the existing affirmative defense for coercion for victims of human trafficking to apply to all crimes except violent felonies.
- 6) Establishes an affirmative defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm. This affirmative defense excludes violent felonies.
- 7) Provides that if the defendant prevails on the affirmative defense the defendant is entitled to specified relief including having the records of the case sealed as specified and being released from all penalties and disabilities resulting from the charge as specified.
- 8) Requires the prosecutor, in the interest of justice, and in order to reach a just resolution during plea negotiations, to consider during plea negotiations, among other factors, the following circumstances as factors in support of a mitigated sentence if any of the following were a contributing factor in the commission of the alleged offense:
 - a) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.
 - b) The person is a youth, or was a youth at the time of the commission of the offense.
 - c) Prior to the instant offense, or during the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

Comments

According to the author 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 (ACLU:

Prison Rape Elimination Act of 2003). Black women make up a quarter of the incarcerated population in California, which when considered alongside the reality that Black women are only five percent of the adult population yet are incarcerated at five times the rate of white women, demonstrates a deplorable overrepresentation of Black women in prison (California's Prison Population). Similar disparities exist for other individuals of color, including Latinx and indigenous communities. Transgender, lesbian, and bisexual women, trans men, and gender non-conforming people are also 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. When law enforcement views girls as perpetrators, and when their cases are not dismissed or diverted but sent deeper into the justice system, the cost is twofold: girls' abusers are shielded from accountability, and the trauma that is the underlying cause of the behavior is not addressed. The choice to punish instead of support sets in motion a cycle of abuse and imprisonment that has harmful consequences for victims of trauma (Human Rights Project for Girls, Georgetown Law Center on Poverty and Inequality, and Ms. Foundation for Women). This research indicates that LGBT and gender non-conforming girls in particular experience higher rates of incarceration.

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 and the interest of justice. Too often, limited opportunities to present relevant mitigating evidence, and limited judicial discretion to make fair and balanced decisions leads to inequitable outcomes for trauma victims.

AB 124 is an opportunity to correct unjust outcomes of the past, provide full context of the experiences that might impact a person's actions, and use a more humanizing and trauma-informed response to criminal adjudication.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- The Department of Justice reports ongoing annual costs ranging from roughly \$1.7 million (and 12.0 new 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)
- 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*)
- 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)
- Unknown potential savings annually in reduced state incarceration costs for individuals because of shorter or avoided term of imprisonment. The FY 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, CDCR 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

SUPPORT: (Verified 9/6/21)

California Coalition for Women Prisoners (co-source)

Free to Thrive (co-source)

National Center for Youth Law (co-source)

Survived and Punished (co-source)

USC School of Law Post-Conviction Justice Project (co-source)

Young Women's Freedom Center (co-source)
3Strands Global Foundation
ACLU California Action
Alliance for Children's Rights
Black to the Future Action Fund
California Against Slavery
California Alliance for Youth and Community Justice
California Attorneys for Criminal Justice
California Catholic Conference
California Commission on The Status of Women and Girls
California Legislative Women's Caucus
California Partnership to End Domestic Violence
California Prison Focus
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Center for Public Interest Law/Children's Advocacy Institute/Univ. of San Diego
Ceres Policy Research
Children's Defense Fund – CA
Citizens for Choice
Clergy and Laity United for Economic Justice
Communities United for Restorative Youth Justice
Community Agency for Resources Advocacy and Services
Community Legal Services in East Palo Alto
Community Works
Conxion to Community Center for Training and Careers Inc.
County of San Diego
Crime Survivors for Safety and Justice
Dignity and Power Now
Ella Baker Center for Human Rights
Essie Justice Group
Fair Chance Project
Family Violence Law Center
Felony Murder Elimination Project
Finen Family
Fresno Barrios Unidos
Initiate Justice
John Burton Advocates for Youth
Justice for Josiah
Justice LA

Kern County Participatory Defense
LA Best Babies Network
Los Angeles LGBT Center
Monarch Services
National Association of Social Workers, California Chapter
National Institute for Criminal Justice Reform
National Women's Political Caucus of Sacramento
People's Pottery Project
Re:store Justice
Rights4Girls
San Diego Youth Services
San Francisco Public Defender
Shared Hope International
Showing Up for Racial Justice Bay Area
Silicon Valley De-bug
Somos Mayfair
Sonoma County Black Coalition
Starting Over, INC.
The Art of Yoga Project
The Praxis Project
The Pride Law Firm
The W. Haywood Burns Institute
The Well Path
Transformative In-Prison Workgroup
Transgender Advocacy Group
Treasures
Uncommon Law
Women Democrats of Sacramento County
Women's Foundation California
Youth Alive!

OPPOSITION: (Verified 9/6/21)

California District Attorneys Association
California Narcotics Officers' Association
California State Sheriffs' Association
Crime Victims United of California
Orange County District Attorney

ASSEMBLY FLOOR: 54-12, 6/2/21

AYES: 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
NOES: Cunningham, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Mathis,
Patterson, Seyarto, Smith, Valladares
NO VOTE RECORDED: Bigelow, Chen, Choi, Cooper, Megan Dahle, Gray,
Mayes, Muratsuchi, Nguyen, O'Donnell, Ramos, Rodriguez, Voepel

Prepared by: Stella Choe / PUB. S. /
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**** END ****