

SENATE THIRD READING
SB 73 (Wiener)
As Amended August 30, 2021
Majority vote

SUMMARY

Authorizes the court to grant probation for specified drug offenses which are currently either ineligible or presumptively ineligible for probation, except in cases where a minor is used as an agent, in which case probation could only be granted in the unusual case where the interests of justice would be served.

Major Provisions

- 1) Remove the following offenses from the prohibition against granting probation:
 - a) Possession for sale, sale of, or offering to sell, 14.25 grams or more of a substance containing heroin;
 - b) Possession for sale, sale, or offering to sell heroin, with one or more prior convictions for those offenses;
 - c) Possession for sale, sale of, or offering to sell, 14.25 grams or more of any salt or solution of phencyclidine (PCP), or any of its analogs or precursors;
 - d) Transporting for sale, importing for sale, administering, or offering to transport for sale, import for sale, or administer, or attempt to import for sale or transport for sale, PCP or any of its analogs or precursors;
 - e) Manufacture of PCP or any of its analogs or precursors, as specified;
 - f) Possession of specified substances, with intent to manufacture PCP or any of its analogs; and,
 - g) Possession for sale, sale, or offering to sell cocaine, cocaine base, or methamphetamine, with one or more prior convictions for those offenses;
 - h) Possession for sale or sale of a substance containing 28.5 grams or more of cocaine, cocaine base, or methamphetamine;
 - i) Manufacture of specified controlled substances, except PCP;
 - j) Manufacture or sale of methamphetamine, with one or more specified prior convictions involving methamphetamine.
- 2) Authorize the court to grant probation for drug offenses involving minors only in the unusual case where the interests of justice would best be served.

COMMENTS

According to the Author

"Senate Bill 73 will repeal mandatory minimum sentences for persons convicted of specified nonviolent drug offenses and provides judges with the discretion to grant probation. Mandatory minimums contribute to the crisis of mass incarceration, which costs California billions of dollars each year that the state should be investing in schools, infrastructure, healthcare, and other nonprofits to make our communities and economy stronger. These harsh mandatory minimums are rooted in the racist war on drugs era, which has been disproportionately waged against Black and Latinx people. Imposing mandatory minimum sentences, for nonviolent drug crimes, tie the hands of judges and force them to incarcerate individuals, even when judges believe people would be better treated and supervised in their community. Evidence shows that mandatory minimum sentences for drug crimes do not improve public safety or reduce drug use or sales, but instead exacerbate existing racial disparities in our criminal justice system and disproportionately affect those suffering from mental illness. California has an urgent need to reduce our incarcerated population, especially in the era of COVID-19. SB 73 is an incremental reform that will return discretion to the courts and will provide our criminal justice system with alternatives to mass incarceration. This bill does not eliminate the upper penalties for these offenses or affect sentencing enhancements.

Arguments in Support

According to the *Drug Policy Alliance*, the sponsor of this bill, "This legislation will grant judges appropriate discretion in sentencing for specified nonviolent drug offenses.

"SB 73 will not change the upper penalty for any offense, but will provide judges the discretion to grant probation or to suspend a sentence in the interests of justice, and consistent with local values and local resources. Current state law ties the hands of judges, prohibiting them from ordering probation or suspending a sentence for a person convicted of nonviolent drug offenses, including possessing or agreeing to sell or transport opiates or opium derivatives, possessing or transporting cannabis, planting or cultivating peyote, and various crimes relating to forging or altering prescriptions, if the person has previously been convicted of any one of an expansive list of drug felonies. Existing law also prohibits judges from granting probation or suspending a sentence for persons convicted of specified nonviolent drug offenses, including possessing for sale or selling 14.25 grams or more of a substance containing heroin and possessing for sale 14.25 grams or more of any salt or solution of phencyclidine or its analogs, even if it is their first offense.

"Precluding probation eligibility for these offenses requires a mandatory term of incarceration ranging from two to seven or more years depending on the offense. By allowing judges the discretion to grant probation, this bill reflects the growing bipartisan consensus that mandatory minimum sentencing has failed to protect or enhance public safety, and robbed judges of their traditional and appropriate role in weighing the facts of each case before imposing a sentence. There is ample evidence that long sentences and mandatory minimums have had no effect on the availability, cost or potency of controlled substances. Controlled substances are cheaper, stronger and more widely available than in any time in our nation's history...

"SB 73 by Senator Wiener is an incremental step away from a costly, failed, and racist policy of locking up low-level nonviolent drug offenders for long periods of time. A fair and impartial criminal justice system, like all forms of good government, needs checks and balances. While prosecutors have charging discretion, the final say over a person's sentence must come from

independent judges who have no personal or institutional stake in the outcome of a case other than to ensure justice is done and rights are respected."

Arguments in Opposition

According to the *California Police Chiefs Association*, "SB 73 would allow a judge the discretion to grant probation or to suspend a sentence for a person convicted of drug offenses, included but not limited to, possession or agreement to sell or transport opiates or cannabis, forging or altering prescriptions, possessing or selling a substance containing heroin, PCP or any of its analogs and more.

"The bill goes further, allowing a court to grant probation in an unusual case where the interests of justice would be served, for possessing or selling substances containing 28.5 grams or more of cocaine or methamphetamine, in a case involving a minor to act as an agent to manufacture or sell controlled substances, and the bill disregards previous drug-related offenses for these sentencing purposes as well.

"SB 73 sets a dangerous precedent in California court of law, and would jeopardize the health and safety of the communities we are sworn to protect."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Possible costs (local costs and Proposition 30-General Fund(GF)) in the low hundreds of thousands of dollars annually to county probation departments for increased costs of supervision given these drug crimes are not currently eligible for probation. GF costs will depend on whether the duties imposed on county probation departments by this bill are considered a state reimbursable mandate by the Commission on State Mandates.
- 2) Cost savings possibly in the millions of dollars annually (GF) to the California Department of Corrections and Rehabilitation and local county jails in incarceration costs. The annual cost per year to house an inmate in state prison is approximately \$87,000. If a court grants probation to 10 defendants that might have otherwise been sentenced to an average of two years in state prison, cost savings to the GF in incarceration costs would be \$1.7 million dollars.
- 3) Minor absorbable costs (Trial Court Trust Fund) for courts to determine whether probation is appropriate for specified drug crimes.

VOTES

SENATE FLOOR: 25-10-5

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

NO: Bates, Dahle, Grove, Hurtado, Jones, Melendez, Min, Nielsen, Ochoa Bogh, Wilk

ABS, ABST OR NV: Archuleta, Borgeas, Limón, Newman, Umberg

ASM PUBLIC SAFETY: 6-1-1

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

NO: Lackey

ABS, ABST OR NV: Seyarto

ASM APPROPRIATIONS: 12-4-0

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

NO: Bigelow, Megan Dahle, Davies, Fong

UPDATED

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