

Senate Bill 81

Judicial Guidance on Sentence Enhancements

Senator Nancy Skinner, D-Berkeley

THIS BILL

California's penal code has multiple sentence enhancements that can be added to a criminal charge. Sentence enhancements are not elements of the crime, they are additional circumstances that increase the penalty, or time served, of the underlying crime. While the application of an enhancement may appear straightforward, research reviewed last year by the Committee on the Revision of the Penal Code revealed inconsistency in their use.

Building on the California Rules of Court that guide judges in certain sentencing decisions, SB 81 aims to provide clear guidance on how and when judges may apply sentence enhancements. By clarifying the parameters a judge must follow, SB 81 codifies a recommendation made by the Committee on the Revision of the Penal Code to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime.

ISSUE

Current law allows judges to dismiss sentencing enhancements "in furtherance of justice." This standard lacks clarity and does not provide judges clear guidance on how to exercise this discretion. A ruling by the California Supreme Court noted that the law governing when judges should impose or dismiss enhancements remains an "amorphous concept," with discretion inconsistently exercised and underused because judges did not have adequate guidance.

Data indicates that in about 20% of cases, judges chose not to apply sentence enhancements. Conversely, in about 80% of cases, individuals had their terms lengthened by sentence enhancements, in many cases with two, three or more enhancements assigned. Thus for committing the same crime, some individuals receive only the base sentence while others have five, ten or more years added to their time.

Research examined by the Committee on the Revision of the Penal Code revealed that sentence enhancements were applied disproportionately to women, minorities, and those exhibiting mental health issues. In its deliberations, members of the Committee sought to find places to improve the fairness of CA's penal code. "Sentences must be

fair, balanced, and equally applied," said L. Song Richardson, former dean of UC Irvine School of Law. Dean Richardson further added "California's overuse of sentencing enhancements has tilted the scales of justice resulting in excessively long terms of imprisonment for many." In his testimony before the Committee, Santa Clara DA Jeff Rosen stated: "It's quite common now that the entire trial and all pretrial negotiations are solely about the enhancement, not the crime itself."

Many states have reformed sentence enhancement processes and provided more guidance, for example, by limiting the use of enhancements to convictions that occurred within 5 years.

SOLUTION

SB 81 establishes a presumption that judges would only apply sentence enhancements when there is clear and convincing evidence that not using the enhancement would endanger the public. The following are examples of the circumstances where the judge would have to establish that there is a danger to the public to apply an enhancement:

- Current offense is nonviolent
- Current offense is connected to mental health issues
- Enhancement is based on a prior conviction that is over five years old
- Current offense is connected to prior victimization or childhood trauma
- Defendant was a juvenile when he/she committed the current offense or prior offenses

SUPPORT

California Attorneys for Criminal Justice (Co-Sponsor)
Californians for Safety and Justice (Co-Sponsor)

CONTACT

Tania Natalie Dikho
Office of Senator Nancy Skinner
State Capitol Office, Room 5094
(916) 651-4009 | Tania.Dikho@sen.ca.gov