

Date of Hearing: July 2, 2024

Counsel: Ilan Zur

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Kevin McCarty, Chair

SB 285 (Allen) – As Amended June 4, 2024

UPDATED

As Proposed to be Amended in Committee

SUMMARY: Provides that an individual sentenced to death or a term of life without the possibility of parole (“LWOP”), who has been convicted of a sexually violent offense, and whose term includes certain specified legally invalid enhancements, is not eligible for certain resentencing. Specifically, **this bill:**

- 1) Provides that commencing January 1, 2025, an individual sentenced to death or LWOP, and who has been convicted of a sexually violent offense, as defined, and who, as of January 1, 2025, has not had their judgement reviewed and verified by a sentencing court to determine that the individual is serving a term that includes a legally invalid sentence enhancement for a specified prior drug conviction or prior prison or felony jail term, is not eligible for recall and resentencing.
- 2) Provides that this above provision modifying resentencing eligibility does not apply retroactively.

EXISTING LAW:

- 1) States that any sentence enhancement received prior to January 1, 2018, imposing on a defendant convicted of specified crimes related to controlled substances, an additional three-year term for each prior conviction of specified crimes related to controlled is legally invalid, except if the enhancement was imposed for a prior conviction of using a minor in the commission of offenses involving specified controlled substance. (Pen. Code, § 1172.7, subd. (a).)
- 2) States that any sentence enhancement received prior to January 1, 2020, imposing an additional one-year term of imprisonment for each prior prison or county jail felony term served by the defendant for a non-violent felony is legally invalid, except if the enhancement was for a prior conviction of a sexually violent offense. (Pen. Code, § 1172.75, subd. (a).)
- 3) Requires the Secretary of the Department of Corrections and Rehabilitation (CDCR) and the county correctional administrator of each county to identify those persons in their custody currently serving a term for judgment that includes one of the repealed enhancements and to provide the name of each person, along with the person’s date of birth and relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

- a) By March 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.
 - i) By July 1, 2022, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (b))
- 4) States that upon receiving that information, the court shall review the judgment and verify that the current judgement includes one of the repealed enhancements and the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:
 - a) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement; and,
 - b) By December 31, 2023, for all other individuals. (Pen. Code, §§ 1172.7, 1172.75, subds. (c))
- 5) States that the above resentencing shall result in a lesser sentence than the one originally imposed, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(1).
- 6) Provides that the above resentencing shall not result in a longer sentence than originally imposed. (*Ibid.*)
- 7) States that the court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(2).
- 8) Allows a court to consider post-conviction factors at resentencing, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(3).
- 9) Provides that unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(4).
- 10) Requires the court to appoint counsel. (Pen. Code, §§ 1172.7, 1172.75, subds. (d)(5).

- 11) Provides that the parties may waive a resentencing hearing, and if the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees. (Pen. Code, §§ 1172.7, 1172.75, subds. (e).
- 12) States that the Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply SB 180 (Mitchell, Chapter 677, Statutes of 2017) and SB 136 (Wiener, Chapter 590, Statutes of 2019) to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. (SB 483 (Allen), Chapter 728, Statutes of 2021, Sec. 1.)
- 13) States Legislative intent that any changes to a sentence as a result of these above provisions is not a basis for a prosecutor or court to rescind a plea agreement. (*Ibid.*)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** According to the author, "In 2021, SB 483 (Allen, Chapter 728, Statutes of 2021) made retroactive California's elimination of 1- and 3-year sentence enhancements for drug and previous convictions. This created a process by which people could access resentencing for the purposes of removing these legally invalid sentence enhancements. Recently, appeals have been made to the courts arguing that certain people serving sentences for capital and sexually violent offenses qualify for full resentencing under SB 483. This interpretation does not align with the original bill's intent. While courts have been dismissing the appeals, they have unnecessarily wasted court resources and reopened wounds of victims of their families. SB 285 clarifies who is eligible for resentencing under SB 483 to prevent clogging of the courts, limit re-traumatization of victims and their families, and close a loophole in the original drafting."
- 2) **Sentence Enhancements in California:** There are currently more than 100 unique sentence enhancements used in California that can be used to increase the term of imprisonment a defendant will serve.¹ Enhancements add time to a person's sentence for factors relevant to the defendant such as prior criminal history or for specific facts related to the crime. Multiple enhancements can be imposed in a single case and can range from adding a specified number of years to a person's sentence, or doubling a person's sentence or even converting a determinate sentence into a life sentence.

A 2023 report on sentencing enhancements found that about 40% of individual prison admissions since 2015 have sentences lengthened by a sentence enhancement.² For currently incarcerated persons, the prevalence of enhanced sentences is even higher, impacting the sentences of approximately 70% of people incarcerated as of 2022.³ Data shows that enhancements have been applied a total of 167,340 times to new prison admissions since 2015, and have been applied 197,274 times in the cases of those incarcerated as of July

¹ Bird et. al., *Sentence Enhancements in California*, California Policy Lab (March 2023), p. 6, available at: <https://www.capolicylab.org/wp-content/uploads/2023/03/Sentence-Enhancements-in-California.pdf>

² *Id.* at p. 3.

³ *Ibid.*

2022.⁴ Lastly, there are significant racial disparities in the percent of prison admissions subject to sentence enhancements. Specifically, “of the currently incarcerated Black people, 78% have at least one sentence enhancement, while 70% of American Indian/Alaskan Native people, 66% of Hispanic people, 60% of Asian or Pacific Islander people, and 58% of White people have at least one enhancement.”⁵

- 3) **Retroactive Sentence Enhancement Relief Provided by SB 483 (Allen), Chapter 728, Statutes of 2021:** Prior to January 1, 2020, Penal Code section 667.5, subdivision (b) required trial courts to impose a one-year sentence enhancement for each true finding on an allegation the defendant had served a separate prior prison or county jail term for a felony and had not remained free of custody for at least five years. But effective January 1, 2020, SB 136 (Wiener), Chapter 590, Statutes of 2019, amended section 667.5, subdivision (b) to limit the prior prison term enhancement to only prior prison terms for sexually violent offenses, as defined in Welfare and Institutions Code section 6600, subdivision (b).

Further, former Health and Safety Code section 11370.2, provided for a mandatory three-year enhancement for each prior felony conviction of certain enumerated offenses related to controlled substances. But effective January 1, 2018, SB 180 (Mitchell) Chapter 677, Statutes of 2017, narrowed the list of prior offenses that qualify a defendant for an enhancement under this provision. Now the enhancement only applies to prior convictions that involved using a minor to commit drug-related crimes.

SB 483 (Allen), Chapter 728, Statutes of 2021, retroactively applied the repeal of the above sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances, absent some indication to the contrary in a bill, courts presume the Legislature intended changes to apply prospectively. (See Pen. Code, § 3.) However, SB 483’s language explicitly established legislative intent for SB 180 (Mitchell, Chapter 677, Statutes of 2017) and SB 136 (Wiener, Chapter 590, Statutes of 2019) to retroactively all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. Specifically, it provided that any one year sentence enhancement for each prior prison or county jail felony term served by a defendant for a non-violent felony imposed prior to January 1, 2020 is legally invalid, unless the enhancement was for a prior conviction of a sexually violent offense. Similarly, it made the additional three-year enhancement for each prior conviction of specified crimes related to controlled substances, for defendants convicted of specified crimes related to controlled substances legally invalid if the enhancement was imposed prior to January 1, 2018.

SB 483’s retroactive enhancement relief was required to be completed by December 31, 2023. SB 483 established timelines surrounding when such retroactive enhancement relief must be completed. First, SB 483 required the Secretary of CDCR to identify applicable persons serving a term for judgement including one of the repealed enhancements and provide that information to the sentencing court that imposed the enhancement no later than July 1, 2022. Second, it required the sentencing court to verify that the current judgement includes one of the repealed enhancements and to recall the sentence and resentence the defendant, and provided that this review and resentencing must be completed no later than

⁴ *Id.* at p. 6.

⁵ *Id.* at 31.

December 31, 2023. That being said, it appears that at least a thousand eligible persons are still awaiting resentencing under SB 483.

- 3) **Effect of this Bill:** Earlier this year, Richard Allen Davis, a convicted murderer and sexually violent offender serving a death penalty sentence, petitioned for recall and resentencing under SB 483 on the basis that his sentence included enhancements declared legally invalid by SB 483. This petition was denied on May 31, 2024. SB 285 seeks to clarify that persons convicted of the most serious of offenses, such as Richard Allen Davis, are not eligible for resentencing under SB 483. Specifically, it states that an individual: 1) sentenced to death or LWOP; 2) who has been convicted of a sexually violent offense; and 3) who, as of January 1, 2025, has not had their judgement reviewed and verified by a sentencing court to confirm that the individual's term includes a specified legally invalid sentence enhancement, is not eligible for recall and resentencing under SB 483.
- 4) **Need for the Bill:** Judges can already deny resentencing requests for the most serious of offenders. This was shown when the court summarily denied Richard Allen Davis' request for resentencing earlier this year as an unauthorized challenge to the death sentence. In addition, courts already have discretion to refuse to issue a lesser sentence during resentencing, if the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. As such, persons who have committed the most serious of crimes punishable by the death penalty or LWOP, are unlikely to be resentenced to a lower sentence under SB 483. In fact, it is unclear if any person serving a death penalty or LWOP sentence has been resentenced under SB 483. As such, the need for this bill is unclear.
- 4) **Argument in Support:** None
- 5) **Argument in Opposition:** According to Courage California, “[i]n 2021, Senator Allen authored SB 483, the Repeal Ineffective Sentence Enhancements (RISE) Act, authorizing courts to retroactively remove 1-year prison prior (SB 136, Wiener) and 3-year drug prior enhancements (SB 180, Mitchell) from the sentences of currently incarcerated people, including those with “final sentences,” as well as those serving probation or parole terms. SB 285 seeks to exclude people from these laws, limiting who can and cannot receive access to judicial review, a lesser sentence, and ultimately justice.

The RISE Act represents a meaningful step towards reducing the harm of overly long and unjust sentences, allowing families across California to be restored. Sentencing enhancements have not made our communities safer. Instead, long prison and jail sentences are proven to be injurious to system-impacted folks and destabilizing to their families and communities. More generally, they put significant financial burdens on taxpayers and families statewide — the LAO estimates the annual cost to incarcerate one person in state prison for one year to be in excess of \$133,000. The RISE Act has given hope to incarcerated Californians to have outdated and unjust sentences reviewed, creating a process for the courts to align sentences with the truth of data-driven and lived experiences that show reducing excessive sentences improves community well-being [citation omitted].

SB 285 would partially reverse this landmark victory for those who have been waiting — decades, for some — for their day back in court. People eligible for resentencing under SB 483 are subject to a judge's discretion. Judges retain and continue to use their authority to

decline resentencing if they find clear and convincing evidence that resentencing would endanger public safety.

Sentencing reform in California has worked, and it has reunited people who were incarcerated under extreme sentences with their families, communities, and our economy. The approach proposed in SB 285 (Allen) removes from judges the ability to determine, based on the information available to them at resentencing, that continued incarceration is no longer in the interests of justice, solely based on the original sentence. The RISE Act should not be amended to include this exclusion, as it would fundamentally undermine the reason that SB 483 was first introduced - to ameliorate the harm suffered by individuals who were sentenced to excessive terms. We should not put a limit on who has access to justice.”

6) **Related Legislation:** None

7) **Prior Legislation:**

- a) SB 483 (Allen), Chapter 728, Statutes of 2021, applies retroactively the repeal of sentence enhancements for prior prison or county jail felony terms and for prior convictions of specified crimes related to controlled substances.
- b) SB 81 (Skinner), Chapter 721, Statutes of 2021, provides guidance to courts by specifying circumstances for a court to consider when determining whether to apply an enhancement.
- c) AB 1540 (Ting), Chapter 719, Statutes of 2021, requires the court to provide counsel for the defendant when there is recommendation from the Secretary of the Department of Corrections and Rehabilitation (CDCR), the Board of Parole Hearings (BPH), Sheriff, or the prosecuting agency, to recall an inmate's sentence and resentence that inmate to a lesser sentence, and creates a presumption favoring recall and resentencing, as specified, when the recommendation has been made by one of the agencies described above.
- d) AB 1245 (Cooley), would allow a defendant who has served at least 15 years in the state prison to file a petition for recall and resentencing. AB 1245 died in Assembly Appropriations Committee.
- e) AB 1509 (Lee), would repeal several firearm enhancements, reduces the penalty for using a firearm in the commission of specified crimes from 10 year, 20 years, or 25-years-to-life to one, two, or three years, and authorizes recall and resentencing for a person serving a term for these enhancements. AB 1509 was held in the Assembly Appropriations Committee.
- f) SB 136 (Wiener), Chapter 590, Statutes of 2019, limits the one-year sentence enhancement for prison or county jail felony priors by permitting imposition of the enhancement for a defendant sentenced to a new felony offense only if the defendant has a prior conviction for a sexually violent offense, as specified.
- g) SB 1392 (Mitchell), of the 2017-2018 Legislative Session, would have repealed the one-year sentence enhancement for each prior prison or county jail felony term that applies to

a defendant sentenced on a new felony. SB 1392 failed passage on the Senate Floor.

- h) SB 180 (Mitchell), Chapter 677, Statutes of 2017, limited the three-year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substance to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses.
- i) SB 966 (Mitchell), of the 2015-2016 Legislative Session, would have eliminated the three-year enhancement upon conviction for the sale or possession for sale of specified controlled substances with a prior conviction related to the same. SB 966 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support:

None

Opposition:

A New Path
 California Coalition for Women Prisoners
 California Innocence Coalition
 California Public Defenders Association
 Californians United for A Responsible Budget
 Communities United for Restorative Youth Justice (CURYJ)
 Community Resource Initiative
 Courage California
 Ella Baker Center for Human Rights
 Felony Murder Elimination Project
 Freedom Within Project
 Friends Committee on Legislation of California
 Initiate Justice
 Initiate Justice Action
 Prison Yoga + Meditation
 San Francisco Public Defender
 Silicon Valley De-bug
 Smart Justice California, a Project of Tides Advocacy
 Theatreworkers Project
 Uncommon Law
 Universidad Popular
 University of San Francisco School of Law | Racial Justice Clinic
 Young Women's Freedom Center
 Youth Leadership Institute

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