

Date of Hearing: March 14, 2023
Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Reginald Byron Jones-Sawyer, Sr., Chair

AB 484 (Gabriel) – As Introduced February 7, 2023

CORRECTED

As Proposed to be Amended in Committee

SUMMARY: Re-enacts a sentence enhancement for specified property-related offenses for a person who intentionally takes, damages, or destroys property, when the loss exceeds specified dollar amounts. Specifically, **this bill**:

- 1) Provides that if a person takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court may impose an additional term as follows:
 - a) If the loss exceeds \$275,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of two years;
 - b) If the loss exceeds \$1.75 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of three years; and,
 - c) If the loss exceeds \$4.4 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, may impose an additional term of four years.
- 2) Prohibits imposition of the enhancement unless the facts are charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.
- 3) Defines “loss” as specified.
- 4) Raises the dollar limits required to impose enhancements for taking or destroying property during the commission of a felony, compared to the prior statute, but keeps the penalties consistent with the prior statute.
- 5) States legislative intent to review the threshold amounts every five years and adjust them for inflation.
- 6) Repeals these provisions on January 1, 2028.

EXISTING LAW:

- 1) Defines grand theft as any theft where the money, labor, or real or personal property taken is of a value exceeding \$950. (Pen. Code, § 487, subd. (a).)
- 2) Defines embezzlement as the fraudulent appropriation of property by a person to whom it has been intrusted. (Pen. Code, § 503.)
- 3) States that every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the value or kind embezzled. (Pen. Code, § 514.)
- 4) Specifies that if the embezzlement is of the public funds of the United States, or of this state, the offense is a felony punishable in the state prison, and the person convicted is prohibited from holding any office of honor, trust, or profit in this state. (Pen. Code, § 514.)
- 5) Provides for a “white collar crime” enhancement which specifies that any person who commits two or more related felonies which involve a pattern of related felony conduct, and the pattern of related felony conduct involves fraud or embezzlement, shall receive an additional term of imprisonment in the state prison as specified, depending on the value of the property taken or the loss resulting from that conduct. (Pen. Code, § 186.11.)

PRIOR LAW: Provided that when any person takes, damages or destroys any property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction, the court shall impose an additional term as follows:

- 1) If the loss exceeds \$65,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of one year;
- 2) If the loss exceeds \$200,000, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of two years;
- 3) If the loss exceeds \$1.3 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years; and,
- 4) If the loss exceeds \$3.2 million, the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years. (Former Pen. Code, § 12022.6 (Repealed as of January 1, 2017).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, “Currently, in California statute, penalties for the theft of property worth millions of dollars are the same as the theft of property worth a few hundred dollars. AB 484 will re-impose sentencing enhancements related the most severe and costly incidents of theft and property loss—more commonly known as “white collar” crimes. These crimes may not be violent, but they are certainly not victimless. White-

collar crimes can destroy a company, wipe out a person's life savings, cost families billions of dollars, and erode the public's trust in institutions. Moreover, white collar crimes often target some of our most vulnerable populations, such as the elderly and disabled. AB 484 reinstates an important sentencing enhancement and crucial tool used by law enforcement to help address these devastating and sophisticated fraud schemes.”

- 2) **Great Takings Enhancement:** Until January 1, 2018, state law required the court to impose an additional term of imprisonment, as specified, when any person takes, damages, or destroys any property in the commission or attempted commission of a felony, as specified.

This enhancement, known as the “great takings” enhancement, in former Penal Code section 12022.6 became effective in 1977. It appears that a sunset provision became effective in 1990. The sunset clause was re-written through legislation in 1992. The sunset was then extended from 1998 to 2008 by AB 293 (Cunneen), Chapter 551, Statutes of 1997. The sunset provision stated that the purpose of the provision is to allow the Legislature to consider the effects of inflation on the enhancement thresholds in the law.

AB 1705 (Niello), Chapter 420, Statutes of 2007, raised the dollar limits and contained a sunset date of January 1, 2018. Again, accompanying the sunset date was a statement of legislative intent which indicated that the provisions would be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason section 12022.6 remained in effect only until January 1, 2018. AB 1511 (Low) of the 2017-2018 legislative session would have raised the amounts to trigger the enhancement to reflect the 2017 levels of inflation, but would have removed the sunset date. That bill was vetoed. Therefore, by virtue of the sunset date in the prior legislation, the enhancement was repealed.

This bill would re-enact the statutory framework providing enhanced punishment when an individual is convicted of crimes which result in the loss of specified dollar amounts of property. It authorizes, but does not require, the court to impose the enhancement. This bill raises the dollar limits required to trigger the respective levels of punishment to account for inflation.¹ The bill establishes a sunset date of January 1, 2028, and expresses an intent that the Legislature review the dollar thresholds every five years and adjust them to consider the effects of inflation.

- 3) **Governor’s Veto Message:** As noted above, in 2018, the Legislature passed AB 1511 (Low) which was the same as this bill; however, the measure was vetoed by former Governor Brown. In his veto message, the Governor said:

“This bill re-enacts and re-casts a previous enhancement for excessive takings which was allowed to sunset on January 1, 2018.

“Penal Code Section 12022.6 was enacted in 1977, and in 1990, AB 3087 added a sunset provision, repealing the statute as of July 1, 1992. That sunset date has been extended several times since then, first in 1992 (AB 939) extending the date to 1998, then in 1997 (AB 293)

¹ As introduced, the bill reflected amounts which took into account the effects of inflation in 2017, when AB 1511 (Low) was introduced. The committee amendments raise the amount to reflect the effects of inflation today, using the Bureau of Labor Statistics inflation calculator: https://www.bls.gov/data/inflation_calculator.htm

extending the date by 10 years, to 2008. In 2007, via AB 1705, the Legislature again extended the sunset 10 more years to 2018. The statute was not further extended at that time, and Penal Code Section 12022.6 was therefore repealed on January 1, 2018.

“AB 1511 now seeks to re-enact this repealed enhancement, but omits any sunset provision similar to those that have been included with this statute since 1990. I see no reason to now permanently re-enact a repealed sentencing enhancement without corresponding evidence that it was effective in deterring crime. As I have said before, California has over 5,000 criminal provisions covering almost every conceivable form of human misbehavior. We can effectively manage our criminal justice system without 5,001.”

In contrast to the vetoed bill, this bill does contain a sunset provision.

Research on the Deterrent Effect and Impact on State Prisons: According to the U.S. Department of Justice, “Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes. More severe punishments do not ‘chasten’ individuals convicted of crimes, and prisons may exacerbate recidivism.” (National Institute of Justice, U.S. Department of Justice, Five Things About Deterrence (June 5, 2016) <<https://nij.ojp.gov/topics/articles/five-things-about-deterrence>>)

In a 2014 report, the Little Hoover Commission also addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (Little Hoover Commission, *Sensible Sentencing for a Safer California* (2014) at p. 4 <https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/219/Report219.pdf>.) Additionally, the Commission also explained how California’s sentencing structure and enhancements contributed to a 20-year state prison building boom: “California policymakers enacted hundreds of laws increasing sentence length, adding sentence enhancements and creating new sentencing laws. The end result was that every new prison the state built was quickly filled to capacity.” (*Id.* at p. 9.)

CDCR has informed this committee that in the three years preceding the repeal of this enhancement, the following number of admissions had one or more great taking enhancements applied to their case:

Year ²	Number of Unique Offenders	Number of Unique Cases Per Offender	Number of PC 12022.6(a)(2) Enhancements	Number of PC 12022.6(a)(3) Enhancements	Number of PC 12022.6(a)(4) Enhancements	Aggregate Number of Enhancements
2015	43	43	192	45	4	241
2016	49	49	159	38	4	201
2017	53	54	130	7	35	172

² Year is based on the case’s sentence pronounced date. For cases that were resentenced, the information is based on the original sentencing and excludes information post-resentencing.

It should be noted, however, that some of these enhancements were stayed by the court and so did not affect the actual term of incarceration.

- 4) **Argument in Support:** According to the *Santa Clara County District Attorney's Office*, "Former Penal Code section 12022.6 allowed for an additional term of imprisonment when someone intentionally took, damaged, or destroyed property over a certain amount in the commission or attempted commission of a felony. Originally enacted in 1977, this statute was overwhelmingly supported by the legislature to enhance the law enforcement and judicial process for prosecuting these crimes. The statute sunsetted in 2018. Now, without this statute, penalties for the theft of property worth millions of dollars are the same as the theft of property worth a few hundred dollars.

"AB 484 will revive the previous statute that allowed for an additional term of imprisonment when someone intentionally took, damaged, or destroyed property over a certain amount in the commission or attempted commission of a felony.

"These crimes may not be violent, but they are certainly not victimless. White-collar crimes can destroy a company, wipe out a person's life savings, cost families billions of dollars, and erode the public's trust in institutions. Moreover white collar crimes often target some of our most vulnerable populations, such as the elderly and disabled."

- 5) **Argument in Opposition:** According to the *California Attorneys for Criminal Justice*, "This bill creates 1) a new regime of increased incarceration via sentencing enhancements for certain property crimes involving taking, damage, or destruction of property and 2) reinstates additional punishment for property crimes associated with a cross-reference to a statute that had been repealed (while simultaneously increasing the baseline of punishment for those crimes). CACJ opposes all these provisions, believing that current law is sufficiently punitive and additional incarceration is generally not needed for crimes involving destruction of property.

"As explained by the legislative counsel's digest, this bill would create a triad of sentencing enhancements for felonies in which a person takes, damages, or destroys property in the commission or attempted commission of a felony, with the intent to cause that taking, damage, or destruction. The bill authorizes an additional term of imprisonment of up to 2 years if the property loss exceeds \$235,000, 3 years if the property loss exceeds \$1,500,000, or up to 4 years if the property loss exceeds \$3,700,000. Increased prison time is not the solution to crimes involving economic loss. Prison time—in the form of lengthy prison sentences—are already available for crimes involving taking and/or destruction of highly valued property. In the area of property crimes, the focus ought to be on increased enforcement. Moreover, because 'loss' calculations are notoriously difficult to ascertain with precision in cases involving large losses, enhancements tied to valuation of loss are generally problematic and increase arbitrariness in the system.

"In addition, this bill reinstates an enhancement that had been available for certain patterns of felonious conduct that involved the taking of property. Currently, an enhancement is only available for a pattern of related felony conduct involving more than \$500,000. This bill 1) reinstates an enhancement for cases involving between \$100,000 and \$500,000 dollars, and 2) increases the length of prison time available for that enhancement. Again, lengthy prison

terms are already available for such crimes, with a wide area of enhancements depending on the facts of the case. Increasing terms of incarceration for crimes involving economic loss will be costly to taxpayers, will do little to deter these crimes, and will ultimately increase arbitrariness in sentencing due to the uncertainties inherent in economic calculations of large magnitude.”

6) Prior Legislation:

- a) AB 1511 (Low) of the 2017-2018 Legislative Session, was substantially similar to this bill. AB 1511 was vetoed by the Governor.
- b) AB 1705 (Niello), Chapter 420, Statutes of 2007, raised the dollar limits on the excessive takings enhancement and set a sunset date of January 1, 2018.
- c) AB 293 (Cunneen), Chapter 551, Statutes of 1997, extended the sunset date of the excessive takings enhancement for 10 years, from 1998 to 2008.

REGISTERED SUPPORT / OPPOSITION:

Support

California Cattlemen’s Association
California State Sheriff’s Association
Santa Clara District Attorney’s Office
Peace Officers Research Association of California

Opposition

California Attorneys for Criminal Justice
California Public Defenders Association

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