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PUBLIC SAFETY**  
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**A G E N D A**

9:00 a.m. – June 12, 2018  
State Capitol, Room 126

**PART II**

**SB 1331(Jackson) – SB 1393(Mitchell)**

Date of Hearing: June 12, 2018  
Counsel: David Billingsley

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

SB 1331 (Jackson) – As Amended April 2, 2018

**SUMMARY:** Requires the Commission on Peace Officer Standards and Training (POST) to include procedures and techniques for assessing signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers in the handling of domestic violence complaints.

**EXISTING LAW:**

- 1) Requires POST to implement a course of instruction for the training of law enforcement officers in California in the handling of domestic violence complaints and also develop guidelines for law enforcement response to domestic violence. (Pen. Code, § 13519, subd. (a).)
- 2) Specifies that the course of instruction and the guidelines shall stress enforcement of criminal laws in domestic violence situations, availability of civil remedies and community resources, and protection of the victim. (Pen. Code, § 13519, subd. (a).)
- 3) Requires that the course of basic training for law enforcement officers to include adequate instruction in specified procedures and techniques, including:
  - a) The legal duties imposed on peace officers to make arrests and offer protection and assistance including guidelines for making felony and misdemeanor arrests;
  - b) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim;
  - c) The nature and extent of domestic violence;
  - d) The signs of domestic violence;
  - e) The legal rights of, and remedies available to, victims of domestic violence;
  - f) The services and facilities available to victims and batterers; and,
  - g) Emergency assistance to victims and how to assist victims in pursuing criminal justice options.
- 4) Specifies that whenever there is an alleged violation or violations of specified domestic violence or sexual assault, the law enforcement officer assigned to the case shall immediately provide the victim of the crime with the "Victims of Domestic Violence" card. (Pen. Code, §

264.2, subd. (a).)

- 5) Specifies that the “Victims of Domestic Violence” card which shall include, but is not limited to, the following information: (Pen. Code, § 13701, subd (c)(9).)
  - a) The names and phone numbers of or local county hotlines for, or both the phone numbers of and local county hotlines for, local shelters for battered women and rape victim counseling centers within the county, including those centers specified in Section 13837, and their 24-hour counseling service telephone numbers;
  - b) A simple statement on the proper procedures for a victim to follow after a sexual assault;
  - c) A statement that sexual assault by a person who is known to the victim, including sexual assault by a person who is the spouse of the victim, is a crime; and,
  - d) A statement that domestic violence or assault by a person who is known to the victim, including domestic violence or assault by a person who is the spouse of the victim, is a crime.
- 6) Requires every law enforcement agency in this state shall develop, adopt, and implement written policies and standards for officers’ responses to domestic violence. (Pen. Code, § 13701, subd. (a).)
- 7) Specifies that the written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. (Pen. Code, § 13701, subd. (b).)
- 8) Provides that these policies shall discourage, when appropriate, but not prohibit, dual arrests. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. (Pen. Code, § 13701, subd. (b).)
- 9) States that the policies shall be in writing and shall be available to the public upon request and shall include: (Pen. Code, § 13701, subd. (c)(1)-(9).)
  - a) Emergency assistance to victims, such as medical care, transportation to a shelter, or a hospital for treatment when necessary, and police standbys for removing personal property and assistance in safe passage out of the victim’s residence;
  - b) Assisting victims in pursuing criminal options, such as giving the victim the report number and directing the victim to the proper investigation unit; and
  - c) Furnishing written notice to victims at the scene, including, but not limited to, all of the following information:
    - i) A statement informing the victim that despite official restraint of the person alleged to have committed domestic violence, the restrained person may be released at any time;
    - ii) A statement that, “For further information about a shelter you may contact \_\_\_\_.”;

- iii) A statement that, "For information about other services in the community, where available, you may contact \_\_\_\_.";
- iv) A statement that, "For information about the California Victims' Compensation Program, you may contact 1-800-777-9229.";
- v) A statement informing the victim of domestic violence that he or she may ask the district attorney to file a criminal complaint;
- vi) A statement informing the victim of the right to go to the superior court and file a petition requesting any of the following orders for relief:
  - (1) An order restraining the attacker from abusing the victim and other family members;
  - (2) An order directing the attacker to leave the household;
  - (3) An order preventing the attacker from entering the residence, school, business, or place of employment of the victim;
  - (4) An order awarding the victim or the other parent custody of or visitation with a minor child or children;
  - (5) An order restraining the attacker from molesting or interfering with minor children in the custody of the victim;
  - (6) An order directing the party not granted custody to pay support of minor children, if that party has a legal obligation to do so;
  - (7) An order directing the defendant to make specified debit payments coming due while the order is in effect; and,
  - (8) An order directing that either or both parties participate in counseling.
- 10) States that every law enforcement agency shall have policies and standards for dispatchers' response to domestic violence calls that reflect that calls reporting threatened, imminent, or ongoing domestic violence, and the violation of any protection order, and restraining orders, shall be ranked among the highest priority calls. (Pen. Code, § 13702.)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Three women are murdered every day in the United States by current or former partners. Many abusive situations turn deadly when a victim attempts to leave a relationship. Seventy-two percent of all murder-suicides involve an intimate partner, with 94 percent of the victims of these murder-suicides female, and more than half of all female homicide victims were killed in connection with intimate partner

violence. The World Health Organization says that worldwide, a partner or spouse is the killer in 38 percent of women's homicides.

"Lethal domestic violence is not limited to the batterer's primary victim – a study of partner homicides found that 20 percent of victims were not the intimate partners themselves but family members, friends or bystanders.

"Lethality assessments are protocols designed for law enforcement first responders. Excessive jealousy, having threatened suicide or homicide in the past, heavy drug or alcohol use, or previous cases of choking a victim are tied to increased risk of lethality. Victims are asked a series of questions based on research on factors linked to lethality; certain victims' responses trigger the 'protocol referral,' which is an immediate connection with a local advocacy program.

"One in 10 victims of intimate-partner-related violence experienced some form of violence in the preceding month. Linking women to advocates has been demonstrated to improve women's quality of life as well as increase their engagement with the criminal legal process."

- 2) **Maryland's Lethality Assessment Program (LAP):** In 2000, the Maryland Network Against Domestic Violence (MNADV) set the goals of identifying victims at high risk for homicide by an intimate partner and creating a plan to assist them with decreasing that risk. To meet these goals, the MNADV established a statewide multi-disciplinary Lethality Assessment Committee in the fall of 2003 to create a protocol for response to domestic violence in Maryland. The committee included advocates, police officers, and professionals from other related disciplines including prosecution and probation, as well as three researchers from Johns Hopkins University and the University of Maryland, including Dr. Jacquelyn Campbell and Dr. Daniel Webster. Four research findings from Dr. Campbell's study on intimate partner homicide (Campbell et al., 2003) were utilized as touchstones:

- 1) Nearly half of domestic homicide offenders had been arrested in the year prior to the homicide;
  - 2) Women do not access domestic violence services at high rates;
  - 3) There is a significant reduction in risk of severe assault when victims utilize the services of a domestic violence advocacy program; and
  - 4) Abused women who used community-based domestic violence services were rarely the victim of murder or attempted murder.
- (<https://www.ncjrs.gov/pdffiles1/nij/grants/247456.pdf>)

Maryland's LAP involves an 11-question risk assessment instrument called the Lethality Screen and an accompanying proactive response called the "Protocol Referral" that occurs at the scene of domestic violence calls for service. The LAP is initiated by police officers at the scene of a domestic violence incident. The officer determines whether it is appropriate to use the Lethality Screen, though it is suggested that the officer use the Lethality Screen when a past or current intimate relationship is involved and there is a "manifestation of danger" by evidence of at least one of the following criteria: (1) the officer believes that an assault or other violent act has occurred whether or not there was probable cause for arrest, (2) the officer is concerned for the safety of the victim once they leave the incident scene, (3) the officer is responding to a domestic violence call from a victim or at a location where domestic violence had occurred in the past, or (4) the officer has a "gut feeling" that the

victim is in danger. Administration of the Lethality Screen usually occurs near the end of the officer's investigation. (*Maryland Network Against Domestic Violence [MNADV]*, 2013).

At the core of the LAP process is a willing partnership between law enforcement and a local domestic violence service provider. If a victim screens in as "high danger," meaning that the victim is at an increased risk of homicide, the police officer conveys to the victim the danger that she/he is in and tells the victim that people in the same situation have been killed. The officer then tells the victim that she/he would like to call the local 24- hour domestic violence hotline at the collaborating advocacy organization in order to get some information to help the victim. The officer asks whether the victim would consider speaking with the hotline worker. Whether or not the victim chooses to speak to the hotline worker, the officer makes the call to the hotline and provides some basic information to the hotline worker. This may give the victim some time to consider speaking to the hotline worker; therefore, while the officer is on the telephone, she/he will ask the victim if they have reconsidered and would now like to talk. It is the victim's choice whether or not they want to speak to the hotline worker and, if the victim declines to speak, the officer no longer pursues his/her effort to put the victim on the phone. Instead, the hotline worker provides the officer with some immediate safety planning tips for the next 24 hours to share with the victim. If the victim chooses to speak with the hotline worker, the conversation is brief (no more than 10 minutes) and focused, both because the officer must return to service and because the victim may not be in a position to attend to a great deal of information.

Because being on the phone with the victim at the scene of a domestic violence incident is a different type of call for hotline workers, they are trained to use special guidelines to communicate with and engage victims in situations where they do not have much time and where the victim may not have come to terms with the seriousness of their situation. Guidelines for hotline workers convey four main points: 1) gaining the victim's trust, 2) reinforcing the information that the officer has provided about the danger that the victim is in (and thus reinforcing the partnership with law enforcement), 3) educating the victim and doing immediate safety planning, and 4) actively encouraging the victim to come in for services. Through years of experience implementing the LAP in Maryland, advocates have learned that most victims encountered in calls for service from the scene of a domestic violence incident are different from victims who initiate calls to the hotline for help. Victims at the scene of an incident may not be ready to reach out to social services for help or may have not yet even recognized that they are victims of abuse. The hotline worker, therefore, may need to provide more education about domestic violence, provide more information about services, and give more encouragement to access services than they would if a victim had reached out for services on their own.

In Maryland, 100% of law enforcement agencies that respond to calls for service are LAP participants. Between 2006 and 2012, officers administered more than 56,000 screens. During that time period, 53% of victims screened at high risk with 57% of those talking with the advocate at the scene and 31% following up with the agency. (Id.)

This bill would not require local law enforcement agencies to establish an LAP program, but would provide officers with some of the information and tools that form the basis for the Maryland LAP program.

POST currently has a training course for law enforcement officers on the handling of

domestic violence complaints. That training course includes instruction on specified procedures and techniques for responding to domestic violence, including, among others, the signs of domestic violence, and techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and that promote the safety of the victim. This bill would require POST to include procedures and techniques for assessing lethality or signs of lethal violence in domestic violence situations in the existing training course for law enforcement officers in the handling of domestic violence complaints.

- 3) **Argument in Support:** According to the *Santa Barbara County District Attorney, Joyce Dudley*, “The goal of lethality assessments is to prevent domestic violence homicides, serious injury, and re-assault by encouraging more victims to utilize the support and shelter services of domestic violence programs.

“Lethality assessments are protocols designed for law enforcement first responders. Excessive jealousy, having threatened suicide or homicide in the past, heavy drug or alcohol use, or previous cases of choking a victim are tied to increased risk of lethality. Victims are asked a series of questions based on research on factors linked to lethality; certain victims’ responses trigger the ‘protocol referral,’ which is an immediate connection with a local advocacy program.

“One in ten victims of intimate-partner-related homicide experienced some form of violence in the preceding month. Linking women to advocates has been demonstrated to improve women’s quality of life as well as increase their engagement with the criminal legal process.”

4) **Related Legislation:**

- a) AB 2136 (Bonta), would allow Alameda County to develop a domestic violence lethality assessment pilot program for five years. Would specify that the program may investigate which strategies reduce domestic violence fatalities. AB 2136 is awaiting assignment in the Senate Rules Committee.
- b) AB 2290 (Gallagher), would have required the court to consider issuing a post-conviction protective order for child witnesses to domestic violence crimes. AB 2290 was held on the Assembly Appropriations Committee Suspense File.

5) **Prior Legislation:**

- a) AB 1268 (Reyes), of the 2017-2018 Legislative Session, would have created the Domestic Violence and Sexual Assault Prevention Fund and require that moneys in the fund be used, upon appropriation by the Legislature, to provide grants to nonprofit organizations for the purpose of funding programs that incorporate comprehensive, evidence-based, and promising practices to prevent domestic violence and sexual assault. AB 1268 has held on the Senate Appropriations Committee Suspense File.
- b) AB 1312 (Gonzalez-Fletcher), Chapter 692, Statutes of 2017, requires law enforcement and medical professionals to provide victims of sexual assault with written notification of their rights.

- c) SB 40 (Roth), Chapter 331, Statutes of 2017, requires that police reports include whether there were indications that a domestic violence incident involved strangulation or suffocation, as specified.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Santa Barbara County District Attorney, Joyce Dudley

**Opposition**

None

**Analysis Prepared by:** David Billingsley / PUB. S. / (916) 319-3744



Date of Hearing: June 12, 2018  
Chief Counsel: Gregory Pagan

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

SB 1346 (Jackson) – As Introduced February 16, 2018

**SUMMARY:** Clarifies that the existing definition of a multiburst trigger activator includes a bump fire stock or bump fire stock attachment.

**EXISTING LAW:**

- 1) Provides that any person in California who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any multiburst trigger activator is guilty of a misdemeanor punishable by up to one year in the county jail, or a felony punishable by 16 months, two or three years in county jail. (Pen. Code, § 32900.)
- 2) States that any multiburst trigger activator is considered a nuisance and subject to provisions of law permitting the Attorney General, a district attorney, or city attorney to bring an action enjoining the manufacture of, importation of, keeping for sale of, offering for exposing for sale, giving, lending, or possession of. (Pen Code, §§ 18010 & 32990.)
- 3) Defines a multiburst trigger activator as either of the following:
  - a) A device designed or redesigned to be attached to a semiautomatic firearm, which allows the firearm to discharge two or more shots in a burst by activating the device; or
  - b) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm. (Pen. Code, § 16930.)

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Bump stocks, also known as multiburst trigger activators, in plain English, are a type of firearm modification. A bump stock is an accessory that modifies a semiautomatic rifle so that it can fire shots continuously as long as the shooter keeps the rifle against his or her shoulder. The bump stock takes the place of the gun's standard stock (the piece of the rifle that rests against the shooter's shoulder). By holding down the trigger and simultaneously placing pressure on the barrel of the gun, a shooter using a bump stock can shoot almost as quickly as an automatic firearm.

"Bump stocks were reportedly used in the Las Vegas massacre, the deadliest mass shooting in modern American history. Between 10:05 and 10:15 p.m. on October 1, 2017, 64-year-old Stephen Paddock of Mesquite, Nevada, fired more than 1,100 rounds from his suite on the 32nd floor of the Mandalay Bay Hotel. By the end of Paddock's shooting spree, 58 people were dead and another 851 injured. In the wake of this horrific event, and in light of porous borders between states, we want it to be unmistakably clear in California that possession, sale, transfer, and import of these devices is a crime punishable by up to three years in jail.

"In October after the Las Vegas shooting, the Attorney General felt it necessary to issue an advisory to gun retailers, reminding them that bump stocks are illegal under California law. With SB 1346, we seek to clarify the law even further to ensure there is no confusion about what firearm accessories are legal, and illegal, in the state."

- 2) **Las Vegas Shooting:** On October 1, 2017 the deadliest mass shooting committed by an individual in the history of the United States was perpetrated by Stephen Paddock in Las Vegas California. 851 people were injured and 59 people lost their lives, including the perpetrator of the shooting. Paddock utilized 24 guns in the course of the shooting. Many of the weapons utilized were semi-automatic rifles modified with a bump fire stocks so that they functioned with a firing rate similar to the rate of a fully automatic rifle.

This bill would clarify that bump fire stocks and bump fire stock attachments are considered multiburst trigger activators under California law. Possession, manufacture, and sale of these items are punishable as an alternate felony/misdemeanor under California law.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Bay Area Student Activists  
California State Sheriffs' Association  
City of Long Beach  
City of Santa Monica  
Los Angeles County Board of Supervisors  
Bay Area Student Activists

### **Opposition**

Gun Owners of California

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 12, 2018  
Chief Counsel: Gregory Pagan

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

SB 1382 (Vidak) – As Introduced February 16, 2018

**SUMMARY:** Permits the leaving of a handgun in an unattended vehicle if the handgun is locked in a tool box or utility box, and defines a locked tool box or utility box as a fully enclosed container that is permanently affixed to the bed of a pickup truck or vehicle that does not have a trunk, and is locked by a padlock, key lock, combination lock, or other similar locking device.

**EXISTING LAW:**

- 1) Requires every person who is leaving a handgun in an unattended vehicle, lock the handgun in the vehicle's trunk, lock the handgun in a locked container and place the container out of plain view, or lock the handgun in a locked container that is permanently affixed to the vehicle's interior, and a violation of this provision is an infraction punishable by a fine not to exceed \$1,000. (Pen. Code, § 25140, subsd. (a) & (b).)
- 2) Defines "locked container" as "a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device." A locked container "does not include the utility or glove compartment of a motor vehicle." (Pen. Code, § 25140, subd. (d)(1)(A).)
- 3) Defines "trunk" as "the fully enclosed and locked main storage or luggage compartment of a vehicle that is not accessible from the passenger department. A trunk does not include the rear of a hatchback, station wagon, or sport utility vehicle, any compartment which has a window, or toolbox or utility box attached to the bed of a pickup truck." (Pen. Code, § 25140, subd. (d)(1)(C).)
- 4) Defines "vehicle" as "a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks." (Pen. Code, § 25140, subd. (d)(1)(D).)
- 5) Provides that a vehicle is unattended when a person who is lawfully carrying or transporting a handgun in a vehicle is not within close enough proximity to the vehicle to reasonably prevent unauthorized access to the vehicle or its contents. (Pen. Code, § 25140, subd. (d)(2).)
- 6) Defines "plain view", to include any "area of a vehicle that is visible by peering through the window of the vehicle, including windows that are tinted, with or without illumination. " (pen. Code, § 25140, subd. (d)(3).)

- 7) Exempts a peace officer from vehicle safe storage requirements during circumstances requiring immediate aid or action that are within the course of his or her official duties. (Pen. Code, § 25140, subd. (e).)
- 8) States that local ordinances pertaining to handgun storage in unattended cars supersede this section if the jurisdiction had enacted the ordinance before the effective date of this statute. (Pen. Code, § 25140, subd. (f).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Unfortunately, for many who drive either a pickup truck or vehicle that does not have a trunk, the options under current law to legally and safely store a firearm are quite limited. Peace officers, farmers, ranchers, and other persons who drive a vehicle without a trunk are denied a viable option to store their handgun in an area that is not accessible from the passenger compartment."
- 2) **Prior Legislation:**
  - a) SB 497 (Portantino), Chapter 809, Statutes of 2017, allowed a peace officer when leaving a handgun in an unattended vehicle to lock the handgun in the center console secured with a padlock, keylock, combination lock, or other similar locking device.
  - b) SB 869 (Hill), Chapter 651, Statutes of 2016, required every person when leaving a handgun in an unattended vehicle, to secure the handgun in either the trunk of the vehicle or in a locked container out of plain view.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California State Sheriffs' Association

**Opposition**

None

**Analysis Prepared by:** Gregory Pagan / PUB. S. / (916) 319-3744

Date of Hearing: June 12, 2018  
Counsel: David Billingsley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1393 (Mitchell) – As Amended May 9, 2018

**SUMMARY:** Allows a judge discretion to strike a prior serious felony conviction, in furtherance of justice, to avoid the imposition of the five-year prison enhancement when the defendant has been convicted on a serious felony.

**EXISTING LAW:**

- 1) States that any person convicted of a serious felony who previously has been convicted of a serious felony, as defined, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction. The terms of the present offense and each enhancement shall run consecutively. (Pen. Code § 667, subd. (a)(1).)
- 2) Provides that if a defendant has one prior serious and/or violent felony conviction, as defined, that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction. (Pen. Code, § 667, subd. (e)(1).)
- 3) Provides that if a defendant has two or more prior serious and/or violent felony convictions, as defined, that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment as specified. (Pen. Code, § 667, subd. (e)(2).)
- 4) Authorizes a judge or magistrate, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, to order an action to be dismissed, as specified. (Pen. Code, § 1385, subd. (a).)
- 5) Specifies that a judge may, in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. (Pen. Code, § 1385, subd. (a).)
- 6) Prohibits a judge from striking any prior conviction of a serious felony for purposes of enhancement of a sentence. (Pen. Code, § 1385, subd. (b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

- 1) **Author's Statement:** According to the author, "Nearly every sentence enhancement in California can be dismissed at the time of sentencing if the judge finds that doing so would serve the interest of justice. However, under existing law people with current and prior serious felony convictions receive a mandatory five-year enhancement. As a result, judges

lack the discretion to tailor these sentences based on the facts of the case, the defendant's history and culpability or other potential mitigating factors. This has resulted in mandatory additional terms for thousands of individuals incarcerated throughout California's prisons. This rigid and arbitrary system has meted out punishments that are disproportionate to the offense, which does not serve the interests of justice, public safety, or communities.

"SB1393 amends Penal Code Sections 667 and 1385 to restore the court's discretion, in the interest of justice, to strike a five-year sentence enhancement for each prior serious felony conviction on a person's record, when a person is currently convicted of a serious felony. Allowing judicial discretion is consistent with other sentence enhancement laws and retains existing penalties for serious crimes."

- 2) **Courts Have Broad Discretion to Strike Enhancements:** Penal Code section 1385 specifies that a judge may, in furtherance of justice, order an action to be dismissed. That provision has been interpreted to allow courts broad discretion to strike prior convictions and enhancements in order to provide individualized sentencing to a defendant.

"Section 1385 has long been recognized as an essential tool to enable a trial court 'to properly individualize the treatment of the offender.'" (*People v. Tanner* (1979), 24 Cal. 3d 514,530.) "It was designed to alleviate 'mandatory, arbitrary or rigid sentencing procedures [which] invariably lead to unjust results.'" (*People v. Dorsey* (1972), 28 Cal. App. 3d 15,18.) "Society receives maximum protection when the penalty, treatment or disposition of the offender is tailored to the individual case. Only the trial judge has the knowledge, ability and tools at hand to properly individualize the treatment of the offender." (*People v. Williams* (1970) 30 Cal. 3d 470,482, citation and internal quotation marks omitted.)

One of the purposes of Section 1385 is to ensure that sentences are proportional to a defendant's conduct. Striking a prior conviction pursuant to Penal Code section 1385 does not wipe out the prior conviction, or prevent that conviction from being considered in connection with later convictions; it simply means that the judge made a determination that, in the interest of justice, the defendant should not be required to be sentenced to a statutorily increased penalty. (*People v. Ortega* (2000) 84 Cal.App.4th 659, 666.)

Current law provides that when a defendant is sentenced on an offense which qualifies as a serious felony and the defendant has a prior conviction for a serious felony, the defendant must receive an additional five year prison term for each prior conviction for a serious felony. Current law specifically prohibits a judge from using his or her authority under Section 1385 to strike a serious prior conviction and the additional five year prison term.

This bill would provide judges the discretion to strike the five year prison enhancement if the judge found that it was in the furtherance of justice to do so.

- 3) **Prison Overcrowding:** On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:
  - a) 143% of design bed capacity by June 30, 2014;

- b) 141.5% of design bed capacity by February 28, 2015; and,
- c) 137.5% of design bed capacity by February 28, 2016.

California has enacted a series of policy changes intended to reduce the number of adults incarcerated in state prisons and boost investment in rehabilitation. These changes include Realignment, Proposition 47, and Proposition 57.

The California Budget and Policy Center published a report on California's criminal sentencing scheme in December, 2015, entitled "Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach." That report noted that sentencing changes enacted by California had helped the state comply with the federal court orders to reduce prison overcrowding. But the report pointed out that it was not clear that the changes would be enough to maintain the requisite reductions over the long term and that even at the levels ordered by the federal court, the state prisons are still extremely overcrowded.

[\(http://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/\)](http://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/)

The report stated that an important question for policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources. The report raised that question in light of the fact that longer prison terms have been a key driver of prison populations and costs and ultimately recommended cutting the length of prison terms as one way to tackle prison costs.

This bill would provide discretion for courts to avoid imposing a five year prison enhancement (which is currently mandatory), if the circumstances of the case establish that to do so would be in furtherance of justice.

State corrections spending remains stubbornly high in California despite recent criminal justice reforms and the substantial drop in the number of people involved with the state correctional system. Cutting the length of prison terms would further reduce the number of incarcerated adults and thereby allow the state to close prisons and other correctional facilities, generating substantial ongoing savings that could be redirected to other public services and systems. To achieve this outcome – a smaller state prison system – policymakers would have to reduce the length of imprisonment for a broad range of crimes, not simply for nonviolent offenses. Experts note that reducing prison lengths of stay has little to no impact on either crime rates or recidivism.

[\(http://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/\)](http://calbudgetcenter.org/resources/sentencing-in-california-moving-toward-a-smarter-more-cost-effective-approach/)

- 4) **Sentencing Enhancements and Prison Overcrowding:** Existing law contains a variety of enhancements that can be used to increase the term of imprisonment a defendant will serve. Multiple enhancements can be imposed in a single case. Enhancements 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.

According to a recent Public Policy Institute of California (PPIC) publication on enhancements, as of September 2016, 79.9% of prisoners in institutions operated by the

California Department of Corrections and Rehabilitation (CDCR) had some kind of sentence enhancement; 25.5% had three or more. (*Sentence Enhancements: Next Target of Corrections Reform?* PPIC (Sept. 2017))

Among the most common enhancements are a one-year enhancement applied for each prior prison term or felony county jail term and a five-year enhancement applied to individuals convicted of a serious felony for each prior conviction for a serious felony. According to the California Department of Corrections and Rehabilitation, the five-year enhancements, respectively, impacted 19,677 sentences as of Dec. 1, 2017. ([www.ocregister.com/2018/04/24/sb1392-and-sb1393-are-needed-fixes-to-californias-overuse-of-sentence-enhancements/](http://www.ocregister.com/2018/04/24/sb1392-and-sb1393-are-needed-fixes-to-californias-overuse-of-sentence-enhancements/)) Those five-year enhancements are the subject of this bill.

- 5) **Argument in Support:** According to the *California Public Defenders Association*, “SB 1393 (Mitchell) amends Penal Code Sections 667 and 1385 to restore the court’s discretion to strike a five-year sentence enhancement for prior serious felony convictions. Allowing judicial discretion is consistent with other sentence enhancement laws and retains existing penalties for serious crimes. This bill does not affect ‘Three Strikes’ or any other enhancements or sentences.

“SB 1393 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

“Persons convicted of felonies are already sentenced to lengthy prison terms. Sentence enhancements are in addition to those. Studies of sentence enhancements show that adding a longer sentence to an already lengthy sentence has no deterrence on crime. Instead it greatly increases prison populations and disproportionately increases racial disparities in imprisonment.

“Consistent with other enhancement sentence laws, SB 1393 would allow a court use judicial discretion when applying a sentence enhancement for a person convicted of committing a serious felony. SB 1393 does not alter and retains existing sanctions for serious crimes.

“CPDA members have seen individual cases in which imposition of sentence enhancements were not warranted or were manifestly unjust. In one case, a mentally ill defendant was charged with burglary with a burglary prior after literally stealing the shirt he was wearing and food from a home. The defendant was facing at least 7 years in state prison. The judge opined that he would have stricken the priors but his hands were tied under Penal Code section 1385. Under such circumstances sentencing a mentally ill defendant to 7 years in prison is not a deterrent and wastes scarce public resources.”

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*, “As you know, ‘serious felonies’ are defined in Penal Code section 1192.7(c) and include things like murder, forcible rape, lewd acts on a child under 14 years old, kidnapping, exploding a destructive device with intent to injure, carjacking, and continuous sexual abuse of a child – among many others. It is unclear under what sort of scenario a person convicted of one of these serious offenses, after previously being convicted of a serious offense, should not be subject to the enhancement in PC 667. Yet this bill contemplates exactly that – some situation where a judge is able to dismiss an enhancement that the defendant earned by his or



her prior serious criminal conduct.

“Already, under Proposition 57, a non-violent state prison inmate will have an opportunity to go before the Board of Parole Hearings after serving his or her base term, regardless of any enhancements or consecutive sentences. Under that scheme, those who demonstrate their rehabilitation can be paroled without serving the enhancement. SB 1393 would allow the enhancement to be eliminated altogether, before the convicted defendant had even served a day of his or her sentence.

“We believe this is bad public policy that makes our communities less safe.”

**7) Related Legislation:**

- a) SB 1279 (Bradford), would, with exceptions, as specified, limit the maximum term of imprisonment to twice the number of years imposed by the trial court as the base term. SB 1279 is awaiting referral by the Assembly Rules Committee.
- b) SB 1392 (Mitchell), would eliminate the sentencing enhancement which imposes an additional one-year of imprisonment term for each prior separate prison term or county jail felony term. SB 1392 failed passage on the Senate Floor.
- c) SB 1025 (Skinner), would permit a court to grant probation for specified drug offenses. SB 1025 is awaiting referral by the Assembly Rules Committee.

**8) Prior Legislation:**

- a) SB 180 (Mitchell), Chapter 677, Statutes of 2017, limits the three year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substance to convictions for a controlled substance offense where a minor was used or employed in the commission of the offense.
- b) SB 620 (Bradford), Chapter 682, Statutes of 2017, allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.
- c) SB 966 (Mitchell), of the 2015-2016 Legislative Session, would have limited the three year enhancement for prior conviction of specified controlled substance offenses to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses. SB 966 failed in the Assembly Public Safety Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Civil Liberties Union of California (Co-sponsor)  
California Coalition for Women Prisoners (Co-sponsor)

Californians United for a Responsible Budget (Co-sponsor)  
Coalition for Humane Immigrant Rights (Co-sponsor)  
Drug Policy Alliance (Co-sponsor)  
Ella Baker Center for Human Rights (Co-sponsor)  
Friends Committee on Legislation of California (Co-sponsor)  
Pillars of the Community (Co-sponsor)  
The Advocacy Fund (Co-sponsor)  
The Women's Foundation of California, Women 's Policy Institute (Co-sponsor)  
American Friends Service Committee  
Alliance San Diego  
A New Path  
A New Way of Life Reentry Project  
Asian Americans Advancing Justice – California  
Bay Area Chapter of Resource Generation  
Bay Area Equal Voice Coalition  
Black Caucus of the California Community Colleges  
Bend the Arc Jewish Action  
Berkeley Underground Scholars  
BOLD Women's Leadership Network  
California Association of Alcohol and Drug Program Executives  
California Calls  
California Catholic Conference  
California Immigrant Policy Center  
California Public Defenders Association  
California School-Based Health Alliance  
Californians for Safety and Justice  
Center for Employment Opportunities  
Center for Living and Learning  
Center for the Study of Racism, Social Justice & Health  
Center on Juvenile and Criminal Justice  
Coleman Advocates for Children & Youth  
Community Works West  
Contra Costa County Racial Justice Coalition  
Courage Campaign  
Crossroads, Inc.  
Daily Kos  
East Bay Community Law Center  
Equal Justice Society  
Essie Justice Group  
Fair Chance Project  
Fathers and Families of San Joaquin  
Felony Murder Elimination Project  
Harm Reduction Coalition  
Harm Reduction Services  
Human Impact Partners  
Immigrant Legal Resource Center  
Justice Now  
Law Enforcement Action Partnership  
Lawyers' Committee for Civil Rights

Los Angeles Regional Reentry Partnership  
Mayor of Los Angeles, Eric Garcetti  
MILPA  
National Association of Social Workers, California Chapter  
Oakland Law Collaborative  
Our Family Coalition  
Partnership for the Advancement of New Americans  
PICO California  
Prison Law Office  
Prisoner Advocacy Network  
Project Rebound  
Rainwater & Associates  
Riverside's All of Us or None  
Root & Rebound  
San Francisco Public Defenders Office  
Showing up for Racial Justice - Bay Area  
Showing Up for Racial Justice - Long Beach  
Sin Barras  
Starting Over, Inc.  
Students Against Mass Incarceration at University of California, San Diego  
Successful Reentry  
Survived & Punished  
The Greenlining Institute  
Time for Change Foundation  
Transitions Clinic Network  
UnCommon Law  
Venice Community Housing  
W. Hayward Burns Institute  
Western Center on Law and Poverty  
Western Regional Advocacy Project  
White People for Black Lives/Showing Up for Racial Justice – Los Angeles

**Opposition**

California District Attorneys Association  
California State Sheriffs' Association  
Los Angeles Police Protective League  
Peace Officers Research Association of California  
Riverside Sheriffs' Association

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