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In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellant,

v.

ALEXIS ALEJANDRO FUENTES,

Respondent.

Case No. S219109

Orange County
Superior Court Case
No. G048563

APPELLANT'S MOTION FOR JUDICIAL NOTICE

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Appellant respectfully moves this Court, pursuant to Evidence Code sections 452 and 459 and California Rules of Court, rules 8.252(a), and 8.630(g), to take judicial notice of the documents appended to this motion pertaining to Penal Code section 1385, subdivision (c), as enacted by Assembly Bill 1808, Chapter 689, Statutes of 2000.

The following documents are requested for judicial notice:

EXHIBIT A: A Summary of the Fiscal Impact of AB 1808 Basic Sentencing Reform sponsored by the California District Attorneys Association, excerpted from the Senate Committee on Public Safety legislative bill file.

EXHIBIT B: Analysis of AB 1808 prepared for the Senate Committee on Public Safety.

These documents were obtained by counsel for appellant from Legislative Intent Service ("LIS") of Woodland, California. The documents are described, and indicated, under penalty of perjury to be true and correct copies of the originals in the declaration of Heather Thomas, attorney for LIS. (See Exh. C, attached declaration of Heather Thomas.)

Each of the attached exhibits is the proper subject of judicial notice under Evidence Code section 452. Subdivision (c) of that provision provides that judicial notice may be taken of "Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States."

Pursuant to this authority, it is appropriate to take judicial notice of the statements of the California District Attorney Association because they reflect the comments of the sponsor of this legislation. (See *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572, fn. 3 [court took judicial notice of committee reports and individual legislators' (including co-authors') comments from the Assembly and Senate committee bill files]; *People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of memorandum sent by sponsor of legislation to senate committee]; *Wells Fargo Bank v. Bank of America* (1995) 32 Cal.App.4th 424, 434 ["Comments by the author of a bill are properly considered where such comments were before the legislative body and presumably entered into its deliberations in passing the bill."].)

Furthermore, legislative committee analyses are properly the subject of judicial notice to determine the purpose of the legislation. (*In re J.W.* (2002) 29 Cal.4th 200, 211-212.) Here, the detailed analysis conducted by the Senate Committee on Public Safety explains the purpose behind enacting section 1385, subdivision (c).

The types of legislative documents submitted herewith are routinely considered by the reviewing courts of this State when considering the background and purpose of specific bills and statutes. In the present matter, this material sheds considerable light on the circumstances leading to the passage of Assembly Bill 1808 in 2000, and the Legislature's intent behind enacting Penal Code section 1385, subdivision (c).

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CONCLUSION

Accordingly, for the reasons stated above, Appellant respectfully requests that this Court take judicial notice of the documents attached in Exhibits A, B and C.

I declare under penalty of perjury that the foregoing is true and correct. Executed at San Diego, California, on December 16, 2014

KRISTEN KINNAIRD CHENELIA
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[Proposed] Order

This Court grants Appellant's Motion for Judicial Notice.

IT IS SO ORDERED. _____ , P.J.

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EXHIBIT A

BASIC SENTENCING REFORM, PART III:

THE LAST STEP

AB 1808 (WAYNE):

FISCAL IMPACT

Sponsored by:
The California District Attorneys Association

Co-Sponsored by:
The Office of the Attorney General

Supported by:
The Los Angeles District Attorney's Office

August, 2000

AB 1808 – BASIC SENTENCING REFORM: SUMMARY

AB 1808 by Assembly Member Howard Wayne is a short, narrowly focused bill with a single objective: to finish the job of basic sentencing reform.

Prior to 1997, our central sentencing statute, Penal Code section 1170.1, was complex almost beyond understanding. It was filled with a series of very complicated and confusing rules which had, over the years, accumulated so many exceptions that the rules themselves very seldom applied. In fact, the main impact of these rules was to make our sentencing law needlessly complex, to guarantee that certain criminal conduct was "free," and to deny judges sentencing discretion.

The first two sentencing reform bills, by Sen. Lockyer in 1997 (SB 721) and Sen. Schiff in 1998 (SB 1900), have greatly simplified the statute by removing most of these complicated provisions, with very little change in actual sentences. This bill will complete the job of basic sentencing reform by eliminating the last one of these outmoded and unnecessary rules.[1]

- This bill eliminates the consecutive sentence enhancement limitation, which provides that specific enhancements are not allowed on certain subordinate terms.
- This particular rule has so many exceptions and exclusions that **the rule itself almost never applies.**
- In the very few cases where the rule could apply, this bill **would not require any sentence increase at all.**
- Instead, this bill would merely **give judges additional sentencing discretion** in those rare cases.
- Moreover, allowing discretion in those rare cases would typically involve **only a few months of actual additional time.**
- Because so very few sentences will be affected, and because the additional time is very limited, this bill will **have only a very small fiscal impact.**
- As a result, this bill will greatly benefit the criminal justice system by **substantially simplifying the basic sentencing scheme**, with very little change in actual sentences.

Fundamentally, AB 1808 is about "good government" and "good sense." It improves the law by fixing the last problem in our basic sentencing statute at a very low cost. This bill is both a great benefit and a real bargain. It deserves your support.

[1] The main provision in this bill was approved twice by the Senate Public Safety Committee, in SB 721 and SB 1900. Unfortunately, this particular provision was removed from both of those bills in the Appropriations Committee based on fiscal information that has turned out to be completely erroneous and unreliable. This unfortunate error has now been corrected, allowing this provision to be judged on a more realistic estimate of its actual fiscal impact. Based on this new, more accurate fiscal information, this bill (AB 1808) was unanimously approved by the Assembly Appropriations Committee (21-0).

- Sponsored by: The California District Attorneys Association
- Co-sponsored by: The Office of the Attorney General
- Supported by: The Los Angeles District Attorney's Office

FISCAL IMPACT OF AB 1808

Purpose of the Bill

Everybody in the criminal justice system recognizes the need for realistic sentencing reform. The enactment of SB 721 (Lockyer) and SB 1900 (Schiff) finally did something substantial to address this need. However, one essential reform provision was not included in the final version of those bills. This new bill, AB 1808 (Wayne), contains that essential provision.

The fundamental purpose of this bill is to **finish the job of basic sentencing reform** without significantly altering the general sentencing scheme. This proposal will produce actual simplification and real sentencing reform with only a **very small fiscal impact.**

Because the primary goal is simplification, and because very few sentences will actually be affected, the costs associated with this bill will be very small. However, the **benefits** of this bill will be substantial:

- Our sentencing scheme will be simpler and easier to understand.
- The application of our sentencing statutes will be more rational.
- Justice will be improved by ending certain "free" criminal conduct.
- Judicial discretion will be restored to its appropriate place.
- The job of basic sentencing reform will be completed.

Background of the Problem

The original Determinate Sentence Law (DSL), as enacted in 1976, had a significant flaw in its underlying conceptual scheme: The law contained a number of arbitrary and unnecessary limitations and lids that denied judicial discretion and completely precluded any punishment from being imposed for certain multiple crimes and enhancements.

As originally enacted, these limitations and lids had a substantial impact on sentencing and did great harm to the potential punishment that could be imposed. But to avoid this harm, many exceptions to these rules were enacted. In fact, this process of creating exceptions started before the original DSL scheme had even become effective (July 1, 1977).

The heart of the problem is this: Instead of simply recognizing that these arbitrary limitations and lids were bad policy and then abolishing them, the Legislature has continued to just add more and more exceptions to these rules. Every time another injustice caused by these rules became apparent, another new exception was added by either the Legislature or the courts.

The result of twenty years of adding exceptions to these limitations and lids was that our central sentencing statute was filled with a series of complex and confusing rules which had accumulated so many exceptions that the rules themselves seldom applied.

This approach to sentencing law for two decades produced the **nightmare of complexity without purpose:** The general "rule" actually applied to very few cases, while the "exceptions" applied to most or almost all cases. It is, of course, irrational to have a "rule" that almost never applies and exceptions that almost always apply. And, even worse, in the few remaining cases when the "rule" actually did apply, it always denied judicial discretion and had the potential to produce injustices.

The basic sentencing statutes had become complex almost beyond understanding. The limitations and lids of the original DSL had been practically amended out of existence, because the numerous exceptions virtually consumed the rules.

Enactment of SB 721 & SB 1900

SB 721 (Lockyer, 1997) and SB 1900 (Schiff, 1998) were introduced to finally address the issue of simple, low-cost, basic sentencing reform. By overwhelming margins, the Legislature enacted almost all of the reforms exactly as they were proposed in these two bills. The most important accomplishment of SB 721 and SB 1900 was that, for the first time in twenty years, the Legislature enacted bills to significantly simplify the basic statutory scheme, instead of just providing for longer terms. This was a landmark achievement.

Provisions of the Bill

The main subject addressed by this bill, the consecutive sentence enhancement limitation, is contained in PC 1170.1(a), our basic sentencing statute. This rule, including its nature, application, and numerous exceptions, is explained in detail in Attachment #1 (pages 10-13), and is also briefly summarized below.

The bill eliminates the consecutive sentence enhancement limitation, which provides that specific enhancements are not included on certain subordinate terms. This limitation, as presently amended, almost never applies. Moreover, the very few times that it does apply, it denies judicial discretion and automatically rewards a criminal's greater ambition and achievement with a "free" enhancement. Instead of enacting further modifications to this limitation and adding even more complexity to the law, the rule itself must now be simply and finally eliminated.

Because of the numerous exceptions and exclusions that have been enacted over the years, this limitation now has almost no impact on actual sentences (see Attachments #1 & 2). By far the greatest impact of this provision is to make our sentencing law needlessly complex and far more difficult to understand. Eliminating this rule, which now applies in so very few cases, would not result in any significant increase in the sentences imposed, and thus would have only a very small fiscal impact.

In fact, **eliminating this rule would not result in even one additional person being sent to prison.** Furthermore, **eliminating this rule would not mandate any sentence increases at all,** since judges would still have full discretion to impose concurrent sentences and to strike virtually all enhancements in the very few remaining cases now covered by this limitation.

This bill also would make several other changes and improvements in the basic sentencing law. These other changes include the following provisions:

First, the bill eliminates the unnecessary, and now obsolete, special computation provision of PC 1170.95. This is a conforming technical amendment only, with no substantive change and no fiscal impact.

Second, the bill conforms and updates the list of sex crime code sections in PC 1170.1(h) by using a simple cross reference to the violent sex crimes statute, PC 667.6. Originally, these two statutes were identical in their listing of sex crimes. However, the list in PC 1170.1(h) has not always been completely updated to reflect the changes in PC 667.6 (for example, sex crimes committed by threat of authority [Stats. 1993, ch. 127 (Lockyer)]; these crimes are actually already included under the category of "duress" which was added to rape, effective 1/1/91 [Stats. 1990, ch. 630 (Roberti)]; PC 261(a)(2), (b); see *People v. Bergschneider* (1989) 211 CA3d 144, 152). Use of this simple cross reference will ensure continued conformity and correctness. Also, the bill eliminates an obsolete reference to the "merger" provision, which has been repealed [Stats. 1978, ch. 579, sec. 28]. These changes to conform and update the statute will have virtually no fiscal impact because: 1) sex crimes by threat of authority already qualify as a form of "duress," and thus are already included in the statute, and 2) Dept. of Corrections records indicate that there are currently zero commitments (for sex crimes by threat of authority and PC 288.5) that would have been affected by this change.

Third, the bill adds a provision to PC 1385 to clarify and confirm that the court has the authority and discretion to strike either the enhancement itself or the additional punishment for the enhancement in the furtherance of justice. This point was expressly stated in an uncodified provision of SB 721 (as requested by the Judicial Council): "it is not the intent of the Legislature to alter the existing authority and discretion of the court to strike those enhancements or to strike the additional punishment for those enhancements pursuant to Section 1385 . . ." [Stats. 1997, ch. 750 § 9]. Because of possible misunderstanding concerning the court's authority to strike the additional punishment instead of the enhancement itself (see *People v. Bradley* (1998) 64 CA4th 386, 401; *People v. Sainz* (1999) 74 CA4th 565, 569), statutory clarification is now required. This clarification may actually have a beneficial fiscal impact, because some judges who might be reluctant to strike the enhancement in its entirety may be more willing to strike only the punishment for that enhancement.

Impact of the Bill

The main impact of this bill is to eliminate a significant source of needless complexity in our basic sentencing statute. In addition to producing actual **simplification of the law**, the bill will also appropriately **expand the scope of judicial discretion**. Moreover, because so few terms will actually be affected, this bill will have only a **very small fiscal impact.**

The central provision of this bill is the elimination of the consecutive sentence enhancement limitation. As a practical matter, the impact of removing this restriction would be minimal because of three factors: 1) crimes with enhancements often qualify as the principal term; 2) there are

numerous exceptions allowing enhancements on the subordinate term; and 3) sentencing judges still have discretion to impose concurrent, rather than consecutive, sentences, and also to strike almost all enhancements. Thus, it is a rare case in which this limitation has any actual impact.

Furthermore, allowing the court discretion to impose one-third of the term for an enhancement in one of these rare cases would typically add only a few months to the time served. For example, with the normal enhancement term of one year, only one-third of that term could be imposed on a subordinate offense (PC 1170.1(a)) and prison credits would further cut that time in half (PC 2933). Thus, the defendant would have to serve only two months of actual additional time, which amounts to only one-sixth of the normal term for the enhancement.

Moreover, it is now clear that the Department of Corrections, in both its prior and current estimates concerning sentencing reform, has not been able to use actual data from OBIS [Offender Based Information System] to provide any direct fiscal information on the impact of the particular proposal that is the main subject of this bill because their data base does not include this information. Thus, various prior estimates regarding this proposal have been inaccurate and unreliable (see Fiscal Estimates for Sentencing Reform, pages 6-9, and Attachment #3). Furthermore, any estimates regarding the bill's impact that are based merely on the number of prison commitments with a stayed enhancement term would greatly overstate the number of offenders who would be affected because enhancement terms are stayed for numerous reasons that have nothing whatsoever to do with the provisions of this bill (see Attachment #5).

However, some opponents of this bill have expressed concerns that the use of enhancements may lead to lengthy and disproportionate sentences and prison overcrowding. With respect to the actual provisions in this bill, these concerns are completely unfounded and untrue. The focus of this bill is sentence simplification, not sentence increases. In fact, the bill does not require any sentence increases at all; it just gives judges additional discretion in a small group of cases. The reality of what this bill would do and what the practical effect would be is fully laid out in Attachment #1 on the Consecutive Sentence Enhancement Limitation (pages 10-13). The opponents **do not and cannot refute this reality**. In actual application, the impact of this bill will be minimal because: 1) very few sentences will be affected; 2) the potential additional term will be very small; and 3) the decision will be left to the discretion of the court.

The simple truth is this: This bill will greatly benefit the criminal justice system by substantially simplifying the basic sentencing scheme, with very little change in actual sentences. The contrary concerns expressed by the opponents are completely unsupported and plainly wrong.

The **practical** answer to the opponents of this bill is twofold: 1) we almost never see cases involving the actual application of this limitation; and 2) in those rare cases when we do, sentencing judges can conscientiously perform their duties without this artificial restriction on judicial discretion. The **policy** answer to the opponents is also twofold: 1) it is bad policy to perpetuate complexity without purpose; and 2) it is also bad policy to guarantee that additional criminal conduct will be completely "free" – there should always exist at least the possibility of some further punishment for further criminal conduct.

Public Safety Committee Analysis

The analysis prepared by Jerry McGuire for the Senate Public Safety Committee was both thoughtful and thorough. It explained in a fair and objective manner what this bill would do and what the probable impact would be.

Specifically, the analysis stated that the "amount of actual time added to an enhancement for a subordinate term is generally small," and used an example with an increase in time served of only two months. It concluded: "Therefore, the impact on prison population may be small." (Analysis, page 5).

The analysis also recognized that recent amendments to the violent felony list have further limited the effect of this bill. After a discussion of the application of the bill, the analysis concluded: "In any event, **it does appear that the additional punishment imposed because of this bill will only occur in a limited number of cases and will result in relatively few prison years overall.**" (Analysis, page 6).

Interestingly, the two enhancement examples cited in the analysis at the bottom of page 5, PC 12022.6 [excessive loss] and HS 11356.5 [inducing another to violate drug laws], illustrate just how minor the impact will actually be. Based on Dept. of Corrections records, it appears that in the entire current prison population of over 160,000 inmates, only one has a consecutive sentence with a PC 12022.6 enhancement, and the crimes in that case predated the amendment allowing for cumulative losses. In addition, in the entire current prison population, there are no commitments with an enhancement for HS 11356.5.

In short, the analysis for the Public Safety Committee strongly supports the conclusion that the fiscal impact of this bill will be very small.

Conclusion

The time has come to take the last step and **finish the job** of simplifying and improving our basic determinate sentencing statutes. This bill, AB 1808, will produce significant benefits at a very small cost. It has already received overwhelming, bipartisan support (Assembly: Public Safety Committee, passed 6-0; Appropriations Committee, passed 21-0; Floor, passed 75-2; Senate: Public Safety Committee, passed 5-0). It deserves the support of every member of the Legislature.

EXHIBIT B

SENATE COMMITTEE ON PUBLIC SAFETY

Senator John Vasconcellos, Chair
1999-2000 Regular Session

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AB 1808 (Wayne)
As Introduced January 31, 2000
Hearing date: June 20, 2000
Penal Code
JM:mc

DETERMINATE SENTENCING LAW

SUBORDINATE TERM ENHANCEMENTS

HISTORY

Source: Attorney General's Office and California District Attorneys Association

Prior Legislation: SB 1900 (Schiff) – Ch. 926, Stats. 1998
SB 721 (Lockyer) – Ch. 750, Stats. 1997.

Support: Los Angeles County District Attorney

Opposition: California Attorneys for Criminal Justice; California Public Defenders Association; American Civil Liberties Union

Assembly Floor Vote: Ayes 75 – Noes 2

KEY ISSUES

SHOULD THE PROHIBITION ON THE IMPOSITION OF ENHANCEMENTS ON NON-VIOLENT "SUBORDINATE" TERMS (AT A RATE OF 1/3 THE ENHANCEMENT ON THE "PRINCIPAL TERM") BE ELIMINATED?

SHOULD THE SEX CRIME ENHANCEMENT PROVISIONS IN PENAL CODE SECTIONS 1170.1 AND 667.6 BE CONFORMED SO THAT ENHANCEMENTS SHALL BE UNLIMITED FOR SEX OFFENSES LISTED IN PENAL CODE SECTION 667.6?

(CONTINUED)

SHOULD A STATUTE MADE IRRELEVANT BY PROPOSITION 21 (MARCH, 2000, PRIMARY ELECTION) BE ELIMINATED?

SHOULD THE POWER OF THE COURT TO STRIKE THE PUNISHMENT FOR AN ENHANCEMENT UNDER PENAL CODE SECTION 1385 BE SPECIFICALLY SET OUT IN STATUTE?

PURPOSE

The purpose of this bill is to streamline California sentencing statutes, including the elimination of the prohibition on the imposition of enhancements on subordinate terms and clarification of a court's power to strike the punishment for an enhancement.

Existing law – the Determinate Sentencing Law (DSL) – provides that each felony offense has three possible sentences – lower, middle and upper term. The court should impose the middle term, unless there are circumstances in aggravation or mitigation of the offense. (Pen. Code § 1170.) The DSL includes complicated formulae for determining the appropriate sentence in a multiple count case, with only limited consistency among the rules, and exceptions for the rules. (Pen. Code §§ 667.6, 669, 1170.1.)

Existing law generally provides that the court in imposing sentence in a multiple count case deems one count is to be the "principal" term, and imposes a lower, middle or upper term for that crime, and then imposes any applicable enhancements on the principal term. The court can impose consecutive sentences (served in succession), usually at a rate of 1/3 of middle term sentence, or concurrent sentences (served at the same time). If the court imposes consecutive terms, very complicated rules govern the imposition of enhancements on subordinate terms. For example, for violent felonies, the court can impose 1/3 of an enhancement on each subordinate term. (Pen. Code §§ 667.5, 667, 667.6, 669, 1170.1, etc.)

Existing law limits the total term of imprisonment for subordinate terms for consecutive non-violent offenses, imposed at one-third the midterm of the subordinate offenses, and prohibits imposition of specific enhancements (those related to the manner in which the crime was committed) on those offenses. (Pen. Code § 1170.1, subd. (a).) The following exceptions apply to the prohibition on enhancements for subordinate terms for non-violent felonies:

a. Additional terms of imprisonment may be imposed for prior convictions, prior prison terms, or for crimes committed while on bail or while the defendant is released on his or her recognizance.

b. Enhancements may be added to indeterminate sentences.

c. Sentence enhancements for the following circumstances may be applied:

(1) Use of a firearm (Penal Code § 12022.5 and 12022.55.);

(2) Infliction of injury (Penal Code §12022.7 and 12022.9.); or,

(3) Weapons, injury, and abduction in the commission of specified sex crimes. (Penal Code §§ 12022.3, 12022.53, 12022.8 and 667.8.)

This bill would eliminate the prohibition on the imposition of enhancements on consecutive, subordinate terms for non-violent crimes.

This bill would specifically confirm the discretion of the court to strike the punishment for an enhancement in the interests of justice pursuant to Penal Code section 1385.

Existing law provides that a court must impose full term, consecutive sentences for multiple sex crimes that occurred on separate occasions or involved multiple victims. (Penal Code § 667.6, subd. (d).) Full term, consecutive sentences may be imposed where the crimes occurred on a single occasion and with the same victim. (Pen. Code § 667.6. subd. (c).)

Existing law provides that for any violation of paragraph (2), (3), or (6) of subdivision (a) of section 261, paragraph (1) or (4) of subdivision (a) of section 262, section 264.1, subdivision (b) of section 288, subdivision (a) of section 289, or sodomy or oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in section 286 or 288a, the number of enhancements that may be imposed shall not be limited, regardless of whether the enhancements are pursuant to this section, section 667.6, or some other section of law. Each of the enhancements shall be a full and separately served enhancement and shall not be merged with any term or with any other enhancement. (Pen. Code § 1170.1, subd. (h).)

This bill allows unlimited enhancements in all sexual cases specified in Penal Code section 667.6, and thus appears to conform section 667.6 and section 1170.1, subdivision (h).

Existing law provides that, where a defendant commits multiple robberies with a deadly or dangerous weapon, and each of those robberies is not a violent felony as defined in Penal Code section 667.5, subdivision (c), the subordinate sentences will be one-third the mid-term for the robbery and one-third the enhancement for the use of the weapon. (Pen. Code § 1170.95.)

This bill repeals Penal Code section 1170.95, which sets special rules for robbery defendants that have been made irrelevant by Proposition 21 (March, 2000 Primary Election).

COMMENTS

1. Need for this Bill

According to the author:

> AB 1808 is a narrowly focused bill with a single objective: to finish the job of basic sentence reform. Prior to 1997, our central sentence statute, section 1170.0, was complex almost beyond understanding. It was filled with a series of complicated and confusing rules, which had accumulated so many exceptions that the rules themselves very seldom applied. In fact, the main impact of these rules was to make our sentencing law needlessly complex, to guarantee that certain criminal conduct was 'free,' and to deny judges sentencing discretion.
>
> The two previous sentencing reform bills by Senator Lockyer in 1997 and Senator Schiff in 1998 have greatly simplified the statute with very little change in actual sentences. This bill will complete the job of basic sentencing reform by eliminating the last one of these complicated and unnecessary rules.
>
> This bill eliminates the consecutive sentence enhancement limitation. This particular rule has so many exceptions and exclusions that the rule itself almost never applies. Furthermore, in the very few cases where the rule could apply, this bill would not require any sentence increase at all. It would merely give judges additional sentencing discretion in those rare cases.

2. Background Explanations

From 1977 to 1997, statutory law provided for a consecutive sentencing scheme with four basic limitations or "caps" on the various sentencing enhancements that may be applied. There were rules limiting the total time of imprisonment to "double the base term," limiting enhancements for weapons or injuries, limiting non-violent subordinate terms to five years, and prohibiting imposition of enhancements on non-violent subordinate terms. There were numerous exceptions to those rules.

3. Recent Sentencing Reform Bills

a. 1997 Lockyer Bill

SB 721 (Lockyer) – Chapter 750, Statutes of 1997, was drafted as a "sentencing reform" bill and would have eliminated those caps. The other reforms in SB 721 included the following:

i. Eliminating the complicated twice base lid and its numerous exceptions;

ii. Eliminating the remaining restrictions on imposing both a weapon and an injury enhancement;

iii. Eliminating the secondary lids of 10 and 15 years that applied to certain crimes;

iv. Using concise, correct generic references to replace almost all of the lengthy, inaccurate lists of enhancements;

vi. Correcting technical flaws in various statutory provisions; and

vii. Clarifying and simplifying the statutory language.

b. 1998 Schiff Bill

In 1998, SB 1900 (Schiff) – Chapter 926, Statutes of 1998, eliminated the five-year limitation on subordinate terms when imposing consecutive sentences. SB 1900 also provided that the full term prescribed for any enhancements imposed pursuant to any provision for being armed with or using a deadly or dangerous weapon, or for inflicting great bodily injury.

4. Likely Effect of Non-Violent, Subordinate Term Changes

a. Subordinate Term Enhancements Generally do not add Substantial Prison

The amount of actual time added to an enhancement for a subordinate term is generally small. For example, on a subordinate count of spousal battery with an enhancement for being armed with a firearm, Penal Code section 12022(a)(1), the increase in time served would be only two months (1/3 x 1 year = 4 months - 50% credits = 2 months served). Therefore, the impact on prison population may be small. Proposition 21 (March, 2000 ballot) has further limited the effect of this bill. Under Proposition 21 all robberies are violent felonies, not just certain first degree robberies and carjackings, and thus are subject to subordinate term enhancement regardless of the fate of this bill.

b. Non-Violent Crimes that will be Affected by the Subordinate Term Changes

Several property and drug crimes will be eligible for an enhancement under this bill. For example, the taking of or damage to property over $50,000 (Penal Code § 12022.6, subd. (a)(1)) and inducing another person to violate drug laws in excessive values (Health and Safety Code § 1356.5) would now be subject to enhancement (at a rate of 1/3 the enhancement) as part of a subordinate term.

c. Decreasing Punishment for Multiple Crimes under DSL

It can be argued that this bill will ameliorate an inequity in the current sentencing law. A defendant who commits only a single crime feels the full brunt of the DSL. The court imposes the full term for a single count and imposes a full enhancement on that count. However, a defendant who commits a number of crimes, and who is thus arguably a more culpable person, receives a reduced sentence for each of the additional crimes. On a crime-per-crime basis, the person who commits more offenses receives less punishment. Arguably, this violates the most basic maxim of sentencing law – defendants should be punished commensurate with their culpability.

It appears that part of the rationale for the DSL and similar laws was the theory that punishment should be swift and sure. Although the punishment must initially match the severity of a crime, merely adding additional years will have little effect on an inmate. However, the process of charging, pleading, proof and sentencing inevitably takes much of the swiftness out of the swift and sure scheme. In any event, it does appear that the additional punishment imposed because of this bill will only occur in a limited number of cases and will result in relatively few prison years overall.

6. Subordinate Term Enhancements in Sex Crimes

Under existing law, consecutive sentences, including full enhancements on subordinate terms, may be imposed for most sex crimes. Penal Code section 1170.1, subdivision (h), sets out the crimes for which enhancements may be imposed without limitation. These include rape by force, drug or duress; spousal rape by force or duress, rape or sexual penetration in concert; lewd conduct, sexual penetration, oral copulation, or sodomy by force or duress.

This bill adds continuous sexual abuse of a child under the age of 14 (Penal Code section 288.5), and the threatened use of public authority to accomplish rape, rape of a spouse, sodomy, oral copulation (Penal Code §§ 261, subd. (a)(7), 262, subd. (a)(5), 286, subd. (k) and 288a, subd. (k)) to the list of sexual offenses for which subordinate term enhancement may be added without statutory limitation. These crimes are already subject to full term consecutive sentencing for the underlying terms. Further, it does appear that the use of public authority to accomplish a sex crime could be charged as duress, for which enhancements are unlimited under current law.

The crime of continuous sexual abuse of a child was created to avoid problems where child victims could not be adequately certain about the dates on which charged offenses occurred. The need for prosecutors to charge continuous sexual abuse of a child has been limited by Supreme Court cases that loosened requirements for certainty by child victims. Sex crimes against children, committed by force or duress, can now likely be charged as lewd conduct, which is not subject to any sentencing limitations.

According to the sponsor, Department of Corrections records indicate that no inmates currently serving sentences for continuous sexual abuse of a child or for accomplishing a sex crime through threat of authority would be affected by this bill.

7. Impact of Proposition 21

This bill repeals Penal Code section 1170.95, which allowed imposition of 1/3 of an enhancement for use of a weapon in a subordinate term for robbery. With the passage of Proposition 21, any robbery is now included as a violent felony pursuant to Penal Code section 667.5. Consequently, repealing the vestigial Penal Code section 1170.95 is a technical clean-up that will eliminate, albeit in a small way, sentencing confusion.

8. Section 1385 Amendments

Penal Code section 1385 provides that a court can strike an action, or any part thereof, in the interest of justice, unless the Legislature clearly limits that power. Section 1385 includes the power to strike the punishment that may be imposed for a crime or an enhancement, as well as the power to completely dismiss an action, a count or an enhancement. This bill clarifies that judges have power under Penal Code section 1385 to strike the punishment for an enhancement. The confusion on this point may have derived from SB 721 (Lockyer) – Ch. 750, Statutes 1997, that eliminated a provision in Penal Code section 1170.1 that stated that trial judges could strike the "punishment" for a listed enhancement. The provision was confusing, as it truly added little or nothing to a court's power, since the court could dismiss punishment under Penal Code section 1385. The provision in Penal Code section 1170.1 may, however, have been understood by some judges as limiting their power to strike punishment for an enhancement that was not listed in section 1170.1. Arguably, this bill will clearly set out the full range of sentencing discretion for judges. Further, a judge can strike the additional punishment allowed by this bill for enhancements on non-violent subordinate terms.

9. Ball of Confusion – the DSL Saga – What a Long Strange Trip It's Been

The DSL was complex at birth, and has become more so with age (maturity may not be the correct description of its development). It has been said with only some exaggeration that courts commit error with virtually every sentence imposed under the DSL.

In the early years of the DSL, sentencing errors were more often than not resolved in the defendant's favor on appeal. For example, the court would fail to consider certain aggravating factors, or it would use the same factor to impose the upper term as to impose an enhancement. The defendant's sentence would then be lowered on appeal or lowered on remand to the trial court. As trial and appellate courts became more familiar with the law, errors occurred less frequently, and appellate courts may have seen less harm in some errors. When cases were remanded for resentencing, the trial court could mine the complexity of the DSL to impose, in a legal manner, the exact same prison term that was previously found to be improper because of the way the court initially constructed the sentence. Arguably, this was a very wasteful process.

The DSL was amended often in a piecemeal fashion to increase a particular sentencing triad or to add another sentence enhancement. Where it appeared that a defendant in a high publicity case got an inadequate sentence, the sentence for the defendant's crime was quite likely to be increased. These amendments weakened or destroyed much of the consistency in the DSL.

The additional punishments have become so complex that courts not infrequently fail to impose some mandatory penalty. A defendant who appeals his or her sentence may often be told now that continuing with his or her appeal may result in a much more severe sentence than the one he or she thinks is unfair. For example, a defendant serving a 25 years to life sentence for a case in which he stole two bicycles from adjoining garages on separate nights could told that he will likely get at least 35 years, and perhaps 60 years to life, if he pursues his appeal. An inmate who is successful in removing a 4-month enhancement for a non-violent subordinate term, could find that he must serve an additional five years because the court imposed an unauthorized sentence in other counts.

10. Arguments in Support

The San Diego District Attorney argues

> The fundamental purpose of this bill is to finish the job of basic sentencing reform without significantly altering the general sentencing scheme. This proposal will produce action simplification and real sentencing reform with only a modest fiscal impact.
>
> The main provision of this would correct one of the remaining injustices in our present law, which could result in possibly a few sentences being slightly increased, in the discretion of the sentencing court. The bill would do away with certain "free" criminal activity by removing an inappropriate restriction on judicial discretion.

11. Arguments in Opposition

The California Public Defenders Association argues:

> California's Penal Code sufficiently enhances sentences for persons convicted of multiple felonies. Increasing enhancements and expanding their applicability neither deters crime nor increases public safety. It does, however, increase the population in our already overcrowded prisons.

****

EXHIBIT C

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

DECLARATION OF HEATHER THOMAS

I, Heather Thomas, declare:

I am an attorney licensed to practice in California, State Bar No. 280817, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain all documents relevant to the enactment of Assembly Bill 1808 of 2000. Assembly Bill 1808 was approved by the Legislature and was enacted as Chapter 689 of the Statutes of 2000.

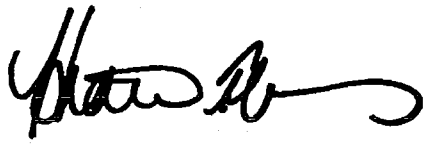
The following list identifies all documents obtained by the staff of Legislative Intent Service, Inc. on Assembly Bill 1808 of 2000. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service, Inc. and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service, Inc. In compiling this collection, the staff of Legislative Intent Service, Inc. operated under directions to locate and obtain all available material on the bill.

ASSEMBLY BILL 1808 OF 2000:

1. All versions of Assembly Bill 1808 (Wayne-2000);
2. Procedural history of Assembly Bill 1808 from the 1999-2000 *Assembly Final History*;
3. Analysis of Assembly Bill 1808 prepared for the Assembly Committee on Public Safety;
4. Material from the legislative bill file of the Assembly Committee on Public Safety on Assembly Bill 1808;
5. Analysis of Assembly Bill 1808 prepared for the Assembly Committee on Appropriations;
6. Material from the legislative bill file of the Assembly Committee on Appropriations on Assembly Bill 1808;
7. Third Reading analysis of Assembly Bill 1808 prepared by the Assembly Committee on Public Safety;

8. Material from the legislative bill file of the Assembly Republican Caucus on Assembly Bill 1808;
9. Analysis of Assembly Bill 1808 prepared for the Senate Committee on Public Safety;
10. Material from the legislative bill file of the Senate Committee on Public Safety on Assembly Bill 1808;
11. Three analyses of Assembly Bill 1808 prepared by the Senate Committee on Appropriations;
12. Material from the legislative bill file of the Senate Committee on Appropriations on Assembly Bill 1808;
13. Third Reading analysis of Assembly Bill 1808 prepared by the Office of Senate Floor Analyses;
14. Material from the legislative bill file of the Senate Republican Office of Policy on Assembly Bill 1808;
15. Material from the legislative bill file of Assembly member Howard Wayne on Assembly Bill 1808;
16. Post-enrollment documents regarding Assembly Bill 1808;
17. Press Release #L00:180 issued by the Office of the Governor on September 28, 2000, to announce that Assembly Bill 1808 had been signed;
18. Material from the legislative bill file of the Department of Finance on Assembly Bill 1808;
19. Excerpt regarding Assembly Bill 1808 from the *Digest of Legislation*, prepared by the Office of Senate Floor Analyses, 2000.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of September, 2014 at Woodland, California.



HEATHER THOMAS

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: ***People v. Fuentes***
No.: **S219109**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **December 16, 2014**, I served the attached **APPELLANT'S MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Miles David Jessup, Esq.
Orange County Public Defender
901 West Civic Center Drive, Suite 200
Santa Ana, CA 92703-2352
Attorney for Respondent Alexis Alejandro Fuentes
(2 Copies)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **December 16, 2014**, at San Diego, California.

S. McBrearty
Declarant

S. McBrearty
Signature

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