

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff and Respondent,

v.

RANDOLPH STEVEN ESQUIVEL,

Defendant and Appellant.

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} No. S262551  
}  
}  
}  
}  
}

Second District Court of Appeal, Division Five, Case No. B294024  
Los Angeles County Superior Court No. NA102362  
Honorable Jesus I. Rodriguez, Presiding Judge

**MOTION FOR JUDICIAL NOTICE**

MARK R. FEESER  
ATTORNEY AT LAW  
State Bar No. 252968  
3940-7174 Broad Street  
San Luis Obispo, CA 93401  
805-542-0189  
[Mark.R.Feeser@gmail.com](mailto:Mark.R.Feeser@gmail.com)

Attorney for Defendant and  
Appellant Randolph Steven Esquivel

By Appointment of The  
Supreme Court of California

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

THE PEOPLE OF THE STATE OF  
CALIFORNIA,

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RANDOLPH STEVEN ESQUIVEL,

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**MOTION FOR JUDICIAL NOTICE**

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

Pursuant to rule 8.252 of the California Rules of Court, and  
Evidence Code sections 452 and 459, appellant Randolph Steven  
Esquivel, by and through his attorney, respectfully requests that  
this Court take judicial notice of two legislative history  
documents regarding Senate Bill No. 136 (2019-2020 Reg. Sess.) §  
1, effective Jan. 1, 2020) (“SB 136”), as they relate to the issues  
set for in Appellant’s Opening Brief on the Merits, which is being  
filed along with this request. Copies of the relevant legislative  
history documents are attached as Exhibits A and B.

This motion is based on the attached Memorandum of  
Points and Authorities.

DATED: November 23, 2020

Respectfully submitted,

Mark R. Feeser

MARK R. FEESER

Attorney for Appellant

## MEMORANDUM OF POINTS AND AUTHORITIES

### **A. Procedural Background.**

On August 12, 2020, this Court granted review, limited to the following issue: Is the judgment in a criminal case considered final for purposes of applying a later ameliorative change in the law when probation is granted and execution of sentence is suspended, or only upon revocation of probation when the suspended sentence is ordered into effect? The question before this Court is whether appellant is entitled to benefits of the recent ameliorative amendment to Penal Code section 667.5, subdivision (b) (SB 136), which was enacted during this appeal.

Appellant's argument that the Legislature intended for the amendments to Penal Code section 667.5, subdivision (b) to apply retroactively, and that the Legislative intent is consistent with treating a grant of probation, where the sentence is imposed but suspended, as a non-final order for purposes of *In re Estrada* (1965) 63 Cal.2d 740, is based in part on the legislative history of SB 136, including statements contained in the Senate Floor Analysis for this legislation. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 136 (2019-2020 Reg. Sess.); Sen. Rules Com., Off. of Sen. Floor Analyses, Unfinished Business of Sen. Bill No. 136 (2019-2020 Reg. Sess).)

It is appropriate to take judicial notice of committee analyses and reports. (*People v. Snyder* (2000) 22 Cal.4th 304, 309 [judicial notice of senate analysis]; *People v. Ledesma* (1997) 16 Cal.4th 90, 98 [judicial notice of assembly bill analysis]; *People v. Eubanks* (1997) 14 Cal.4th 580, 591, fn. 3 [judicial notice of

committee reports].)

These legislative history documents are relevant to this appeal because, among other things, it is important to demonstrate that the legislature did not intend to alter existing law regarding finality of judgments or retroactive application of ameliorative legislation. The legislative analysis further demonstrates that SB 136 was enacted to eliminate an ineffective sentence enhancement, to save taxpayer dollars while reducing prison and jail populations, and to redirect resources towards rehabilitative programming. These legislative documents were not presented to the trial court because SB 136 was enacted after appellant's probation was revoked and his sentence executed and while this case was pending on appeal.

### CONCLUSION

For the foregoing reasons, appellant respectfully requests that this Court take judicial notice of the attached Senate Floor Analysis of SB 136.

DATED: November 23, 2020

Respectfully submitted,

Mark R. Feeser

MARK R. FEESER

Attorney for Appellant

**[PROPOSED] ORDER GRANTING MOTION FOR  
JUDICIAL NOTICE**

Good cause appearing, it is hereby ordered that Appellant's Motion for Judicial Notice of: 1) Senate Rules Committee, Office of Senate Floor Analyses, Unfinished Business of Sen. Bill No. 136 (2019-2020 Reg. Sess.), and 2) Senate Rules Committee, Office of Senate Floor Analyses, 3d reading analysis of Sen. Bill No. 136 (2019-2020 Reg. Sess.), is GRANTED.

Dated: \_\_\_\_\_

Chief Justice

**EXHIBIT A:**

Senate Rules Committee, Office of Senate Floor Analyses,  
Unfinished Business of Sen. Bill No. 136 (2019-2020 Reg. Sess.)

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UNFINISHED BUSINESS

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Bill No: SB 136  
Author: Wiener (D), et al.  
Amended: 9/3/19  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 5-2, 3/26/19  
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener  
NOES: Moorlach, Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 21-11, 5/28/19  
AYES: Allen, Atkins, Beall, Bradford, Caballero, Durazo, Glazer, Hertzberg, Hill,  
Hueso, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Roth, Skinner, Stern,  
Wieckowski, Wiener  
NOES: Bates, Borgeas, Chang, Galgiani, Grove, Jones, Moorlach, Morrell,  
Nielsen, Stone, Wilk  
NO VOTE RECORDED: Archuleta, Dodd, Hurtado, Portantino, Rubio, Umberg

ASSEMBLY FLOOR: 41-37, 9/12/19 - See last page for vote

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**SUBJECT:** Sentencing

**SOURCE:** American Civil Liberties Union of California  
California Coalition for Women Prisoners  
Californians United for a Responsible Budget  
Coalition for Humane Immigrant Rights  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Friends Committee on Legislation  
Legal Services for Prisoners with Children  
Pillar of the Community  
Tides Advocacy

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**DIGEST:** This bill amends the one-year sentence enhancement for each prior prison or county jail felony term that applies to a defendant sentenced on a new felony by imposing the one-year sentence enhancement on a defendant sentenced on a new felony only if the defendant has a prior conviction for a sexually violent offense.

*Assembly Amendments* require defendants who have previously been convicted of a sexually violent offense to receive the one-year sentence enhancement when sentenced on a new felony conviction.

### **ANALYSIS:**

Existing law:

- 1) Imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code, § 667.5, subd. (a).)
- 2) Imposes a one-year sentence enhancement for each prior prison or county jail felony term if the new offense is a felony. (Pen. Code, § 667.5, subd. (b).)
- 3) Defines “sexually violent offense” to include specified sex offenses committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person. (Welf. & Inst. Code, § 6600, subd. (b).)

This bill amends the one-year sentence enhancement for prison or county jail felony priors and by imposing the one-year sentence enhancement for a defendant sentenced to a new felony offense only if the defendant has a prior conviction for a sexually violent offense, as defined in subdivision (b) of Welfare and Institutions Code Section 6600.

### **Comments**

According to the author of this bill:

Senate Bill 136 repeals a costly and ineffective 1-year sentence enhancement that is applied to current sentences for each prior felony jail or prison term served. This 1-year enhancement re-punishes people for previous jail or prison time served instead of the actual crime when convicted of a non-violent felony. By ignoring the actual offense committed, this enhancement exacerbates existing racial and socio-economic disparities in our criminal justice system.



Additionally, wide-spread research refutes the underlying premise that arbitrary enhancements increase public safety or deter future crime. Instead, evidence shows that longer and overly-punitive sentences are extremely expensive and increase the chances that someone will reoffend. Given that this 1-year enhancement is commonly used, the Department of Finance projects that repealing this single enhancement will save California tax payers tens of millions dollars each year. It will also keep families together, redirect funds to evidence-based rehabilitation and reintegration programs, and move California away from our failed mass incarceration policies. This 1-year enhancement does apply to repeat violent offenders and leaves in place the discretion that prosecutors and judges need to treat a repeat offender more harshly than a first time offender. Amendments made in the Assembly exclude sexual predators so that these offenders are still subject to this 1-year enhancement.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, cost savings (General Fund) possibly in the tens of millions of dollars annually. California Department of Corrections and Rehabilitation estimates there are 10,000 inmates currently incarcerated serving a one-year prison enhancement.

**SUPPORT:** (Verified 9/12/19)

American Civil Liberties Union of California (co-source)  
California Coalition for Women Prisoners (co-source)  
Californians United for a Responsible Budget (co-source)  
Coalition for Humane Immigrant Rights (co-source)  
Drug Policy Alliance (co-source)  
Ella Baker Center for Human Rights (co-source)  
Friends Committee on Legislation (co-source)  
Legal Services for Prisoners with Children (co-source)  
Pillars of the Community (co-source)  
Tides Advocacy (co-source)  
Access Women's Health Justice  
All of Us or None  
Alliance San Diego  
Anti-Recidivism Coalition  
Asian Americans Advancing Justice-California  
Behavioral Health Services, Inc.  
Bend the Arc  
Black American Political Association of California

California Attorneys for Criminal Justice  
California Catholic Conference  
California Council of Churches IMPACT  
California Democratic Party  
California Public Defenders Association  
Californians for Safety and Justice  
Center on Juvenile and Criminal Justice  
Community Justice Action Fund  
Courage Campaign  
Equal Justice Society  
Fair Chance Project  
Harm Reduction Coalition  
Haywood Burns Institute  
Homeboy Industries  
Human Impact Partners  
Immigrant Legal Resource Center  
Impact Hub Oakland  
Indivisible Sausalito  
Initiate Justice  
Justice Teams Network  
JusticeLA  
Law Enforcement Action Partnership  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Aid at Work  
Monterey County Public Defender's Office  
National Association of Social Workers, California Chapter  
NextGen California  
Pangea Legal Services  
Peninsula Progressives  
Prison Law Office  
Public Health Justice Collective  
Riverside Temple Beth El  
San Francisco Peninsula People Power  
San Francisco Public Defender's Office  
SEIU California  
Showing Up for Racial Justice Bay Area  
Showing Up for Racial Justice Marin  
Smart Justice California  
Starting Over, Inc.  
Survived and Punished

Time for Change Foundation  
Transgender, Gender-Variant, Intersex Justice Project  
Underground Scholars Initiative  
Unite the People  
Voices for Progress  
W. Haywood Burns Institute  
Young Women's Freedom Center  
Multiple individuals

**OPPOSITION:** (Verified 9/12/19)

California District Attorneys Association  
California State Sheriffs Association  
Los Angeles Police Protective League  
Riverside Sheriffs' Association

**ASSEMBLY FLOOR:** 41-37, 9/12/19

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Bonta, Burke, Calderon, Carrillo, Chiu, Chu, Daly, Diep, Eggman, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, McCarty, Medina, Mullin, Quirk, Reyes, Luz Rivas, Robert Rivas, Santiago, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

**NOES:** Bigelow, Boerner Horvath, Brough, Cervantes, Chau, Chen, Choi, Cooley, Cooper, Cunningham, Flora, Fong, Frazier, Gabriel, Gallagher, Gray, Irwin, Kiley, Lackey, Low, Maienschein, Mathis, Mayes, Melendez, Muratsuchi, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Rodriguez, Blanca Rubio, Salas, Smith, Voepel, Waldron

**NO VOTE RECORDED:** Nazarian

Prepared by: Stella Choe / PUB. S. /  
9/13/19 16:46:50

\*\*\*\* END \*\*\*\*

**EXHIBIT B:**

Senate Rules Committee, Office of Senate Floor Analyses, 3d  
reading analysis of Sen. Bill No. 136 (2019-2020 Reg. Sess.)

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THIRD READING

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Bill No: SB 136  
Author: Wiener (D), et al.  
Introduced: 1/15/19  
Vote: 21

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SENATE PUBLIC SAFETY COMMITTEE: 5-2, 3/26/19  
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener  
NOES: Moorlach, Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

---

**SUBJECT:** Sentencing

**SOURCE:** American Civil Liberties Union of California  
California Coalition for Women Prisoners  
Californians United for a Responsible Budget  
Coalition for Humane Immigrant Rights  
Drug Policy Alliance  
Ella Baker Center for Human Rights  
Friends Committee on Legislation  
Legal Services for Prisoners with Children  
Tides Advocacy

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**DIGEST:** This bill repeals the one-year sentence enhancement for each prior prison or county jail felony term that applies to a defendant sentenced on a new felony.

**ANALYSIS:**

Existing law:

- 1) Imposes a three-year sentence enhancement for each prior separate prison term served by the defendant if the prior offense was a violent felony and the new offense is a violent felony. (Pen. Code, § 667.5, subd. (a).)

- 2) Imposes a one-year sentence enhancement for each prior prison or county jail felony term if the new offense is a felony. (Pen. Code, § 667.5, subd. (b).)

This bill deletes the one-year sentence enhancement for prison or county jail felony priors.

## **Background**

According to the author of this bill:

SB 136 (Wiener) would repeal the provision under Penal Code 667.5(b) that requires an additional one-year term for each prior separate felony that resulted in incarceration in jail or prison. The imposition of this enhancement is ineffective in protecting public safety, is wasteful of public resources, and is damaging to the families and communities that disproportionately suffer from these long sentences. Those families and communities are overwhelming Black and Latino. This injustice undermines the public trust in our laws, law enforcement, and our political institutions.

California has some of the most severe sentence enhancements for prior convictions in the nation. According to the Public Policy Institute of California (PPIC), “California has more than 100 separate code sections that enhance sentences” based on a person’s current offense and/or record of prior convictions. As of 2016, 79% of people under California Department of Corrections and Rehabilitation custody had some kind of sentence enhancement attached to their base sentence; 25% had three or more enhancements stacked on. SB 136 would amend the most commonly applied sentencing enhancement that adds one year for each previous prison or felony jail term, and which impacted one-third of people convicted in 2017. (Fn. omitted.)

This single enhancement, applied wholesale and scattershot, is a massive driver of prison and jail populations and associated costs to taxpayers and to the families of incarcerated Californians. According to data provided by [California Department of Corrections and Rehabilitation] CDCR, as of December 31, 2108, the one-year enhancement authorized by Penal Code 667.5 (b) was applied 15,422 times to persons in state prisons (this is a count of application, not a count of people, as some prisoners have multiple enhancements). Data on application in county jails is not readily available, but it is reasonable to assume an equal or greater number of persons convicted of non-violent, non-serious, non-sex offenses are also burdened with additional time for a prior felony, such as a common drug possession for sale offense.

....

Repealing ineffective sentencing enhancements will save hundreds of millions of dollars, reduce prison and jail populations, mitigate racial and gender disparities in incarceration, and end the double punishment for prior convictions. It will give California the opportunity to divest from expensive and ineffective policies of mass incarceration and instead invest in our communities.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 5/13/19)

American Civil Liberties Union of California (co-source)  
California Coalition for Women Prisoners (co-source)  
Californians United for a Responsible Budget (co-source)  
Coalition for Humane Immigrant Rights (co-source)  
Drug Policy Alliance (co-source)  
Ella Baker Center for Human Rights (co-source)  
Friends Committee on Legislation (co-source)  
Legal Services for Prisoners with Children (co-source)  
Tides Advocacy (co-source)  
Access Women's Health Justice  
Alliance San Diego  
Asian Americans Advancing Justice-California  
Bend the Arc: Behavioral Health Services, Inc.  
Black American Political Association of California  
California Attorneys for Criminal Justice  
California Catholic Conference  
California Council of Churches IMPACT  
California Public Defenders Association  
Californians for Safety and Justice  
Center on Juvenile and Criminal Justice  
Community Justice Action Fund  
Courage Campaign  
Equal Justice Society  
Fair Chance Project  
Harm Reduction Coalition  
Homeboy Industries  
Human Impact Partners  
Immigrant Legal Resource Center  
Impact Hub Oakland

Indivisible Sausalito  
Initiate Justice  
Justice Teams Network  
JusticeLA  
Law Enforcement Action Partnership  
Lawyers' Committee for Civil Rights of the San Francisco Bay Area  
Legal Aid at Work  
National Association of Social Workers, California Chapter  
NextGen California  
Pangea Legal Services  
Peninsula Progressives  
Pillars of the Community  
Prison Law Office  
Public Health Justice Collective  
San Francisco Peninsula People Power  
San Francisco Public Defender's Office  
Showing Up for Racial Justice Bay Area  
Showing Up for Racial Justice Marin  
Smart Justice California  
Stanislaus County Public Defender Laura Arnold  
Starting Over, Inc.  
Time for Change Foundation  
Transgender, Gender-Variant, Intersex Justice Project  
Underground Scholars Initiative  
Unite the People  
W. Haywood Burns Institute  
Young Women's Freedom Center  
Multiple individuals

**OPPOSITION:** (Verified 5/10/19)

California District Attorneys Association  
California State Sheriffs Association  
Los Angeles District Attorney's Office  
Los Angeles Police Protective League  
Riverside Sheriffs' Association

Prepared by: Stella Choe / PUB. S. /  
5/14/19 16:03:50

\*\*\*\* END \*\*\*\*



**DECLARATION OF SERVICE BY MAIL AND  
ELECTRONIC SERVICE**

**Re: People v. Randolph Steven Esquivel  
Supreme Court Case No.: S262551**

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, employed in the County of San Luis Obispo, and not a party to the within action; my business address is 3940-7174 Broad Street, San Luis Obispo, CA 93401. My electronic service address is [mark.r.feesser@gmail.com](mailto:mark.r.feesser@gmail.com).

On **November 23, 2020**, I served the following:

**MOTION FOR JUDICIAL NOTICE**

by placing a true copy in an envelope addressed to each addressee, respectively as follows:

Clerk of the Los Angeles Sup. Court,  
The Honorable Jessie I. Rodriguez  
Governor George Dukmejian  
Courthouse  
275 Magnolia Avenue  
Long Beach, CA 90802

Randolph Steven Esquivel  
CDC# BH9729  
California Correctional  
Institute  
24900 Highway 202  
Tehachapi, CA 93561

Second District Court of Appeal  
Division Five  
300 S. Spring Street  
2nd Floor, North Tower  
Los Angeles, CA 90013

Each said envelope was sealed and the postage thereon fully prepaid, and then placed for deposit in the United States Postal Service this same day following ordinary business practices.

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//  
//

**DECLARATION OF SERVICE BY MAIL AND  
ELECTRONIC SERVICE (Cont.)**

On **November 23, 2020**, I transmitted a PDF version of this document by electronic mail to each of the following using the email addresses indicated:

Office of the Attorney General  
Los Angeles Office  
Los Angeles, CA 90013-1230  
[docketingLAawt@doj.ca.gov](mailto:docketingLAawt@doj.ca.gov)

California Appellate Project  
Los Angeles Office  
Los Angeles, CA 90071  
[CAPdocs@lacap.com](mailto:CAPdocs@lacap.com)

Los Angeles District Attorney  
Los Angeles, CA 90012  
[truefiling@da.lacounty.gov](mailto:truefiling@da.lacounty.gov)

I declare under penalty of perjury that the foregoing is true and correct. Executed **November 23, 2020**, at San Luis Obispo, California.

Mark R. Feeser  
MARK R. FEESER