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SUPREME COURT
FILED

JUN 17 2019

Jorge Navarrete Clerk

Deputy

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

DOUGLAS EDWARD MCKENZIE,

Defendant and Appellant.

S251333

F073942

Madera County
Case Numbers
MCR047554
MCR047692
MCR047982

MOTION FOR JUDICIAL NOTICE

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

Pursuant to rule 8.252 of the California Rules of Court, and to
Evidence Code sections 452 and 459, appellant Douglas McKenzie, by and
through his attorney, respectfully requests that this Court take judicial
notice of four legislative history documents regarding Senate Bill 180, as

they relate to the issues set forth in the Answer Brief on the Merits, which is being filed along with this request. Copies of the documents are attached hereto as Exhibits A through D.

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

Dated: June 14, 2019

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MEMORANDUM OF POINTS AND AUTHORITIES

A. Procedural Background

This court has granted the People's petition for review on the question of when a grant of probation constitutes a "final judgment" for purposes of *In re Estrada* (1965) 63 Cal.2d 740. Specifically, the question before this court is whether appellant, whose current appeal arises from a revocation of probation and subsequent imposition of sentence, is entitled to the effect of recent amendments to Health and Safety Code section 11370.2, adopted by the Legislature during the pendency of this appeal as part of Senate Bill 180.

Appellant's argument that the Legislature intended for Health and Safety Code section 11370.2 to apply retroactively, and that the Legislative intent is consistent with treating a grant of probation with no sentence imposed as a non-final order for purposes of *Estrada*, is based in part on the legislative history of Senate Bill 180, specifically on statements contained in the Assembly Floor Analysis, the Senate Floor Analysis, and analyses prepared for both the Assembly and Senate Public Safety Committees. 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

Code, § 9080, subd. (a) [legislative records relating to bills provide evidence of legislative intent].) “In enforcing the command of a statute, both the policy expressed in its terms and the object implicit in its history and background should be recognized.” (*Shafer v. Registered Pharmacists Union* (1940) 16 Cal.2d 379, 383.) “The guiding star of statutory construction is the intention of the Legislature. To the end that it be correctly ascertained the statute is to be read in the light of its historical background and evident objective.” (*H.S. Mann Corp. v. Moody* (1956) 144 Cal.App.2d 310, 320.)

Exhibits A through D consist of an analysis prepared for the Assembly Public Safety Committee, an analysis prepared for the Senate Public Safety Committee, a Senate Floor Analysis, and an Assembly Floor Analysis. Copies of these documents are attached to this motion; they were printed from California Legislative Information¹. These materials are in the category of “[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.” (*Post v. Prati* (1979) 90 Cal.App.3d 626, 634, citing Evid.Code, § 452, subd. (c).)

Judicial notice of an item specified in section 452 is mandatory so

¹ <<http://leginfo.legislature.ca.gov/>>

long as the party requesting such judicial notice gives each adverse party sufficient notice of the request, and provides the court with sufficient information to enable it to take the requested judicial notice. (Evid. Code, § 453 [“court shall take judicial notice”]; Evid. Code, § 459, subd. (a) [reviewing court shall take judicial notice of each matter which trial court was required to notice under Evid. Code, § 453].) Appellant has complied with both requirements by submitting the actual documents of which notice is sought to both the adverse party and this Court as exhibits to this motion. Consequently, the instant request falls within the mandatory language of Evidence Code section 453.

The documents sought to be noticed were not presented to the trial court. (See Cal. Rules of Court, rule 8.252(a)(2)(B).) As noted, Senate Bill 180 was passed during the pendency of this appeal; thus, neither the issue before this court nor the documents themselves existed while this matter was before the superior court.

For the foregoing reasons, appellant respectfully requests this Court to grant this motion, and to take judicial notice of the legislative history documents submitted herewith as Exhibits A through D.

Dated: June 14, 2019

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EXHIBIT A

SENATE THIRD READING
SB 180 (Mitchell and Lara)
As Introduced January 24, 2017
Majority vote

SENATE VOTE: 22-13

Committee	Votes	Ayes	Noes
Public Safety	4-2	Jones-Sawyer, Gonzalez Fletcher, Rubio, Santiago	Lackey, Fbra

SUMMARY: Limits the current 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.

EXISTING LAW:

- 1) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance.
- 2) Provides that any person convicted of, or conspiracy to commit the sale, furnishing, transportation, or possession for sale of cocaine, cocaine base, heroin, or other specified controlled substances shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses.
- 3) Provides that any person convicted of, or conspiracy to commit the sale, possession for sale, the manufacture, possession with the intent to manufacture PCP, or using a minor in the commission of specified offenses related to PCP shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses.
- 4) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport cocaine, cocaine base, or heroin, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for three, four, or five years.
- 5) States, except as provided, that every person who possesses for sale or purchases for purposes of sale any of the specified controlled substances, including cocaine and heroin, shall be punished by imprisonment in a county jail for two, three, or four years.
- 6) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or

attempts to import into this state or transport methamphetamine, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for two, three, or four years.

- 7) States that the possession for sale of methamphetamine, and other specified controlled substances is punishable by imprisonment in a county jail for 16 months, or two or three years.
- 8) Provides that any person who manufactures, compounds, converts, produces, derives, processes, or prepares specified controlled substances is guilty of a felony, punishable by imprisonment in the state prison for three, five or seven years.
- 9) Any person who possesses specified chemicals with the intent to manufacture methamphetamine or PCP shall be punished by two, four, or six years in state prison.

FISCAL EFFECT: Unknown. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS: According to the author, "Sentencing enhancements do not prevent or reduce drug sales, but do have destabilizing effects on families and communities. Research finds that the length of sentences does not provide any deterrent or significant incapacitation effect; in other words, longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught (Russell, Sarah F, "Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing," 43 UC Davis L. Rev. 1135 2010). Research shows that people incarcerated for selling drugs are quickly replaced by other people (U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform 2004).

"As of 2014, there were at least 1,635 people in county jails across California sentenced to five to ten years. There were at minimum, 124 people sentenced to more than ten years in county jail. The leading causes of these excessive sentences are drug sales, possession for sale, or similar nonviolent drug offenses, which are compounded by cruel and costly sentencing enhancements. (California State Sheriffs Association letter to "Interested Parties" April 25, 2014.) Thousands more are serving such sentences in prison.

"In November 2016, voters overwhelmingly passed Proposition 57, making people in prison with non-violent convictions eligible for parole after completing their base terms – prior to serving time on any sentence enhancements. However, Proposition 57 does not impact people in county jail. Thus, people in county jail can serve longer sentences than those in state prison, even if they have been convicted of the same crime.

"The current policy of sentencing people with nonviolent convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use.

"SB 180 will reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites. (Human Rights Watch, "Decades of Disparity: Drug Arrests and Race in the United States." 2009). Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense (Sonja B Starr and Marit Rehavi, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker," Yale Law Journal 123, no. 1 2013).

"However, incarceration can lead to more crime by destabilizing families and communities. Many people who return from incarceration face insurmountable barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems (Ella Baker Center for Human Rights, "Who Pays? The True Cost of Incarceration on Families" 2015)."

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

FN: 0001067

EXHIBIT B

Date of Hearing: June 27, 2017
Chief Counsel: Gregory Pagan

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

SB 180 (Mitchell) – As Introduced January 24, 2017

SUMMARY: Limits the current three year enhancement for a prior conviction related to the sale or possession for sale of specified controlled substance to convictions for the manufacture of a controlled substance, or using or employing a minor in the commission of specified controlled substance offenses.

EXISTING LAW:

- 1) Classifies controlled substances in five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)
- 2) Provides that any person convicted of, or conspiracy to commit the sale, furnishing, transportation, or possession for sale of cocaine, cocaine base, heroin, or other specified controlled substances shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (a).)
- 3) Provides that any person convicted of, or conspiracy to commit the sale, possession for sale, the manufacture, possession with the intent to manufacture PCP, or using a minor in the commission of specified offenses related to PCP shall, in addition to any other punishment, receive a full, separate, and consecutive three year term of imprisonment in a county jail for each prior conviction for sale, possession for sale, manufacturing, possession with the intent to manufacture specified controlled substances, or using a minor in the commission of specified controlled substance offenses. (Health & Saf. Code, § 11370.2, subd. (b).)
- 4) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport cocaine, cocaine base, or heroin, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for three, four, or five years. (Health & Saf. Code, § 11352, subd. (a).)
- 5) States, except as provided, that every person who possesses for sale or purchases for purposes of sale any of the specified controlled substances, including cocaine and heroin, shall be punished by imprisonment in a county jail for two, three, or four years. (Health & Saf. Code, § 11351.)

- 6) Provides that every person that transports, imports into the state, sells, furnishes, administers, or gives away, or offers to transport, import into the state, sell, furnish, or give away, or attempts to import into this state or transport methamphetamine, or other specified controlled substances listed in the controlled substance schedule, without a written prescription from a licensed physician, dentist, podiatrist, or veterinarian shall be punished by imprisonment for two, three, or four years. (Health & Saf. Code, § 11379, subd. (a).)
- 7) States that the possession for sale of methamphetamine, and other specified controlled substances is punishable by imprisonment in a county jail for 16 months, or two or three years. (Health & Saf. Code, § 11378.)
- 8) Provides that any person who manufactures, compounds, converts, produces, derives, processes, or prepares specified controlled substances is guilty of a felony, punishable by imprisonment in the state prison for three, five or seven years. (Health & Saf. Code, § 11379.6.)
- 9) Any person who possesses specified chemicals with the intent to manufacture methamphetamine or PCP shall be punished by two, four, or six years in state prison. (Health & Saf. Code, § 11383.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Sentencing enhancements do not prevent or reduce drug sales, but do have destabilizing effects on families and communities. Research finds that the length of sentences does not provide any deterrent or significant incapacitation effect; in other words, longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught (Russell, Sarah F, "Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing," 43 UC Davis L. Rev. 1135 2010). Research shows that people incarcerated for selling drugs are quickly replaced by other people (U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform 2004).

"As of 2014, there were at least 1,635 people in county jails across California sentenced to five to ten years. There were at minimum, 124 people sentenced to more than ten years in county jail. The leading causes of these excessive sentences are drug sales, possession for sale, or similar nonviolent drug offenses, which are compounded by cruel and costly sentencing enhancements. (California State Sheriffs Association letter to "Interested Parties" April 25, 2014.) Thousands more are serving such sentences in prison.

"In November 2016, voters overwhelmingly passed Proposition 57, making people in prison with non-violent convictions eligible for parole after completing their base terms – prior to serving time on any sentence enhancements. However, Proposition 57

does not impact people in county jail. Thus, people in county jail can serve longer sentences than those in state prison, even if they have been convicted of the same crime.

"The current policy of sentencing people with nonviolent convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use.

"SB 180 will reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites. (Human Rights Watch, "Decades of Disparity: Drug Arrests and Race in the United States." 2009). Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense (Sonja B Starr and Marit Rehavi, "Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker," Yale Law Journal 123, no. 1 2013).

"However, incarceration can lead to more crime by destabilizing families and communities. Many people who return from incarceration face insurmountable barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems (Ella Baker Center for Human Rights, "Who Pays? The True Cost of Incarceration on Families" 2015)."

- 2) **Controlled Substance Sentence Enhancements:** The enhancement for prior drug crime convictions was enacted through AB 2320 (Condit), Chapter 1398, Statutes of 1985. The bill included un-codified legislative intent "to punish more severely those persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity."

The bill - called "The Dealer Statute" - was sponsored by the Los Angeles District Attorney and also included enhancements based on the weight of the drug involved in specified drug commerce crime. The weight enhancement is found in Health and Safety Code Section 11370.4. The Senate Judiciary Committee analysis of the bill set out the sponsor's explanation that the bill was modeled on particularly harsh federal drug crime laws. The sponsor argued that the bill was necessary to eliminate an incentive for persons "to traffic [in drugs] in California where sentences are significantly lighter than in federal law." The federal laws to which the sponsor referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences. In recent years, Congress has passed some sentence reductions, most notably reducing the disparity between cocaine powder crimes and cocaine base crimes.

- 3) **Argument in Support:** According to the *Californians for Safety and Justice*, "The Repeal Ineffective Sentence Enhancements (RISE) Act would repeal the three-year sentence enhancement for prior drug convictions, with an exception for convictions involving a minor. This extreme punishment has failed to protect communities or reduce the availability of drugs, but has resulted in overcrowded jails and prisons, harsh sentences, and crippled state and local budgets. By repealing this expensive and ineffective punishment, funds will be freed to reinvest in community programs that actually improve the quality of life and reduce crime.

"The RISE Act would begin to undo the damage of the failed War on Drugs. The long sentences that were central to the drug war strategy utterly failed to reduce drug availability or the number of people harmed in the illicit drug market. Controlled substances are now cheaper and more available than ever before, despite a massive investment of tax revenue and human life in an unprecedented build-up and fill-up of prisons and jails that have devastated low-income communities of color.

"The RISE Act is urgently needed. Counties around the state are building new jails to imprison more people with long sentences, funneling money away from community-based programs and services.

"Since 2007, California has spent \$2.5 billion on county jail construction – not including the costs borne by the counties for construction and increased staffing, or the state's debt service for these high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance use needs. By reforming sentencing enhancements for people with prior drug convictions, SB 180 will address the rationale for costly jail expansion, allowing state and county funds to be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance treatment, job programs, and affordable housing.

"The RISE Act will reduce racial disparities in the criminal justice system. Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than whites.

"Further, sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities – those with substance use and mental health needs, and those who, after prior contact with police or imprisonment, have struggled to reintegrate into society."

- 4) **Argument in Opposition:** According to the *Office of the San Diego County District Attorney*, "Currently, the Office of National Drug Control Policy reports our nation is in the grips of an opioid epidemic, and California is not immune. In 2013, California hospitals treated more than 11,500 patients suffering an opioid or heroin overdose; this is about one overdose every 45 minutes. Now is not the time to reduce penalties for sales and trafficking of opioids. Other states are actually increasing the penalties for trafficking in certain opioids. Legislation aimed at funding educational and prevention programs to reduce the current opioid addiction epidemic would better

serve all Californians.

“SB 180 repeals the current three year sentence enhancement for defendants convicted of specified drug sales and possession for sale crimes who have prior convictions for drug sales or possession for sale offenses. The scenario we will face is one where a defendant with multiple convictions for drug sales or possession for sale, or drug manufacturing offenses would be treated the same as a first time offender. This would include reducing the sentences for those who knowingly manufacture “Norco” pills laced with fentanyl, an opiate about 100 times stronger than heroin. The first time offender may need education or treatment for opioid addiction, while the defendant with multiple convictions for sales should receive punishment.

“Heroin addiction has spiked in recent years, especially for counties along the U.S. – Mexico border. In 2014, more than 300 San Diegans died from heroin overdoses, and the percentages of men and women booked into county jail who tested positive for heroin or other opiates were the highest since tracking began in 2000. The problem is severe enough locally that patrol deputies in the San Diego Sheriff’s Department are now equipped to administer a drug that counteracts the effects of heroin and other opioids. Overall, experts say heroin use in San Diego County is at its highest rate in 15 years. Experts say the resurgent heroin epidemic stems in part from doctors’ over-prescription of legal opioid pain killers such as Oxycodone or its time release cousin, OxyContin. When addicts can no longer afford, or find these particularly addictive over-the-counter drugs, they move on to heroin. Drug cartels are taking notice of the demand and in 2014, law enforcement agencies in the U.S. seized triple the amount of heroin confiscated in 2009. SB 180 will allow these drug dealers to escape the additional punishment they deserve.”

- 5) **Prior Legislation:** SB 966 (Mitchell), of the 2015-2016 Legislative Session, was identical to this bill, and would have eliminated the three year sentence enhancement upon conviction for the sale or possession for sale of specified controlled substances with a prior conviction related to the same. SB 966 failed passage in this Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Abode Services
Access Support Network of San Luis Obispo and Monterey Counties
ACCESS Women's Health Justice
Advocacy Fund
Alliance san Diego
Alameda County Public Defender's office
American Civil Liberties Union of California
American Federation of Teachers, Local 2121
American Friend Service Committee
Amity Foundation
Anne Martin Center
Anti-Recidivism Coalition

Arts for Incarcerated Youth network
Asian American Criminal Trial Lawyers Association
Asian American Drug Abuse Program
Asian Law Alliance
Asian Prisoner Support Committee
Bay Area Black Worker Center
Because Black is Still Beautiful
Bend the Arc: A Jewish Partnership for Justice
Black Women for Wellness
Black Women Organized for Political Action
California Association of Alcohol and Drug Program Executives
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Women Prisoners
California Communities United for Restorative Youth Justice
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Prison Focus
California Prison Moratorium Project
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Center for Living and Learning
Center on Juvenile and Criminal Justice
City of Refuge Church
Coleman Advocates for Children and Youth
Congregation Beth Israel Judea
Contra Costa County Racial Justice Coalition
Courage Campaign
Critical Resistance
Downtown Women's Center
Drug Policy Alliance
Eastlake United for Justice
Ella Baker Center for Human Rights
E/La Para TransLatinas
Employee Rights Center
Equal Justice Society
Felony Murder Elimination Project
Forward Together
Further the Work
Harm Reduction Services
Healing Dialogue and Action
HealthRIGHT360
HIV Education Prevention Project of Alameda County
Human Rights Commission of the City and County of San Francisco
Human Rights of the Incarcerated at UC Berkeley
Hunger Action Los Angeles
Immigrant Youth Coalition
International Faith Based Coalition

John Gioia, Contra Costa County Supervisor
Justice Now
Kehila Community Synagogue
Law Enforcement Action Project
Law Foundation of Silicon Valley
League of Women Voters of California
Mexican American Legal Defense Fund (MALDEF)
MILPA
National Association of Social Workers, California Chapter
National Council of Jewish Women, California
National Center for Youth Law
Needle Exchange Emergency Distribution
Oakland Rising
Office of the Mayor, City of Richmond
Or Shalom Jewish Community
People's life Fund
Prison Law Office
Prison Policy Initiative
Project Inform
Reentry Council of the City and County of San Francisco
Reentry Success Center
Religious Action Center of Reform Judaism
Riverside Temple Beth El
Root & Rebound
Roots Community Health Center
Rubicon Programs
Safe Alternatives to Violent Enterprises
San Diego Organizing Project
SHIELDS for Families
Starting Over, Inc.
Students for Sensible Drug Policy
SURJ (Showing Up for Racial Justice) Bay Area
Swords to Plowshares
The Sentencing Project
Temple Beth EL
The Kitchen
Think Dignity
Time for Change Foundation
Together to End Solitary, Santa Cruz
Transgender Gendervariant Intersex Justice Project
Trybe Inc.
UDW/AFSCME Local 3930
Urban Habitat
Venice Community Housing Corporation
W. Haywood Burns institute
Wellstone Democratic Renewal Committee
Western Center on Law and Poverty
Western Regional Advocacy Project
Women's Foundation of California

Youth for Environmental Sanity
56 Private Individuals

Opposition

Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotics Officers Association
California Police Chiefs Association
California State Sheriffs' Association
International Faith Based Coalition
Los Angeles County Probation Officers Union AFSCME Local 685
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs' Association
San Diego County District Attorney's Office

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

EXHIBIT C

THIRD READING

Bill No: SB 180
Author: Mitchell (D) and Lara (D), et al.
Introduced: 1/24/17
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-2, 4/18/17
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Anderson, Stone

SUBJECT: Controlled substances: sentence enhancements: prior convictions

SOURCE: American Civil Liberties Union of California
California Public Defenders Association
Californians United for a Responsible Budget
Coalition for Humane Immigrant Rights of Los Angeles
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Legal Services for Prisoners with Children

DIGEST: This bill repeals the current enhancement for specified drug offenses under which a defendant receives an additional three-year term for each prior conviction of any one of a number of specified drug offenses, except in cases where a minor was used in the commission of the prior offense.

ANALYSIS:

Existing law:

- 1) Classifies controlled substances in five schedules according to their medical utility and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code §§ 11054 to 11058.)

- 2) Provides penalties for possession, possession for purposes of sale, and manufacturing, transporting and distributing controlled substances. Sentences for drug offenses are typically subject to Penal Code Section 1170 (h). Convicted persons serve felony sentences in county jails, unless disqualified by a prior serious felony conviction or a sex offender registry requirement. (Health & Saf. Code §§ 11350-11401.)
- 3) Provides that a person convicted of specified drug commerce crimes who has previously been convicted of certain drug crimes, is subject to an additional three-year sentence enhancement for each prior conviction. The sentence is to be served in jail unless the defendant is disqualified from a jail term by a prior serious felony conviction or sex offender registration, or another statute requires a prison term. (Health & Saf. Code § 11370.2.) The enhancement also covers a conviction for conspiracy to commit any of the listed crimes. The qualifying offenses are listed below. All statutory references in the list are to the Health and Safety Code:
- Possession for sale of cocaine, heroin, specified opiates, and other specified drugs - § 11351
 - Possession for sale of cocaine base - § 11351.5
 - Sale, distribution, or transportation of cocaine, cocaine base, heroin, specified opiates - § 11352
 - Possession for sale of methamphetamine or specified other drugs - § 11378
 - Sale, distribution, or transportation of methamphetamine or specified other drugs - § 11379
 - Possession for sale of PCP - § 11378.5
 - Sale, distribution, or transportation of PCP - § 11379.5
 - Manufacturing any controlled substance through chemical extraction or synthesis - § 11379.6
 - Using a minor in the commission of specified drug offenses - § 11380
 - Possession of precursor chemicals with intent to manufacture PCP - § 11383

This bill repeals the three-year sentence enhancement for each of a defendant's prior convictions for the above listed drug offenses where the defendant is convicted in the current case of one of a number of specified drug offenses, except in cases where the person was convicted of using a minor to commit the prior offense.

Background

The enhancement for prior drug crime convictions was enacted through AB 2320 (Condit, Chapter 1398, Statutes of 1985). The bill included un-codified legislative intent “to punish more severely those persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity.” The sponsor of the bill, the Los Angeles District Attorney, argued that the bill was necessary to eliminate an incentive for persons “to traffic [in drugs] in California where sentences are significantly lighter than in federal law.” The federal laws to which the sponsor referred included reduced judicial discretion through mandatory minimum sentences.

Criminal justice experts and commentators have noted that, with regard to sentencing, “a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits. Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.” (Valerie Wright, Ph.D., Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment (November 2010), The Sentencing Project [<http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>].)

Related/Prior Legislation

SB 966 (Mitchell, 2016) would have repealed the current enhancement for specified drug offenses under which a defendant receives an additional three-year term for each prior conviction of any one of a number of specified drug offenses, except in cases where a minor was used in the commission of the prior offense. The bill failed passage in Assembly Public Safety Committee.

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

SUPPORT: (Verified 4/20/17)

American Civil Liberties Union of California (co-source)

California Public Defenders Association (co-source)

Californians United for a Responsible Budget (co-source)

Coalition for Humane Immigrant Rights of Los Angeles (co-source)

Drug Policy Alliance (co-source)

Ella Baker Center for Human Rights (co-source)

Friends Committee on Legislation of California (co-source)
Legal Services for Prisoners with Children (co-source)
Access Support Network of San Luis Obispo and Monterey Counties
Access Women's Health Justice
Alameda County Public Defender
Alliance San Diego
American Federation of Teachers, Local 2121
American Friends Service Committee
Amity Foundation
A New Way of Life Re-Entry Project
Anti-Recidivism Coalition
Asian American Criminal Trial Lawyers Association
Asian American Drug Abuse Program, Inc.
Asian Pacific Environmental Network
Asian Prisoner Support Committee
Bay Area Black Worker Center
Because Black is Still Beautiful
Bend the Arc: A Jewish Partnership for Justice
Berkeley Youth Alternatives
Black Women Organized for Political Action
California Alliance for Youth and Community Justice
California Association of Alcohol and Drug Program Executives, Inc.
California Attorneys for Criminal Justice
California Catholic Conference
California Coalition for Women Prisoners
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Prison Focus
California Prison Moratorium Project
Californians for Safety and Justice
Center for Living and Learning
Center on Juvenile and Criminal Justice
City and County of San Francisco Human Rights Commission
City of Refuge Church
City of Richmond, Mayor Tom Butt
Coleman Advocates
Communities United for Restorative Youth Justice
Congregation Beth Israel Judea
Contra Costa County Board of Supervisors, District One
Contra Costa County Racial Justice Coalition

Courage Campaign
Critical Resistance Los Angeles
Downtown Women's Center
Eastlake United for Justice
El/La Para TransLatinas
Equal Justice Society
Employee Rights Center
Felony Murder Elimination Project
Forward Together
Further The Work
Harm Reduction Services
Health RIGHT 360
HIV Education and Prevention Project of Alameda County
Homeless Health Care Los Angeles
Human Rights of the Incarcerated at UC Berkeley
Immigrant Youth Coalition
Jewish Youth for Community Action
Justice Now
Kehilla Community Synagogue
Law Enforcement Action Partnership
League of Women Voters of California
National Association of Social Workers, California Chapter
National Center for Youth Law
National Council of Jewish Women, California
National Employment Law Project
Needle Exchange Emergency Distribution
Oakland Rising
Or Shalom Jewish Community
People's Life Fund
Positive Women's Network
Prison Law Office
Prison Policy Initiative
Project Inform
Reentry Success Center
Riverside Temple Beth El
Root and Rebound
Roots Community Health Center
Rubicon Programs
Safe Alternatives to Violent Environments
San Diego LGBT Community Center

San Diego Organizing Project
SHIELDS for Families
Showing Up for Racial Justice Bay Area Chapter
Starting Over, Inc.
Students for Sensible Drug Policy
Swords to Plowshares
Tarzana Treatment Centers, Inc.
Temple Beth El Jewish Community Center
The Gubbio Project
The Kitchen
The Sentencing Project
Think Dignity
Time for Change Foundation
Together to End Solitary Confinement, Santa Cruz
Transgender Gendervariant Intersex Justice Project
T'ruah
Trybe Inc.
Urban Habitat
Venice Community Housing Corp.
W. Haywood Burns Institute
Wellstone Democratic Renewal Club
Western Regional Advocacy Project
Women's Foundation of California
Youth for Environmental Safety
Youth Justice Coalition
Several individuals

OPPOSITION: (Verified 4/20/17)

Association for Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California College and University Police Chiefs Association
California District Attorneys Association
California Narcotics Officers Association
California Police Chiefs Association
California State Sheriffs' Association
International Faith Based Coalition
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs' Association

San Diego County District Attorney

ARGUMENTS IN SUPPORT: According to the sponsors of the bill:

The RISE Act would repeal the three-year sentence enhancement for prior drug convictions, with an exception for convictions involving a minor. This extreme punishment has failed to protect communities or reduce the availability of drugs, but has resulted in overcrowded jails and prisons, harsh sentences, and crippled state and local budgets. By repealing this expensive and ineffective punishment, funds will be freed to reinvest in community programs that actually improve the quality of life and reduce crime....The RISE Act is urgently needed. Counties around the state are building new jails to imprison more people with long sentences, funneling money away from community-based programs and services.

Since 2007, California has spent \$2.5 billion on county jail construction – not including the costs borne by the counties for construction and increased staffing, or the state’s debt service for these high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance use needs. By reforming sentencing enhancements for people with prior drug convictions, SB 180 will address the rationale for costly jail expansion, allowing state and county funds to be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance treatment, job programs, and affordable housing.

The RISE Act will reduce racial disparities in the criminal justice system. Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than whites.

Further, sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities – those with substance use and mental health needs, and those who, after prior contact with police or imprisonment, have struggled to reintegrate into society.

ARGUMENTS IN OPPOSITION: According to California Narcotic Officers Association:

Under current law, we have the ability to impose higher sanctions on those who are hard-core drug traffickers by adding an additional three years for each prior

conviction to the current conviction of a trafficker who has been convicted pursuant to Health & Safety Code Sections 11351, 11351.5 or 11352 – opiates, opiate derivatives or hallucinogenic substances. Senate Bill 180 will prevent the imposition of the enhancement for opiate, opiate derivative or hallucinogenic traffickers who have prior drug trafficking convictions. The consequence of Senate Bill 180 will be to treat the career drug trafficker exactly the same as the person who has been convicted of their first offense.

We believe that there is an enhanced level of seriousness posed to a community by career drug traffickers and that the enhanced sentence that is available under current law should be retained. Put another way, there is nothing benign about the drug dealer who systematically preys on the most vulnerable of our society. We do not believe that proponents of the bill have made the case that the arc of social progress is advanced by reducing the accountability of career drug traffickers.

Prepared by: Stephanie Jordan / PUB. S. /
4/21/17 12:50:38

**** END ****

EXHIBIT D

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 180 **Hearing Date:** April 18, 2017
Author: Mitchell
Version: January 24, 2017
Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Controlled Substances: Sentence Enhancements: Prior Convictions*

HISTORY

Source: American Civil Liberties Union of California
California Public Defenders Association
Californians United for a Responsible Budget
Coalition for Humane Immigrant Rights of Los Angeles
Drug Policy Alliance
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Legal Services for Prisoners with Children

Prior Legislation: SB 966 (Mitchell) Failed Assembly Public Safety (2016)
AB 2320 (Condit) Chapter 1398, Stats. 1985

Support: Access Support Network of San Luis Obispo and Monterey Counties; Access Women's Health Justice; Alameda County Public Defender; American Federation of Teachers, Local 2121; American Friends Service Committee; Amity Foundation; A New Way of Life Re-Entry Project; Anti-Recidivism Coalition; Asian American Criminal Trial Lawyers Association; Asian American Drug Abuse Program, Inc.; Asian Pacific Environmental Network; Asian Prisoner Support Committee; Bay Area Black Worker Center; Because Black is Still Beautiful; Bend the Arc: A Jewish Partnership for Justice; Berkeley Youth Alternatives; Black Women Organized for Political Action; California Alliance for Youth and Community Justice; California Association of Alcohol and Drug Program Executives, Inc.; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Immigrant Policy Center; California Immigrant Youth Justice Alliance; California Prison Focus; California Prison Moratorium Project; Center for Living and Learning; Center on Juvenile and Criminal Justice; City and County of San Francisco Human Rights Commission; City of Refuge Church; City of Richmond, Mayor Tom Butt; Coleman Advocates; Communities United for Restorative Youth Justice; Congregation Beth Israel Judea; Contra Costa County Board of Supervisors, District One; Contra Costa County Racial Justice Coalition; Courage Campaign; Critical Resistance Los Angeles; Downtown Women's Center; Eastlake United for Justice; El/La Para TransLatinas; Equal Justice Society; Felony Murder Elimination Project; Forward Together; Further The Work; Harm Reduction Services; Health RIGHT 360; HIV Education and Prevention Project of Alameda County; Homeless Health Care Los Angeles; Human Rights of the

Incarcerated at UC Berkeley; Immigrant Youth Coalition; Jewish Youth for Community Action; Justice Now; Kehilla Community Synagogue; Law Enforcement Action Partnership; National Association of Social Workers, California Chapter; National Center for Youth Law; National Council of Jewish Women, California; National Employment Law Project; Needle Exchange Emergency Distribution; Oakland Rising; Or Shalom Jewish Community; People's Life Fund; Positive Women's Network; Prison Law Office; Prison Policy Initiative; Project Inform; Reentry Success Center; Riverside Temple Beth El; Root and Rebound; Roots Community Health Center; Rubicon Programs; Safe Alternatives to Violent Environments; SHIELDS for Families; Starting Over, Inc.; Students for Sensible Drug Policy; Swords to Plowshares; Tarzana Treatment Centers, Inc.; Temple Beth El Jewish Community Center; The Gubbio Project; The Kitchen; The Sentencing Project; Think Dignity; Time for Change Foundation; Together to End Solitary Confinement, Santa Cruz; Transgender Gendervariant Intersex Justice Project; T'ruah; Trybe Inc.; Urban Habitat; Venice Community Housing Corp.; W. Haywood Burns Institute; Wellstone Democratic Renewal Club; Western Regional Advocacy Project; Women's Foundation of California; Youth for Environmental Safety; Youth Justice Coalition; several individuals

Opposition: Association for Deputy District Attorneys; Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California College and University Police Chiefs Association; California District Attorneys Association; California Narcotics Officers Association; California Police Chiefs Association; California State Sheriffs; Association; International Faith Based Coalition; Los Angeles County Professional Peace Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association; San Diego County District Attorney

PURPOSE

The purpose of this bill is to repeal the current enhancement for specified drug offenses under which a defendant receives an additional three-year term for each prior conviction of any one of a number of specified drug offenses, except in cases where a minor was used in the commission of the prior offense.

Existing law classifies controlled substances in five schedules according to their medical utility and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054 to 11058.)

Existing law provides penalties for possession, possession for purposes of sale, and manufacturing, transporting and distributing controlled substances. Sentences for drug offenses are typically subject to Penal Code Section 1170 (h). Convicted persons serve felony sentences in county jails, unless disqualified by a prior serious felony conviction or a sex offender registry requirement. (Health & Saf. Code §§ 11350-11401.)

Existing law provides that a person convicted of certain specified drug commerce crimes who has previously been convicted of any of those crimes, is subject to an additional three-year

sentence enhancement for each prior conviction, to be served in jail unless the defendant is disqualified from a jail term by a prior serious felony conviction or sex offender registration, or another statute requires a prison term. (Health & Saf. § 11370.2.) The enhancement also covers a conviction for conspiracy to commit any of the listed crimes. The qualifying offenses are as follows. All statutory references in the list are to the Health and Safety Code:

- Possession for sale of cocaine, heroin, specified opiates, and other specified drugs - § 11351
- Possession for sale of cocaine base - § 11351.5
- Sale, distribution, or transportation of cocaine, cocaine base, heroin, specified opiates - § 11352
- Possession for sale of methamphetamine or specified other drugs - § 11378
- Sale, distribution, or transportation of methamphetamine or specified other drugs - § 11379
- Possession for sale of PCP - § 11378.5
- Sale, distribution, or transportation of PCP - § 11379.5
- Manufacturing any controlled substance through chemical extraction or synthesis - § 11379.6
- Using a minor in the commission of specified drug offenses - § 11380
- Possession of precursor chemicals with intent to manufacture PCP - § 11383

This bill repeals the three-year sentence enhancement for each of a defendant's prior convictions for the above listed drug offenses where the defendant is convicted in the current case of one of a number of specified drug offenses, except in cases where the person was convicted of using a minor to commit the prior offense.

COMMENTS

1. Need for This Bill

According to the author:

Sentencing enhancements do not prevent or reduce drug sales, but do have destabilizing effects on families and communities. Research finds that the length of sentences does not provide any deterrent or significant incapacitation effect; in other words, longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught (Russell, Sarah F, "Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing," 43 UC Davis L. Rev. 1135 2010). Research shows that people incarcerated for selling drugs are quickly replaced by other people (U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform 2004).

As of 2014, there were at least 1,635 people in county jails across California sentenced to five to ten years. There were at minimum, 124 people sentenced to more than ten years in county jail. The leading causes of these excessive sentences are drug sales, possession for sale, or similar nonviolent drug offenses, which are compounded by cruel and costly sentencing enhancements. (California

State Sheriffs Association letter to “Interested Parties” April 25, 2014.)
Thousands more are serving such sentences in prison.

In November 2016, voters overwhelmingly passed Proposition 57, making people in prison with non-violent convictions eligible for parole after completing their base terms – prior to serving time on any sentence enhancements. However, Proposition 57 does not impact people in county jail. Thus, people in county jail can serve longer sentences than those in state prison, even if they have been convicted of the same crime.

The current policy of sentencing people with nonviolent convictions to long periods of incarceration is an expensive failure that does not reduce the availability of drugs in our communities. Instead, it cripples state and local budgets that should prioritize drug prevention and treatment, education, and employment as our best policies against drug sales and drug use.

SB 180 (Mitchell) will reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites. (Human Rights Watch, “Decades of Disparity: Drug Arrests and Race in the United States.” 2009). Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense (Sonja B Starr and Marit Rehavi, “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker,” Yale Law Journal 123, no. 1 2013).

However, incarceration can lead to more crime by destabilizing families and communities. Many people who return from incarceration face insurmountable barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue. The longer the sentence, the more severe these problems (Ella Baker Center for Human Rights, “Who Pays? The True Cost of Incarceration on Families” 2015).

2. History of the Enhancement for Prior Drug Offenses

The enhancement for prior drug crime convictions was enacted through AB 2320 (Condit), Chapter 1398, Statutes of 1985. The bill included un-codified legislative intent “to punish more severely those persons who are in the regular business of trafficking in, or production of, narcotics and those persons who deal in large quantities of narcotics as opposed to individuals who have a less serious, occasional, or relatively minor role in this activity.”

The bill - called “The Dealer Statute” - was sponsored by the Los Angeles District Attorney and also included enhancements based on the weight of the drug involved in specified drug commerce crime. The weight enhancement is found in Health and Safety Code Section 11370.4. The Senate Judiciary Committee analysis of the bill set out the sponsor’s explanation that the bill was modeled on particularly harsh federal drug crime laws. The sponsor argued that the bill was necessary to eliminate an incentive for persons “to traffic [in drugs] in California where sentences are significantly lighter than in federal law.” The federal laws to which the sponsor

referred were those enacted in the expansion of the war against drugs during the Reagan administration. These laws included reduced judicial discretion through mandatory minimum sentences. In recent years, Congress has passed some sentence reductions, most notably reducing the disparity between cocaine powder crimes and cocaine base crimes.

3. Research on the Deterrence Effect of Sentences Increases

Criminal justice experts and commentators have noted that, with regard to sentencing, “a key question for policy development regards whether enhanced sanctions or an enhanced possibility of being apprehended provide any additional deterrent benefits.

Research to date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits.¹

A comprehensive report published in 2014, entitled *The Growth of Incarceration in the United States*, discusses the effects on crime reduction through incapacitation and deterrence, and describes general deterrence compared to specific deterrence:

A large body of research has studied the effects of incarceration and other criminal penalties on crime. Much of this research is guided by the hypothesis that incarceration reduces crime through incapacitation and deterrence. Incapacitation refers to the crimes averted by the physical isolation of convicted offenders during the period of their incarceration. Theories of deterrence distinguish between general and specific behavioral responses. General deterrence refers to the crime prevention effects of the threat of punishment, while specific deterrence concerns the aftermath of the failure of general deterrence—that is, the effect on reoffending that might result from the experience of actually being punished. Most of this research studies the relationship between criminal sanctions and crimes other than drug offenses. A related literature focuses specifically on enforcement of drug laws and the relationship between those criminal sanctions and the outcomes of drug use and drug prices.²

In regard to deterrence, the authors note that in “the classical theory of deterrence, crime is averted when the expected costs of punishment exceed the benefits of offending. Much of the empirical research on the deterrent power of criminal penalties has studied sentence enhancements and other shifts in penal policy. . . .

Deterrence theory is underpinned by a rationalistic view of crime. In this view, an individual considering commission of a crime weighs the benefits of offending against the costs of punishment. Much offending, however, departs from the strict decision calculus of the rationalistic model. Robinson and Darley (2004) review the limits of deterrence through harsh punishment. They report that

¹ Valerie Wright, Ph.D., *Deterrence in Criminal Justice Evaluating Certainty vs. Severity of Punishment* (November 2010), The Sentencing Project (<http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>)

² *The Growth of Incarceration in the United States* (2014), Jeremy Travis, Bruce Western and Steve Redburn, Editors, Committee on Causes and Consequences of High Rates of Incarceration, The National Research Council, p. 131 (citations omitted) (http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf)

offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.”³

The authors of the 2014 report discussed above conclude that incapacitation of certain dangerous offenders can have “large crime prevention benefits,” but that incremental, lengthy prison sentences are ineffective for crime deterrence:

Whatever the estimated average effect of the incarceration rate on the crime rate, the available studies on imprisonment and crime have limited utility for policy. The incarceration rate is the outcome of policies affecting who goes to prison and for how long and of policies affecting parole revocation. Not all policies can be expected to be equally effective in preventing crime. Thus, it is inaccurate to speak of the crime prevention effect of incarceration in the singular. *Policies that effectively target the incarceration of highly dangerous and frequent offenders can have large crime prevention benefits, whereas other policies will have a small prevention effect or, even worse, increase crime in the long run if they have the effect of increasing postrelease criminality.*

4. Argument in Support

According to the sponsors of the bill:

The RISE Act would repeal the three-year sentence enhancement for prior drug convictions, with an exception for convictions involving a minor. This extreme punishment has failed to protect communities or reduce the availability of drugs, but has resulted in overcrowded jails and prisons, harsh sentences, and crippled state and local budgets. By repealing this expensive and ineffective punishment, funds will be freed to reinvest in community programs that actually improve the quality of life and reduce crime....

The RISE Act is urgently needed. Counties around the state are building new jails to imprison more people with long sentences, funneling money away from community-based programs and services.

Since 2007, California has spent \$2.5 billion on county jail construction – not including the costs borne by the counties for construction and increased staffing, or the state’s debt service for these high-interest loans. Sheriffs have argued for this expansion by pointing to their growing jail populations, particularly people with long sentences and with mental health and substance use needs. By reforming sentencing enhancements for people with prior drug convictions, SB 180 will address the rationale for costly jail expansion, allowing state and county funds to be invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance treatment, job programs, and affordable housing.

The RISE Act will reduce racial disparities in the criminal justice system. Although rates of drug use and selling are comparable across racial lines, people

³ *Id.* at 132-133.

of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than whites.

Further, sentence enhancements based on prior convictions target the poorest and most marginalized people in our communities – those with substance use and mental health needs, and those who, after prior contact with police or imprisonment, have struggled to reintegrate into society.

5. Argument in Opposition

According to the Association for Los Angeles Deputy Sheriffs, the Association of Deputy District Attorneys, the California Association of Code Enforcement Officers, the California College and University Police Chiefs Association, the California Narcotic Officers Association, the Los Angeles County Professional Peace Officers Association, the Los Angeles Police Protective League, and the Riverside Sheriffs Association:

Under current law, we have the ability to impose higher sanctions on those who are hard-core drug traffickers by adding an additional three years for each prior conviction to the current conviction of a trafficker who has been convicted pursuant to Health & Safety Code Sections 11351, 11351.5 or 11352 – opiates, opiate derivatives or hallucinogenic substances. Senate Bill 180 will prevent the imposition of the enhancement for opiate, opiate derivative or hallucinogenic traffickers who have prior drug trafficking convictions. The consequence of Senate Bill 180 will be to treat the career drug trafficker exactly the same as the person who has been convicted of their first offense.

We believe that there is an enhanced level of seriousness posed to a community by career drug traffickers and that the enhanced sentence that is available under current law should be retained. Put another way, there is nothing benign about the drug dealer who systematically preys on the most vulnerable of our society. We do not believe that proponents of the bill have made the case that the arc of social progress is advanced by reducing the accountability of career drug traffickers.

-- END --

DECLARATION OF SERVICE

I, the undersigned, declare as follows:

I am a member of the State Bar of California and a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is PMB 334, 3104 O Street, Sacramento, California, 95816.

On June 14, 2019, I served the attached

MOTION FOR JUDICIAL NOTICE

(by mail) - by placing a true copy thereof in an envelope addressed to the persons named below at the addresses shown, and by sealing and depositing said envelope in the United States Mail at Sacramento, California, with postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed.

Douglas Edward McKenzie
2294 Emerson Avenue
Merced, CA 95341

(by electronic transmission) - I am personally and readily familiar with the preparation of and process of documents in portable document format (PDF) for e-mailing, and I caused said document(s) to be prepared in PDF and then served by electronic mail to the party listed below, by close of business on the date listed above:

Central California Appellate Program
2407 J Street, Suite 301
Sacramento, CA 95816
eservice@capcentral.org

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P.O. Box 944255
Sacramento, CA 94244-2550
SacAWTTrueFiling@doj.ca.gov

California Court of Appeal, Fifth Appellate District
2424 Ventura Street
Fresno, CA 93721
Served via Truefiling.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 14, 2019, in Sacramento, California.

DECLARANT