

**CENTRAL CALIFORNIA
APPELLATE PROGRAM**
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Executive Director

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Jose Tirado

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

JOSE GUADALUPE TIRADO,

Defendant and Appellant.

S257658

Court of Appeal
No. F076836

Kern County
Superior Court
No. BF163811A

**APPELLANT’S MOTION FOR JUDICIAL NOTICE OF
LEGISLATIVE HISTORY MATERIALS**

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

Pursuant to rule 8.252(a) and 8.520(g) of the California Rules of Court, and Evidence Code sections 452 and 459, appellant Jose Tirado, through counsel, moves this court to take judicial notice of the legislative history materials of Senate Bill

620 (2017-2018 Reg. Sess.), which accompany this motion and relate to the issue addressed in Appellant's Opening Brief on the Merits.

This motion is based on the attached memorandum of points and authorities, the declaration of appellant's counsel, and the legislative history materials accompanying this motion (Attachments A and B).

Dated: May 8, 2020

Respectfully submitted,

/s/ Theresa Schriever
THERESA SCHRIEVER
Attorney for Appellant

MEMORANDUM OF POINTS AND AUTHORITIES

A. Procedural Background

A jury convicted appellant Jose Tirado of second degree robbery and found true the allegation that he personally and intentionally discharged a firearm causing great bodily injury within the meaning of Penal Code section 12022.53, subdivision (d). (4RT 613-616; 2CT 348.)

On January 3, 2018, appellant moved the trial court to strike the 25-year-to-life punishment for the section 12022.53, subdivision (d) enhancement in the interest of justice. The request was based on newly amended section 12022.53, subdivision (h), which effective January 1, 2018 granted trial courts authority to strike section 12022.53 enhancements in the interest of justice pursuant to section 1385. (Pen. Code, § 12022.53, subd. (h), as amended by Stats. 2017, ch. 682, § 2, Senate Bill 620.) The trial court denied the request and imposed a sentence of three years on the robbery count followed by a consecutive term of 25 years to life for the firearm use enhancement. (5RT 635-638; 2CT 367-370.)

On appeal, appellant argued remand for resentencing was required because the trial court was not aware of the scope of its sentencing discretion under section 1385 and subdivision (h) of section 12022.53 to strike a portion of the section 12022.53, subdivision (d) enhancement in order to impose a reduced sentence under subdivision (b) or (c) of that section. (2CT 351-365.) The Court of Appeal found the trial court does not have this discretion. (*People v. Tirado* (2019) 38 Cal.App.5th 637.)

On November 13, 2019, this court granted review on the following question:

Can the trial court impose an enhancement under Penal Code section 12022.53, subdivision (b), for personal use of a firearm, or under section 12022.53, subdivision (c), for personal and intentional discharge of a firearm, as part of its authority under section 1385 and subdivision (h) of section 12022.53 to strike an enhancement under subdivision (d) for personal and intentional discharge of a firearm resulting in death or great bodily injury, even if the lesser enhancements were not charged in the information or indictment and were not submitted to the jury?

B. Judicial Notice

California Rules of Court, rule 8.252 provides the means for judicial notice on appeal. The rule provides in subdivision (a)(2) that the motion must state:

- (A) Why the matter to be noticed is relevant to the appeal;
- (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
- (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
- (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

(Cal. Rules of Court, rule 8.252(a)(2).)

Appellant requests that this court take judicial notice of the legislative history of Penal Code section 12022.53, as amended by Statutes 2017, chapter 682, section 2 (Senate Bill 620). This legislative history is contained in the two legislative history files

attached to this motion as Attachments A and B.¹ Specifically, appellant requests that this court take judicial notice of the following legislative committee reports and bill amendments:

- (1) Senate Committee on Public Safety, Analysis of Senate Bill 620 (2017-2018 Reg. Sess.), as amended March 28, 2017, pp. 1-8 (Attachment A, pp. 36-43);
- (2) Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading Analysis of Senate Bill 620 (2017-2018 Reg. Sess.), as amended March 28, 2017, pp. 1-8 (Attachment A, pp. 52-59);
- (3) Assembly Committee on Public Safety, Analysis of Senate Bill 620 (2017-2018 Reg. Sess.), as amended March 28, 2017, pp. 1-9 (Attachment A, pp. 65-73);
- (4) Assembly Committee on Appropriations, Analysis of Senate Bill 620 (2017-2018, Reg. Sess.), as amended June 15, 2017, pp. 1-2 (Attachment A, pp. 74-75);
- (5) Senate Rules Committee, Office of the Senate Floor Analyses, Third Reading Analysis of Senate Bill 620 (2017-2018 Reg. Sess.), as amended June 15, 2017, pp. 1-3 (Attachment A, pp. 81-83);
- (6) Senate Rules Committee, Office of the Senate Floor Analyses, Unfinished Business Analysis of Senate Bill 620 (2017-2018 Reg. Sess.), as amended June 15, 2017, pp. 1-7 (Attachment A, pp. 85-91);
- (7) Senate Amendments to Senate Bill 620 (2017-2018 Reg. Sess.), as amended March 28, 2017, pp. 1-5 (Attachment A, pp. 13-17); and

¹ Although appellant does not request the court take judicial notice of any specific documents in Attachment B, which contains the Author's File for Senate Bill 620, appellant has attached this file for completeness and for the convenience of the court and the parties.

(8) Assembly Amendments to Senate Bill 620 (2017-2018 Reg. Sess.), as amended June 15, 2017, pp. 1-5 (Attachment A, pp. 18-22).

This court may take judicial notice of the private and official acts of the California Legislature. (Evid. Code, §§ 452, subds. (a), (c); 459, subd. (a).) This includes materials which describe legislative history; that is, documents describing the activity surrounding the Legislature’s adoption of statutes. (See, e.g., *Jones v. Lodge at Torrey Pines Partnership* (2008) 42 Cal.4th 1158, 1172, fn. 5 [court “will generally grant requests to notice legislative history documents”]; *In re S.B.* (2004) 32 Cal.4th 1287, 1296, fn. 3 [granting request for judicial notice of bill analysis prepared by Assembly Committee on Judiciary]; *Mooney v. County of Orange* (2013) 212 Cal.App.4th 865, 872 [granting request for judicial notice of legislative history materials].) Judicial notice of legislative history materials is particularly appropriate when the construction of a statute is at issue. (*Hutnick v. United States Fidelity & Guaranty Co.* (1988) 47 Cal.3d 456, 465 fn. 7 [“it is well established that reports of legislative committees and commissions are part of a statute’s legislative history and may be considered when the meaning of a statute is uncertain”].)

The above legislative history materials are relevant to this appeal, which involves the scope of the trial court’s sentencing discretion under Penal Code section 12022.53, subdivision (h), as amended by Senate Bill 620. Appellant’s argument is that in amending section 12022.53, subdivision (h), the Legislature intended to grant trial courts full discretion to strike section

12022.53 enhancements in the interest of justice, which under section 1385 includes the ability to strike part of an enhancement. Thus, the legislative history of Senate Bill 620 is relevant to show that, with respect to the breadth of the court's power to strike or dismiss a section 12022.53 enhancement, appellant's interpretation furthers the purpose of Senate Bill 620, while a contrary interpretation would frustrate it.

Further, because section 12022.53, subdivision (h) provides that the scope of the court's power to strike or dismiss an enhancement is "pursuant to section 1385," the legislative history is relevant to the question of whether, in amending section 12022.53, subdivision (h), the Legislature intended to place any restrictions on the court's section 1385 discretion. (See *People v. Williams* (1981) 30 Cal.3d 470, 482 ["Section 1385 permits dismissals in the interest of justice in any situation where the Legislature has not clearly evidenced a contrary intent"]; *People v. Fuentes* (2016) 1 Cal.5th 218, 227 [the "clear expression of legislative intent" necessary to limit a court's discretion under section 1385 "may be found in the relevant statutory language or in the statute's legislative or initiative history"].)

Although this legislative history was not presented to the trial court and does not relate to proceedings that occurred after the judgment that is the subject of this appeal, appellant respectfully requests that this court take judicial notice of the legislative history for Penal Code section 12022.53, as amended by Statutes 2017, chapter 682, section 2 (Senate Bill 620), attached as Attachments A and B, as it relates to the question

presented by this case and the arguments set forth in Appellant's
Opening Brief on the Merits.

Dated: May 8, 2020

Respectfully submitted,

/s/ Theresa Schriever
THERESA SCHRIEVER
Attorney for Appellant
Jose Tirado

DECLARATION OF THERESA H. SCHRIEVER

I, Theresa H. Schriever, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

1. I am an attorney in good standing and licensed to practice before the courts of the State of California.
2. I have been appointed by this court to represent appellant Jose Tirado in this stage of the appeal.
3. I used LRI History LLC (“LRI”), a legislative history service, to obtain the legislative history of Penal Code Section 12022.53, as amended by Statutes 2017, Chapter 682, section 2, Senate Bill 620 (2017-2018 Reg. Sess.).
4. Attachment A is a true and correct copy of the legislative history materials I received from Lisa Hampton, the president of LRI, related to Senate Bill 620. Attachment B is a true and correct copy of the supplement to the legislative history materials (containing the Author’s File for Senate Bill 620), which I received separately from LRI because it was not available at the time Attachment A was provided to me.

Dated: May 8, 2020

Respectfully submitted,

/s/ Theresa Schriever
THERESA SCHRIEVER
Attorney for Appellant

**CENTRAL CALIFORNIA
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Jose Tirado

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**PEOPLE OF THE STATE OF
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Plaintiff and Respondent,

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JOSE GUADALUPE TIRADO,

Defendant and Appellant.

S257658

Court of Appeal
No. F076836

Kern County
Superior Court
No. BF163811A

[PROPOSED] ORDER

Appellant's request for judicial notice of the legislative
history materials filed _____, is granted.

Date: _____

Chief/Associate Justice

Re: *The People v. Tirado*, Case No. S257658

**DECLARATION OF ELECTRONIC SERVICE
AND SERVICE BY PLACEMENT AT PLACE OF BUSINESS
FOR COLLECTION AND DEPOSIT IN MAIL**

(Code Civ. Proc., § 1013a, subd. (3); Cal. Rules of Court, rules 8.78(f))

I, *Sebastian Lowe*, declare as follows:

I am, and was at the time of the service mentioned in this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is eservice@capcentral.org and my business address is 2150 River Plaza Dr., Ste. 300, Sacramento, CA 95833 in Sacramento County, California.

On **May 8, 2020**, I served the persons and/or entities listed below by the method checked. For those marked “Served Electronically,” I transmitted a PDF version of **APPELLANT’S MOTION FOR JUDICIAL NOTICE** by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately **12:20 p.m.** For those marked “Served by Mail,” I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place shown below, following the Central California Appellate Program’s ordinary business practices. I am readily familiar with this business’s practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

Office of the Attorney General	Jose Guadalupe Tirado
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AND

Fifth District Court of Appeal
2424 Ventura Street
Fresno, CA 93721

<input checked="" type="checkbox"/> Served Electronically	<input type="checkbox"/> Served Electronically
<input type="checkbox"/> Served by Mail	<input checked="" type="checkbox"/> Served by Mail

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on **May 8, 2020**, at Sacramento, California.

/s/ Sebastian Lowe
Sebastian Lowe

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOSE GUADALUPE TIRADO,

Defendant and Appellant.

S257658

Court of Appeal
No. F076836

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**ATTACHMENTS TO APPELLANT'S MOTION FOR
JUDICIAL NOTICE OF LEGISLATIVE HISTORY
MATERIALS**

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**Attorneys for Appellant
Jose Tirado**

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ATTACHMENT A
LEGISLATIVE HISTORY OF PENAL CODE SECTION
12022.53, AS AMENDED BY SENATE BILL 620



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Legislative History of

CALIFORNIA
PENAL CODE
§ 12022.5 & 12022.53

As Amended By
Statutes of 2017, Chapter 682, § 1-2
Senate Bill 620 – Bradford

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Authentication of the Records and Table of Contents

Legislative History Research Report Regarding:
CALIFORNIA PENAL CODE § 12022.5 & 12022.53
As Amended By Statutes of 2017, Chapter 682, § 1-2, SB 620 – Bradford

I, Lisa Hampton, declare that this report includes:

- *Historical documents relating to the above legislation.* These documents were obtained by the staff of LRI History LLC, or under their direction, and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½” x 11” sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Since 1983 LRI has specialized in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Our research and expert witness services have assisted the courts in understanding and applying the underlying purpose of enactments in countless cases, such as *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994). LRI also provides similar research for other states and at the federal level. (Formerly Legislative Research Institute, Legislative Research, Incorporated, and Legislative Research & Intent LLC).

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed February 5, 2020.

Lisa Hampton, President

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General Enactment History

LRI History LLC hereby certifies that the accompanying record/s is/are true and correct copies of the original/s obtained from one or more official, public sources in California unless another source is indicated, with the following exceptions : In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, for ease of reference, paging and relevant identification have been inserted.

Introduced by Senator Bradford

February 17, 2017

An act relating to the Penal Code.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as introduced, Bradford. Penal Code.

Existing law designates specified statutes to be known as The Penal Code of California, which is divided into 4 parts.

This bill would state the intent of the Legislature to enact legislation to make nonsubstantive changes to the Penal Code.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation to make nonsubstantive changes to the Penal Code.

O

99

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 620

Introduced by Senator Bradford

February 17, 2017

~~An act relating to the Penal Code.~~ *An act to amend Sections 12022.5 and 12022.53 of the Penal Code, relating to firearms.*

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Bradford. ~~Penal Code.~~ *Firearms: crimes: enhancements.*

Existing law requires that a person who personally uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years. Existing law requires that a person who personally uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. Existing law requires a person who personally uses a firearm to commit certain specified felonies to be punished by an additional and consecutive term of imprisonment in the state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm. Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill would delete the prohibition on striking an allegation or finding and, instead, would allow a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required to be imposed by the above provisions of law.

98

Existing law designates specified statutes to be known as The Penal Code of California, which is divided into 4 parts.

This bill would state the intent of the Legislature to enact legislation to make nonsubstantive changes to the Penal Code.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022.5 of the Penal Code is amended
2 to read:

3 12022.5. (a) Except as provided in subdivision (b), any person
4 who personally uses a firearm in the commission of a felony or
5 attempted felony shall be punished by an additional and
6 consecutive term of imprisonment in the state prison for 3, 4, or
7 10 years, unless use of a firearm is an element of that offense.

8 (b) Notwithstanding subdivision (a), any person who personally
9 uses an assault weapon, as specified in Section 30510 or Section
10 30515, or a machinegun, as defined in Section 16880, in the
11 commission of a felony or attempted felony, shall be punished by
12 an additional and consecutive term of imprisonment in the state
13 prison for 5, 6, or 10 years.

14 ~~(e) Notwithstanding Section 1385 or any other provisions of~~
15 ~~law, the court shall not strike an allegation under this section or a~~
16 ~~finding bringing a person within the provisions of this section.~~

17 (c) *The court may, in the interest of justice and at the time of*
18 *sentencing, strike an enhancement otherwise required to be*
19 *imposed by this section. The authority provided by this subdivision*
20 *applies to any resentencing that may occur pursuant to any other*
21 *law.*

22 (d) Notwithstanding the limitation in subdivision (a) relating to
23 being an element of the offense, the additional term provided by
24 this section shall be imposed for any violation of Section 245 if a
25 firearm is used, or for murder if the killing is perpetrated by means
26 of shooting a firearm from a motor vehicle, intentionally at another
27 person outside of the vehicle with the intent to inflict great bodily
28 injury or death.

29 (e) When a person is found to have personally used a firearm,
30 an assault weapon, a machinegun, or a .50 BMG rifle, in the
31 commission of a felony or attempted felony as provided in this

1 section and the firearm, assault weapon, machinegun, or a .50
2 BMG rifle, is owned by that person, the court shall order that the
3 firearm be deemed a nuisance and disposed of in the manner
4 provided in Sections 18000 and 18005.

5 (f) For purposes of imposing an enhancement under Section
6 1170.1, the enhancements under this section shall count as one,
7 single enhancement.

8 *SEC. 2. Section 12022.53 of the Penal Code is amended to*
9 *read:*

10 12022.53. (a) This section applies to the following felonies:

11 (1) Section 187 (murder).

12 (2) Section 203 or 205 (mayhem).

13 (3) Section 207, 209, or 209.5 (kidnapping).

14 (4) Section 211 (robbery).

15 (5) Section 215 (carjacking).

16 (6) Section 220 (assault with intent to commit a specified
17 felony).

18 (7) Subdivision (d) of Section 245 (assault with a firearm on a
19 peace officer or firefighter).

20 (8) Section 261 or 262 (rape).

21 (9) Section 264.1 (rape or sexual penetration in concert).

22 (10) Section 286 (sodomy).

23 (11) Section 288 or 288.5 (lewd act on a child).

24 (12) Section 288a (oral copulation).

25 (13) Section 289 (sexual penetration).

26 (14) Section 4500 (assault by a life prisoner).

27 (15) Section 4501 (assault by a prisoner).

28 (16) Section 4503 (holding a hostage by a prisoner).

29 (17) Any felony punishable by death or imprisonment in the
30 state prison for life.

31 (18) Any attempt to commit a crime listed in this subdivision
32 other than an assault.

33 (b) Notwithstanding any other provision of law, any person
34 who, in the commission of a felony specified in subdivision (a),
35 personally uses a firearm, shall be punished by an additional and
36 consecutive term of imprisonment in the state prison for 10 years.
37 The firearm need not be operable or loaded for this enhancement
38 to apply.

39 (c) Notwithstanding any other provision of law, any person
40 who, in the commission of a felony specified in subdivision (a),

1 personally and intentionally discharges a firearm, shall be punished
2 by an additional and consecutive term of imprisonment in the state
3 prison for 20 years.

4 (d) Notwithstanding any other provision of law, any person
5 who, in the commission of a felony specified in subdivision (a),
6 Section 246, or subdivision (c) or (d) of Section 26100, personally
7 and intentionally discharges a firearm and proximately causes great
8 bodily injury, as defined in Section 12022.7, or death, to any person
9 other than an accomplice, shall be punished by an additional and
10 consecutive term of imprisonment in the state prison for 25 years
11 to life.

12 (e) (1) The enhancements provided in this section shall apply
13 to any person who is a principal in the commission of an offense
14 if both of the following are pled and proved:

15 (A) The person violated subdivision (b) of Section 186.22.

16 (B) Any principal in the offense committed any act specified
17 in subdivision (b), (c), or (d).

18 (2) An enhancement for participation in a criminal street gang
19 pursuant to Chapter 11 (commencing with Section 186.20) of Title
20 7 of Part 1 shall not be imposed on a person in addition to an
21 enhancement imposed pursuant to this subdivision, unless the
22 person personally used or personally discharged a firearm in the
23 commission of the offense.

24 (f) Only one additional term of imprisonment under this section
25 shall be imposed per person for each crime. If more than one
26 enhancement per person is found true under this section, the court
27 shall impose upon that person the enhancement that provides the
28 longest term of imprisonment. An enhancement involving a firearm
29 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
30 or 12022.55 shall not be imposed on a person in addition to an
31 enhancement imposed pursuant to this section. An enhancement
32 for great bodily injury as defined in Section 12022.7, 12022.8, or
33 12022.9 shall not be imposed on a person in addition to an
34 enhancement imposed pursuant to subdivision (d).

35 (g) Notwithstanding any other provision of law, probation shall
36 not be granted to, nor shall the execution or imposition of sentence
37 be suspended for, any person found to come within the provisions
38 of this section.

1 ~~(h) Notwithstanding Section 1385 or any other provision of law,~~
2 ~~the court shall not strike an allegation under this section or a finding~~
3 ~~bringing a person within the provisions of this section.~~

4 *(h) The court may, in the interest of justice and at the time of*
5 *sentencing, strike an enhancement otherwise required to be*
6 *imposed by this section. The authority provided by this subdivision*
7 *applies to any resentencing that may occur pursuant to any other*
8 *law.*

9 (i) The total amount of credits awarded pursuant to Article 2.5
10 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
11 3 or pursuant to Section 4019 or any other provision of law shall
12 not exceed 15 percent of the total term of imprisonment imposed
13 on a defendant upon whom a sentence is imposed pursuant to this
14 section.

15 (j) For the penalties in this section to apply, the existence of any
16 fact required under subdivision (b), (c), or (d) shall be alleged in
17 the accusatory pleading and either admitted by the defendant in
18 open court or found to be true by the trier of fact. When an
19 enhancement specified in this section has been admitted or found
20 to be true, the court shall impose punishment for that enhancement
21 pursuant to this section rather than imposing punishment authorized
22 under any other provision of law, unless another enhancement
23 provides for a greater penalty or a longer term of imprisonment.

24 (k) When a person is found to have used or discharged a firearm
25 in the commission of an offense that includes an allegation pursuant
26 to this section and the firearm is owned by that person, a
27 coparticipant, or a coconspirator, the court shall order that the
28 firearm be deemed a nuisance and disposed of in the manner
29 provided in Sections 18000 and 18005.

30 (l) The enhancements specified in this section shall not apply
31 to the lawful use or discharge of a firearm by a public officer, as
32 provided in Section 196, or by any person in lawful self-defense,
33 lawful defense of another, or lawful defense of property, as
34 provided in Sections 197, 198, and 198.5.

35 ~~SECTION 1. It is the intent of the Legislature to enact~~
36 ~~legislation to make nonsubstantive changes to the Penal Code.~~

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AMENDED IN ASSEMBLY JUNE 15, 2017

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 620

Introduced by Senator Bradford

February 17, 2017

An act to amend Sections 12022.5 and 12022.53 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Bradford. Firearms: crimes: enhancements.

Existing law requires that a person who personally uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years. Existing law requires that a person who personally uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. Existing law requires a person who personally uses a firearm to commit certain specified felonies to be punished by an additional and consecutive term of imprisonment in the state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm. Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill would delete the prohibition on striking an allegation or finding and, instead, would allow a court, in the interest of justice and at the time of sentencing or resentencing, to strike *or dismiss* an enhancement otherwise required to be imposed by the above provisions of law.

97

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022.5 of the Penal Code is amended
2 to read:
3 12022.5. (a) Except as provided in subdivision (b), any person
4 who personally uses a firearm in the commission of a felony or
5 attempted felony shall be punished by an additional and
6 consecutive term of imprisonment in the state prison for 3, 4, or
7 10 years, unless use of a firearm is an element of that offense.
8 (b) Notwithstanding subdivision (a), any person who personally
9 uses an assault weapon, as specified in Section 30510 or ~~Section~~
10 30515, or a machinegun, as defined in Section 16880, in the
11 commission of a felony or attempted felony, shall be punished by
12 an additional and consecutive term of imprisonment in the state
13 prison for 5, 6, or 10 years.
14 (c) The court may, in the interest of justice *pursuant to Section*
15 *1385* and at the time of sentencing, strike *or dismiss* an
16 enhancement otherwise required to be imposed by this section.
17 The authority provided by this subdivision applies to any
18 resentencing that may occur pursuant to any other law.
19 (d) Notwithstanding the limitation in subdivision (a) relating to
20 being an element of the offense, the additional term provided by
21 this section shall be imposed for any violation of Section 245 if a
22 firearm is used, or for murder if the killing is perpetrated by means
23 of shooting a firearm from a motor vehicle, intentionally at another
24 person outside of the vehicle with the intent to inflict great bodily
25 injury or death.
26 (e) When a person is found to have personally used a firearm,
27 an assault weapon, a machinegun, or a .50 BMG rifle, in the
28 commission of a felony or attempted felony as provided in this
29 section and the firearm, assault weapon, machinegun, or a .50
30 BMG rifle, is owned by that person, the court shall order that the
31 firearm be deemed a nuisance and disposed of in the manner
32 provided in Sections 18000 and 18005.
33 (f) For purposes of imposing an enhancement under Section
34 1170.1, the enhancements under this section shall count as ~~one~~,
35 *one* single enhancement.

1 SEC. 2. Section 12022.53 of the Penal Code is amended to
2 read:

3 12022.53. (a) This section applies to the following felonies:

4 (1) Section 187 (murder).

5 (2) Section 203 or 205 (mayhem).

6 (3) Section 207, 209, or 209.5 (kidnapping).

7 (4) Section 211 (robbery).

8 (5) Section 215 (carjacking).

9 (6) Section 220 (assault with intent to commit a specified
10 felony).

11 (7) Subdivision (d) of Section 245 (assault with a firearm on a
12 peace officer or firefighter).

13 (8) Section 261 or 262 (rape).

14 (9) Section 264.1 (rape or sexual penetration in concert).

15 (10) Section 286 (sodomy).

16 (11) Section 288 or 288.5 (lewd act on a child).

17 (12) Section 288a (oral copulation).

18 (13) Section 289 (sexual penetration).

19 (14) Section 4500 (assault by a life prisoner).

20 (15) Section 4501 (assault by a prisoner).

21 (16) Section 4503 (holding a hostage by a prisoner).

22 (17) Any felony punishable by death or imprisonment in the
23 state prison for life.

24 (18) Any attempt to commit a crime listed in this subdivision
25 other than an assault.

26 (b) Notwithstanding any other provision of law, any person
27 who, in the commission of a felony specified in subdivision (a),
28 personally uses a firearm, shall be punished by an additional and
29 consecutive term of imprisonment in the state prison for 10 years.
30 The firearm need not be operable or loaded for this enhancement
31 to apply.

32 (c) Notwithstanding any other provision of law, any person
33 who, in the commission of a felony specified in subdivision (a),
34 personally and intentionally discharges a firearm, shall be punished
35 by an additional and consecutive term of imprisonment in the state
36 prison for 20 years.

37 (d) Notwithstanding any other provision of law, any person
38 who, in the commission of a felony specified in subdivision (a),
39 Section 246, or subdivision (c) or (d) of Section 26100, personally
40 and intentionally discharges a firearm and proximately causes great

1 bodily injury, as defined in Section 12022.7, or death, to any person
2 other than an accomplice, shall be punished by an additional and
3 consecutive term of imprisonment in the state prison for 25 years
4 to life.

5 (e) (1) The enhancements provided in this section shall apply
6 to any person who is a principal in the commission of an offense
7 if both of the following are pled and proved:

8 (A) The person violated subdivision (b) of Section 186.22.

9 (B) Any principal in the offense committed any act specified
10 in subdivision (b), (c), or (d).

11 (2) An enhancement for participation in a criminal street gang
12 pursuant to Chapter 11 (commencing with Section 186.20) of Title
13 7 of Part 1 shall not be imposed on a person in addition to an
14 enhancement imposed pursuant to this subdivision, unless the
15 person personally used or personally discharged a firearm in the
16 commission of the offense.

17 (f) Only one additional term of imprisonment under this section
18 shall be imposed per person for each crime. If more than one
19 enhancement per person is found true under this section, the court
20 shall impose upon that person the enhancement that provides the
21 longest term of imprisonment. An enhancement involving a firearm
22 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
23 or 12022.55 shall not be imposed on a person in addition to an
24 enhancement imposed pursuant to this section. An enhancement
25 for great bodily injury as defined in Section 12022.7, 12022.8, or
26 12022.9 shall not be imposed on a person in addition to an
27 enhancement imposed pursuant to subdivision (d).

28 (g) Notwithstanding any other provision of law, probation shall
29 not be granted to, nor shall the execution or imposition of sentence
30 be suspended for, any person found to come within the provisions
31 of this section.

32 (h) The court may, in the interest of justice *pursuant to Section*
33 *1385* and at the time of sentencing, *strike or dismiss* an
34 enhancement otherwise required to be imposed by this section.
35 The authority provided by this subdivision applies to any
36 resentencing that may occur pursuant to any other law.

37 (i) The total amount of credits awarded pursuant to Article 2.5
38 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
39 3 or pursuant to Section 4019 or any other provision of law shall
40 not exceed 15 percent of the total term of imprisonment imposed

1 on a defendant upon whom a sentence is imposed pursuant to this
2 section.

3 (j) For the penalties in this section to apply, the existence of any
4 fact required under subdivision (b), (c), or (d) shall be alleged in
5 the accusatory pleading and either admitted by the defendant in
6 open court or found to be true by the trier of fact. When an
7 enhancement specified in this section has been admitted or found
8 to be true, the court shall impose punishment for that enhancement
9 pursuant to this section rather than imposing punishment authorized
10 under any other provision of law, unless another enhancement
11 provides for a greater penalty or a longer term of imprisonment.

12 (k) When a person is found to have used or discharged a firearm
13 in the commission of an offense that includes an allegation pursuant
14 to this section and the firearm is owned by that person, a
15 coparticipant, or a coconspirator, the court shall order that the
16 firearm be deemed a nuisance and disposed of in the manner
17 provided in Sections 18000 and 18005.

18 (l) The enhancements specified in this section shall not apply
19 to the lawful use or discharge of a firearm by a public officer, as
20 provided in Section 196, or by any person in lawful self-defense,
21 lawful defense of another, or lawful defense of property, as
22 provided in Sections 197, 198, and 198.5.

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Senate Bill No. 620

CHAPTER 682

An act to amend Sections 12022.5 and 12022.53 of the Penal Code, relating to firearms.

[Approved by Governor October 11, 2017. Filed with
Secretary of State October 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 620, Bradford. Firearms: crimes: enhancements.

Existing law requires that a person who personally uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years. Existing law requires that a person who personally uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. Existing law requires a person who personally uses a firearm to commit certain specified felonies to be punished by an additional and consecutive term of imprisonment in the state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm. Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill would delete the prohibition on striking an allegation or finding and, instead, would allow a court, in the interest of justice and at the time of sentencing or resentencing, to strike or dismiss an enhancement otherwise required to be imposed by the above provisions of law.

The people of the State of California do enact as follows:

SECTION 1. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 30510 or 30515, or a machinegun, as defined in Section 16880, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years.

(c) The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one single enhancement.

SEC. 2. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

- (1) Section 187 (murder).
- (2) Section 203 or 205 (mayhem).
- (3) Section 207, 209, or 209.5 (kidnapping).
- (4) Section 211 (robbery).
- (5) Section 215 (carjacking).
- (6) Section 220 (assault with intent to commit a specified felony).
- (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
- (8) Section 261 or 262 (rape).
- (9) Section 264.1 (rape or sexual penetration in concert).
- (10) Section 286 (sodomy).
- (11) Section 288 or 288.5 (lewd act on a child).
- (12) Section 288a (oral copulation).
- (13) Section 289 (sexual penetration).
- (14) Section 4500 (assault by a life prisoner).
- (15) Section 4501 (assault by a prisoner).
- (16) Section 4503 (holding a hostage by a prisoner).
- (17) Any felony punishable by death or imprisonment in the state prison for life.
- (18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 26100, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e) (1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated subdivision (b) of Section 186.22.

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the accusatory

pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

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SB-620 Firearms: crimes: enhancements. (2017-2018)

Date	Action
10/11/17	Chaptered by Secretary of State. Chapter 682, Statutes of 2017.
10/11/17	Approved by the Governor.
09/19/17	Enrolled and presented to the Governor at 4 p.m.
09/13/17	Assembly amendments concurred in. (Ayes 22. Noes 13. Page 2816.) Ordered to engrossing and enrolling.
09/13/17	In Senate. Concurrence in Assembly amendments pending.
09/12/17	Read third time. Passed. (Ayes 42. Noes 33. Page 3206.) Ordered to the Senate.
09/12/17	Reconsideration granted.
07/10/17	Motion to reconsider made by Assembly Member Weber.
07/10/17	Read third time. Refused passage. (Ayes 31. Noes 34. Page 2499.)
06/29/17	Read second time. Ordered to third reading.
06/28/17	From committee: Do pass. (Ayes 9. Noes 5.) (June 28).
06/15/17	Read second time and amended. Re-referred to Com. on APPR.
06/14/17	From committee: Do pass as amended and re-refer to Com. on APPR. (Ayes 5. Noes 2.) (June 13).
06/01/17	Referred to Com. on PUB. S.
05/18/17	In Assembly. Read first time. Held at Desk.
05/18/17	Read third time. Passed. (Ayes 22. Noes 14. Page 1105.) Ordered to the Assembly.
05/09/17	Read second time. Ordered to third reading.
05/08/17	From committee: Be ordered to second reading pursuant to Senate Rule 28.8.
05/04/17	Set for hearing May 15.
05/03/17	May 8 hearing postponed by committee.
05/01/17	Set for hearing May 8.
04/26/17	From committee: Do pass and re-refer to Com. on APPR. (Ayes 4. Noes 2. Page 855.) (April 25). Re-referred to Com. on APPR.
04/13/17	Set for hearing April 25.
04/05/17	Re-referred to Com. on PUB. S.
03/28/17	From committee with author's amendments. Read second time and amended. Re-referred to Com. on RLS.
03/02/17	Referred to Com. on RLS.
02/21/17	From printer. May be acted upon on or after March 23.
02/17/17	Introduced. Read first time. To Com. on RLS. for assignment. To print.



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SENATE COMMITTEE ON PUBLIC SAFETY

Nancy Skinner, Chairman

BACKGROUND INFORMATION REQUEST

Please complete and return this form to the Senate Public Safety Committee. Please e-mail any other relevant material to one of our committee assistants Sarah Loftin or Zandra Chavez.

PLEASE NOTE THE FOLLOWING:

- **Call the Committee as soon as possible to set your bill.**
- **The Committee WILL NOT automatically set any bill.**
- **Letters may not be reflected in the Committee analysis of your bill, if submitted to the Committee less than 7 days from the date your bill is set to be heard (the Tuesday preceding your hearing date).**
- **Your bill may not be set until this form is completed and returned to the Committee.**
- **This form is two pages. Please complete every question. Send a copy of this completed form and any attachments to the Committee's Minority Policy Consultant, Eric Csizmar (eric.csizmar@sen.ca.gov (651-1772)).**

Measure: SB-620

Author: Bradford

Subject: Firearms: crimes: enhancements.

Staff Contact Name, Phone Number and E-mail: Sue Kateley, 916-651-4035, sue.kateley@sen.ca.gov

1. Which agency, organization, or individual requested the introduction of this bill?

Author

2. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support? Please attach copies of letters.

None on file

3. Which agencies, organizations, or individuals have expressed opposition? Please attach copies of letters.

None on file

4. If a similar bill has been introduced in this or any previous session, what was the number and year of its introduction?

N/A

5. What problem or deficiency under current law does the bill seek and remedy? Please be as specific as possible, and include any legal or empirical information upon which the bill is based. **NOTE: Some or all of this statement may be quoted verbatim in the Committee's analysis.**

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements cause several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

6. Are you planning any amendments to be offered before the Committee hearing? If so, please describe the amendments. **NOTE: THE HEARING OF A BILL MAY BE DELAYED IF 1 SIGNED AND 10 UNSIGNED COPIES OF THE AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE IN A TIMELY MANNER.**

No amendments



SB 620 – Firearm Enhancements: Judicial Discretion

SUMMARY

SB 620 would allow a court, in the interest of justice and at the time of sentencing to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony consistent with other enhancements.

BACKGROUND

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements cause several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SOLUTION

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

SUPPORT

None on file

OPPOSITION

None on file

CONTACT

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Office of Senator Steve Bradford
State Capitol, Room 2062
916-651-4035
sue.kateley@sen.ca.gov



Senator Steve Bradford, 35th Senate District
State Capitol, Room 2062, 916-651-4035

SB 620 – Firearm Enhancements: Judicial Discretion

Offense Enhancement Statute	For Offenders Admitted During 2016
PC 12022.5	2
PC 12022.5(a)	966
PC 12022.5(b)	17
PC 12022.53(b)	556
PC 12022.53(c)	192
PC 12022.53(d)	324
Total	2,057

Data as of 28 February 2017
Data includes stayed offenses and stayed enhancements.
PC 12022.5 offenses were committed in 1980 and 1987.
No offenders are sentenced under PC 12022.5(d).

Offense Enhancement Statute	Offenders In Prison On 12/31/2016
PC 12022.5	2,184
PC 12022.5(a)	13,368
PC 12022.5(b)	279
PC 12022.5(c)	22
PC 12022.53(b)	8,294
PC 12022.53(c)	2,776
PC 12022.53(d)	6,528
Total	33,451

In-Prison data as of 31 December 2016.
Sentencing data as of 28 February 2017.
Offenders with more than one enhancement are counted one time per offender per enhancement.
No offenders are sentenced under PC 12022.5(d).

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 620 **Hearing Date:** April 25, 2017
Author: Bradford
Version: March 28, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Firearms: Crimes: Enhancements*

HISTORY

Source: Author

Prior Legislation: AB 4 (Bordonaro) Chap. 503, Stats. of 1997
AB 2173 (Wayne) Chap. 126, Stats of 2002

Support: Alliance for Boys and Men of Color; Anti-Recidivism Coalition; Californians for Safety and Justice; Californians United for a Responsible Budget; Friends Committee on Legislation of California

Opposition: California District Attorneys Association; California State Sheriffs' Association

PURPOSE

The purpose of this legislation is to allow the court, in the interest of justice and at the time of sentencing, strike a firearm enhancement, as specified.

Existing law provides that any person who personally uses a firearm in the commission or attempted commission of a felony in addition and consecutive to the punishment for the underlying felony offense be sentenced to a term of 3, 4, or 10 years in the state prison unless the use of a firearm is an element of the offense for which he or she is convicted. (Penal Code § 12022.5(a).)

Existing law provides that a person who personally uses an assault weapon or machine gun during the commission of a felony is subject to an additional and consecutive term of 5, 6 or 10 years in state prison. (Penal Code § 12022.5(b).)

Existing law allows a court, in the interests of justice; to dismiss an action, allegation or enhancement, except where specifically and clearly prohibited by statute. (*People v. Superior Court (Romero)* (1996) 13 Cal. 3d 497; Penal Code § 1385.)

Existing law states that the court may not strike an allegation that a person personally used a firearm in the commission of a felony or a finding bringing a person within the provisions of this enhancement. (Penal Code § 12022.5(c).)

Existing law states that notwithstanding the limitation that a firearm use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict great bodily injury, (GBI) or death. (Penal Code § 12022.5(d).)

Existing law states that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005. (Penal Code § 12022.5(e).)

Existing law states that, for purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement. (Penal Code §12022.5(f))

Existing law provides for the "10-20-life" law relating to the use of a firearm. A person who uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses (robbery, carjacking, murder, kidnapping, sexual assault, and mayhem) is subject to an additional consecutive term of 10 years in prison. If the firearm was intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Penal Code § 12022.53.)

Existing law states that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section. (Penal Code § 12022.53(g).)

Existing law states that the court cannot strike an allegation under this section or a finding bringing a person within the provisions of this section. (Penal Code § 12022.53(h).)

Existing law provides that total amount of credits awarded not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section. (Penal Code § 12022.53(i).)

This legislation would provide that the court may, in the interest of justice and at the time of sentencing, strike an enhancement otherwise required to be imposed by 12022.5 or 12022.53. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

COMMENTS

1. Need for this Legislation

According to the author:

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements cause several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

2. Firearms Enhancements: Impact on State Prison Population and Deterrence

In 2014, the Little Hoover Commission explained how California's sentencing structure and enhancements have impacted the prison system:

At the beginning of the state's prison building boom in the early 1980s, adult and youth corrections accounted for 4 percent of California's General Fund expenditures at \$1 billion per year. Today, it represents 9 percent of the total General Fund, approximately \$9.5 billion. This growth has come at the expense of other state priorities including higher education and social services.

With the exception of the recently completed California Health Care Facility and the planned infill housing previously described, California ended its prison-building boom with the opening of Kern Valley State Prison in 2005 after adding 21 new facilities between 1984 and 2005. The state previously had built 12 prisons over the course of 132 years. During the 20-year building campaign, California policy makers enacted hundreds of laws increasing sentence length,

adding sentence enhancements and creating new sentencing laws. The end result was that every new prison the state built was quickly filled to capacity.

... [T]he 10-20-Life "Use a Gun and You're Done" Law in 1997, added significant sentencing enhancements to certain serious felonies. In addition to being sentenced for the felony, an enhancement of 10 years of prison time is added if an offender commits certain crimes while in possession of a gun; 20 years prison time is added if the gun is fired, and 25 years to life is added if someone is killed or seriously injured. As a result of the gun enhancement law, a convicted murderer who used a gun to commit the crime could get as much or more time for the sentence enhancement than the actual murder charge. A second degree murder conviction might result in a 15-years-to-life sentence and the gun enhancement would add a 25-years-to-life sentence for a combined 40-years-to-life sentence.

Unless lawmakers and the public they represent are willing to build more prisons and commit a greater percentage of the General Fund to corrections to pay for the ongoing expenses of running additional facilities, state prisons, under the current sentencing system likely will remain overcrowded. Without additional, long-term measures, prison overcrowding will continue to be a constant and costly battle for California.

(<http://www.lhc.ca.gov/studies/219/Report219.pdf>; Citations omitted.)

The impact that "Use a Gun and You're Done" law would have on California's prison system was evident at the time it was passed, but the focus was seemingly on the legislation's deterrent value:

The toughest gun-sentencing law in the nation will go into effect Thursday when California imposes a new statute that dramatically increases prison terms for anyone who wields a firearm while committing a crime.

Through a massive advertising campaign initiated in recent days, state officials are warning would-be criminals that the law requires that 10 years be added to the sentence of anyone over 14 years old who simply carries a gun -- loaded or unloaded -- in the commission of a serious crime. It requires that 20 years be amended to a term for firing the gun -- even if the bullet hits no one, and that 25 years to life be mandated for seriously injuring a victim.

Although numerous states in recent years have initiated gun bans and other efforts to curb the use of firearms, no other state has so drastically increased the punishments.

All sentences under the new law, which was signed by Gov. Pete Wilson (R) on Sept. 25 with little fanfare or controversy, will be added to whatever punishment is imposed for the crime that was committed with the gun.

This makes it, in the words of Attorney General Dan Lungren, "quite simply the toughest gun-abuse control measure in the nation."

The additional sentences cannot be suspended, probation cannot be recommended and persons convicted will be required to serve at least 85 percent of the additional prison terms after credit for good behavior is deducted.

The sentencing add-ons will apply to gun possession during the commission of 17 crimes, including robbery, kidnapping, rape and assault with intent to commit a felony.

California law enforcement officials predict that the new "10-20-life" law will be copied elsewhere in the country just as the state's 1994 "three-strikes-and-you're-out" law mandating life sentences for third-time felons has been adopted by about two dozen states in one form or another.

As California attempts to get the word out about the new law, no one is being left out. Each of the more than 156,000 inmates in the state's 33 prisons will be handed a brochure in the weeks ahead warning of the law's provisions.

Criminals outside the prison system will get the message about the new law through advertisements broadcast over 300 television and radio stations statewide, featuring actor Alan Autry, who plays tough cop Bubba Skinner on the "Heat of the Night" television series.

"Do you know a tough guy with a gun? Let him know the law just came to town," Autry says before outlining the new sentence enhancements. "Now, if you're 14 years or older, this law applies to you. Use a gun and you're done . . . 10, 20, life, the law is here."

Critics of the new law say it is a well-intentioned but misguided measure that will simply fuel an explosion in new prison construction without addressing either the proliferation of guns or the root causes of crime.

"These types of excessive laws lead to an enormous waste of government resources without solving anything. The government instead should look more closely at regulating the possession of guns in a much stricter fashion so that the use of guns is no longer a possibility," said Elizabeth Schroeder, associate director of the Southern California branch of the American Civil Liberties Union.

The ACLU opposed the measure when it was enacted almost unanimously by the state legislature, calling it "excessive and gratuitous" because existing law already allows for sentence enhancements of up to 10 years when a person uses a firearm in the commission of a felony.

What's different, however, is that the new law mandates the additional sentences.

And that change, according to proponents, is not only critical but won't necessarily swell the ranks of prisons. "We'd rather fill up the prisons than fill the cemeteries," said Sean Walsh, Wilson's press secretary. "But we also believe that when the word gets out there will be fewer crimes committed with guns. We believe it will be a deterrent."

Prison officials have said the short-term impact on the inmate population will be negligible because criminals would be serving time for the basic crime they committed

anyway. They said the longer-term impact of the enhanced sentences will be determined by how effective a deterrent the 10-20-life law becomes.

State officials estimated four years ago that the prison population would soar to 230,000 by the turn of the century because of the three-strikes law and that prisons would run out of beds by 1998. But those predictions proved to be off the mark. Department of Corrections officials now say they will be housing only 181,000 inmates by the year 2000.

Among the reasons given for the lower-than-expected increase were that judges have not imposed three-strike sentences as often as was originally expected, and that felons facing non-three strikes sentences leveled off along with the general decline in the crime rate. Supporters of the 10-20-life law say they expect the same type of flattening out of the crime rate to help reduce the pressure on prisons.

But to be successful, the new law will have to be recognized as a certainty by criminals, said one of the measure's chief proponents, Mike Reynolds, a Fresno anti-crime activist who co-wrote the three-strikes ballot initiative after his 18-year-old daughter, Kimber, was shot to death during a purse-snatching outside a movie theater in 1992.

"It's tough stuff. It's a real deterrent, but you can't bluff these people. You need certainty and realness to make it sink in and cause a real drop in crime," Reynolds said. (*Starting Today, California Packs Toughest Gun-Sentencing Law*; William Claiborne; Washington Post; January 1, 1998.)

The findings of the legislation echoed the deterrence value of this legislation:

The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime. (Assembly Bill 4 (Bordonaro), Chap. 503, Stats of 1997.)

Over twenty years later, the research has demonstrated that lengthy sentences may not be an effective deterrent. 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.¹

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 offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.”²

Given that, according to the author, there are “over 30,000 persons currently incarcerated” as a result of these enhancements, members may wish to discuss the deterrent value of these enhancements.

3. Effect of This Legislation

Existing law includes Penal Code section 1385, which grants a court the power and discretion to dismiss an action or any part of an action in the interests of justice. The Legislature can limit or prohibit the court's exercise of discretion under section 1385 for any particular crime or enhancement. However, any limits on section 1385 discretion must be clearly and specifically stated. (*People v. Superior Court (Romero)*, supra, 13 Cal.3d 497.) Penal Code sections 12022.5 and 12022.53 both include a provision forbidding the court from dismissing an enhancement imposed under that section.

This legislation would provide the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

4. Argument in Support

According to Californian’s for Safety and Justice:

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

¹ *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),

² *Id.* at 132-133.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

5. Argument in Opposition

According to the California District Attorneys' Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

-- END --

Vote requirement: 21
Version Date: 03/28/2017

Quick Summary

Provides that the court may, in the interest of justice and at the time of sentencing, strike an enhancement otherwise required to be imposed for using a firearm in the commission of a felony. More specifically this would apply judicial discretion in imposing the following enhancements: 1) a consecutive 3, 4, or 10 years personally firearm in the commission of a felony; 2) a consecutive 5, 6, or 10 years for personally using an assault weapon, or machine gun in the commission of a felony; 3) the "10-20-life" enhancement imposed for use of a firearm during the commission of one of the specified 18 felonies (murder, rape, mayhem, etc) States that the authority provided also applies to any resentencing that may occur pursuant to any other law.

Fiscal Effect

No effect *No effect*

POTENTIALLY MAJOR STATE SAVINGS (>\$1 million per year)

>> To the extent courts exercise the discretion provided by this bill to not impose firearm enhancements, it would result in unknown savings, potentially in excess of \$1 million per year (General Fund), to the Department of Corrections and Rehabilitation from reduced prison sentences.
>> Any costs to the courts resulting from this measure would be minor and absorbable.

Fiscal Consultant: *Matt Osterli*

Analysis

Arguments in Support:

- 1) Not only does research suggest that longer sentences do not decrease crime but statistics indicate that minority groups are disproportionately arrested, prosecuted and convicted for various crimes. Sentence enhancements further exacerbate this miscarriage of justice. Voters recently approved Proposition 57, showing their support for rehabilitation and reducing excessive sentences caused by decades of misguided "tough on crime" policies that have not been shown to reduce crime through scientific study. This measure is consistent with that vote and decades of research demonstrating that similar or better outcomes can be achieved without these excessive sentences.
- 2) According to the California Attorneys for Criminal Justice, "Granting the courts discretion when deciding on whether or not to impose an additional

sentence is consistent with other enhancement sentence laws. This is due to the importance of the courts taking into consideration other factors such as character of the defendant, external circumstances involved, likeliness of the offender to reoffend, etc., when determining a sentence. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of the crime is not a smart approach to effective punishment. At a time when California is working to be smart on crime and reduce the impacted prison population, measures like AB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.”

Arguments in Opposition:

1) The irony here is palpable. On April 18, the author of this measure supported another bill (SB 497, Portantino) to limit law-abiding citizens to the purchase of one firearm per month. In 2013 he supported SB 374 (Steinberg) which made all rifles owned by law abiding citizens "assault rifles" if they did not have fixed magazines, SB 396 (Hancock) to ban "high capacity" magazines that were owned by law abiding citizens, AB 48 (Skinner) to ban magazine repair kits and criminalize the receipt of "high capacity" magazines by law abiding citizens, SB 299 (DeSaulnier) which criminalized law abiding citizens for failure to report a stolen firearm, and SB 808 (DeLeon) the original "Ghost Gun" bill which criminalized law abiding citizens who lawfully make a firearm without requesting a serial number from DOJ. In fact, the policy office was unable to identify a gun control bill directed toward law abiding citizens that the author has not supported. However, apparently, there is a place where the line has been drawn in the sand for Democrats and 2nd amendment rights... harshly punishing individuals who personally use a firearm (or even a so called "assault weapon") to commit a felony and injure, kill, or rob another person.

2) As the author of the original 10-20-life bill noted "The problem is not guns, the problem is gun violence - criminals misusing guns to terrorize, injure and kill their victims. While we ve seen violent crime decrease somewhat in recent years (probably as a result of Three Strikes) there is still a long way to go. In 1994, the violent crime in California was over five times what it was in 1952. With Three Strikes, the voters sent a clear message to criminals: if you re a career criminal, you re going to jail for a long time. With the 10-20-life provisions of AB 4, we are sending another clear message: if you use a gun to commit a crime, you re going to jail and you re staying there." That is the purpose of the section being amended. Why would we want to allow judges to waive the enhancements on individuals who use a firearm to commit murder, rape, mayhem, torture, etc?

3) According to Gun Owners of California, "Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff

and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the ‘use a gun – go to prison’ policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of ‘justice’ but rather a dangerous proposition.”

Digest

Provides that the court may, in the interest of justice and at the time of sentencing, strike an enhancement otherwise required to be imposed on an individual who personally uses a firearm in the commission of a felony. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

Background

Existing law regarding general firearm enhancements:

Existing law provides that any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense. (Penal Code § 12022.5(a))

Existing law provides that any person who personally uses an assault weapon, as specified in Section 30510 or Section 30515, or a machinegun, as defined in Section 16880, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. (Penal Code § 12022.5(b))

Existing law provides that the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section. (Penal Code § 12022.5(c))

Existing law provides that, the additional term provided by this section shall be imposed for any violation of Section 245 (assault with a deadly weapon) if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death. (Penal Code § 12022.5(c))

The 10-20-life “use a gun and you’re done” legislation of 1996 (Bordanaro) (Penal Code § 12022.53) :

Under existing California law an individual who commits one of the felonies specified below while personally using a firearm is subject to a consecutive sentence enhancement as follows:

- Imposes a mandatory additional sentence of ten years for a crime in which a gun was involved.

- Imposes a mandatory additional sentence of twenty additional years to a sentence if the gun was discharged during the crime.
- Imposes a mandatory additional sentence of 25 years-to-life be added to a sentence of a person convicted of a crime in which a gun was fired, and in which an individual either was seriously injured or killed.

This applies to the following felonies:

- (1) Section 187 (murder).
- (2) Section 203 or 205 (mayhem).
- (3) Section 207, 209, or 209.5 (kidnapping).
- (4) Section 211 (robbery).
- (5) Section 215 (carjacking).
- (6) Section 220 (assault with intent to commit a specified felony).
- (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
- (8) Section 261 or 262 (rape).
- (9) Section 264.1 (rape or sexual penetration in concert).
- (10) Section 286 (sodomy).
- (11) Section 288 or 288.5 (lewd act on a child).
- (12) Section 288a (oral copulation).
- (13) Section 289 (sexual penetration).
- (14) Section 4500 (assault by a life prisoner).
- (15) Section 4501 (assault by a prisoner).
- (16) Section 4503 (holding a hostage by a prisoner).
- (17) Any felony punishable by death or imprisonment in the state prison for life.
- (18) Any attempt to commit a crime listed in this subdivision other than an assault.

These enhancements may also be applied to a principal in the commission of an offense if it is in furtherance of gang activity.

Existing law also provides that a court shall not strike an allegation or a finding bringing a person within the provisions of this section.

Good time credits for an offender shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section. (Penal Code § 12022.53)

Author's Statement:

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements cause several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

Related Legislation

AB 4 (Bordonaro)(Chapter 503, Statutes of 1997) provides for a 10 year enhancement for use of a firearm in commission of specified felonies, 20 years

for intentional discharge, and 25 years to life if injury is caused - and probation or suspension of sentence shall not be granted in any such cases.

Support & Opposition Received

Support: California Attorneys for Criminal Justice; California Public Defenders Association

Opposition: Gun Owners of California; California District Attorneys Association; California State Sheriffs' Association

Senate Republican Policy Office/*Eric Csizmar*

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 03/28/2017
POSITION: Neutral

BILL NUMBER: SB 620
AUTHOR: Bradford, Steven

BILL SUMMARY: Firearms: crimes: enhancements.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required when a person uses or discharges a firearm while committing a felony.

FISCAL SUMMARY

By providing the option to the courts to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, this bill could result in lowering the state prison population.

As of December 2016, inmates in the California Department of Corrections and Rehabilitation (CDCR) had been sentenced to more than 33,000 enhancements under Penal Code sections 12022.5 and 12022.53. Should the courts exercise the discretion authorized in this bill, it would result in shorter sentences for felony offenders sentenced to CDCR, which would drive unknown, although potentially significant, savings to the General Fund in future years.

This bill would have no fiscal impact on the Judicial Branch.

COMMENTS

The Department of Finance is neutral on this bill because it provides judges the discretion to strike a firearm enhancement, as specified, for offenders where case factors do not indicate a need for a more severe punishment. Consequently, this bill could result in shorter sentence lengths, thereby resulting in General Fund savings by lowering the state prison population.

Existing law requires that a person who uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 3, 4, or 10 years. Existing law requires that a person who uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 5, 6, or 10 years. Existing law requires a person who uses a firearm to commit certain specified felonies be punished by an additional and consecutive term of imprisonment in state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and causes great bodily harm.

Existing law also prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony.

Analyst/Principal C. Kellum	Date	Assistant Program Budget Manager Amy Jarvis	Date
Department Deputy Director			Date
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

BILL ANALYSIS--(CONTINUED)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Bradford, Steven

03/28/2017

SB 620

COMMENTS (continued)

According to the author's office, SB 620 is "consistent with other enhancement sentence laws and retains existing sanctions for serious crimes."

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code	
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2016-2017	FC	2017-2018	FC	2018-2019	
5225/Corr Rehab	SO	No	A	--	U	1,000-100,000	U	1,000-100,000	0001
0250/Jud Branch	LA	No		-----	No/Minor Fiscal Impact	-----			0001

THIRD READING

Bill No: SB 620
Author: Bradford (D)
Amended: 3/28/17
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/25/17
AYES: Skinner, Bradford, Mitchell, Wiener
NOES: Anderson, Stone
NO VOTE RECORDED: Jackson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Firearms: crimes: enhancements

SOURCE: Author

DIGEST: This bill allows the court, in the interest of justice and at the time of sentencing, to strike a firearm enhancement, as specified.

ANALYSIS:

Existing law:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony in addition and consecutive to the punishment for the underlying felony offense be sentenced to a term of three, four, or 10 years in the state prison unless the use of a firearm is an element of the offense for which he or she is convicted. (Penal Code § 12022.5(a).)
- 2) Provides that a person who personally uses an assault weapon or machine gun during the commission of a felony is subject to an additional and consecutive term of five, six or 10 years in state prison. (Penal Code § 12022.5(b).)
- 3) Allows a court, in the interests of justice, to dismiss an action, allegation or enhancement, except where specifically and clearly prohibited by statute.

(*People v. Superior Court (Romero)* (1996) 13 Cal. 3d 497; Penal Code § 1385.)

- 4) States that the court may not strike an allegation that a person personally used a firearm in the commission of a felony or a finding bringing a person within the provisions of this enhancement. (Penal Code § 12022.5(c).)
- 5) States that notwithstanding the limitation that a firearm use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict great bodily injury (GBI) or death. (Penal Code § 12022.5(d).)
- 6) States that, for purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement. (Penal Code § 12022.5(f).)
- 7) Provides for the "10-20-life" law relating to the use of a firearm. A person who uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses (robbery, carjacking, murder, kidnapping, sexual assault, and mayhem) is subject to an additional consecutive term of 10 years in prison. If the firearm was intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Penal Code § 12022.53.)
- 8) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section. (Penal Code § 12022.53(g).)
- 9) States that the court cannot strike an allegation under this section or a finding bringing a person within the provisions of this section. (Penal Code § 12022.53(h).)
- 10) Provides that total amount of credits awarded not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section. (Penal Code § 12022.53(i).)

This bill provides that the court may, in the interest of justice and at the time of sentencing, strike an enhancement otherwise required to be imposed by 12022.5 or

12022.53. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

Background

Firearms Enhancements: Impact on State Prison Population and Deterrence

The impact that “Use a Gun and You’re Done” law would have on California’s prison system was evident at the time it was passed, but the focus was seemingly on the legislation’s deterrent value:

The toughest gun-sentencing law in the nation will go into effect Thursday when California imposes a new statute that dramatically increases prison terms for anyone who wields a firearm while committing a crime.

Through a massive advertising campaign initiated in recent days, state officials are warning would-be criminals that the law requires that 10 years be added to the sentence of anyone over 14 years old who simply carries a gun -- loaded or unloaded -- in the commission of a serious crime. It requires that 20 years be amended to a term for firing the gun -- even if the bullet hits no one, and that 25 years to life be mandated for seriously injuring a victim.

Although numerous states in recent years have initiated gun bans and other efforts to curb the use of firearms, no other state has so drastically increased the punishments.

All sentences under the new law, which was signed by Gov. Pete Wilson (R) on Sept. 25 with little fanfare or controversy, will be added to whatever punishment is imposed for the crime that was committed with the gun.

This makes it, in the words of Attorney General Dan Lungren, “quite simply the toughest gun-abuse control measure in the nation.”

The additional sentences cannot be suspended, probation cannot be recommended and persons convicted will be required to serve at least 85 percent of the additional prison terms after credit for good behavior is deducted.

The sentencing add-ons will apply to gun possession during the commission of 17 crimes, including robbery, kidnapping, rape and assault with intent to commit a felony.

California law enforcement officials predict that the new “10-20-life” law will be copied elsewhere in the country just as the state's 1994 “three-strikes-and-

you're-out" law mandating life sentences for third-time felons has been adopted by about two dozen states in one form or another.

Critics of the new law say it is a well-intentioned but misguided measure that will simply fuel an explosion in new prison construction without addressing either the proliferation of guns or the root causes of crime.

"These types of excessive laws lead to an enormous waste of government resources without solving anything. The government instead should look more closely at regulating the possession of guns in a much stricter fashion so that the use of guns is no longer a possibility," said Elizabeth Schroeder, associate director of the Southern California branch of the American Civil Liberties Union.

The ACLU opposed the measure when it was enacted almost unanimously by the state legislature, calling it "excessive and gratuitous" because existing law already allows for sentence enhancements of up to 10 years when a person uses a firearm in the commission of a felony.

What's different, however, is that the new law mandates the additional sentences.

And that change, according to proponents, is not only critical but won't necessarily swell the ranks of prisons. "We'd rather fill up the prisons than fill the cemeteries," said Sean Walsh, Wilson's press secretary. "But we also believe that when the word gets out there will be fewer crimes committed with guns. We believe it will be a deterrent."

Prison officials have said the short-term impact on the inmate population will be negligible because criminals would be serving time for the basic crime they committed anyway. They said the longer-term impact of the enhanced sentences will be determined by how effective a deterrent the 10-20-life law becomes....

(Starting Today, California Packs Toughest Gun-Sentencing Law; William Claiborne; Washington Post; January 1, 1998.)

The findings of the legislation echoed the deterrence value of this legislation:

The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes,

in order to protect our citizens and to deter violent crime. (Assembly Bill 4 (Bordonaro), Chap. 503, Stats of 1997.)

Over twenty years later, the research has demonstrated that lengthy sentences may not be an effective deterrent. 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.¹

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 offenders must have some knowledge of criminal penalties to be deterred from committing a crime, but in practice often do not.”²

Given that, according to the author, there are “over 30,000 persons currently incarcerated” as a result of these enhancements, members may wish to discuss the deterrent value of these enhancements.

¹ *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),

² *Id.* at 132-133.

Effect of This Bill

Existing law includes Penal Code Section 1385, which grants a court the power and discretion to dismiss an action or any part of an action in the interests of justice. The Legislature can limit or prohibit the court's exercise of discretion under Section 1385 for any particular crime or enhancement. However, any limits on Section 1385 discretion must be clearly and specifically stated. (*People v. Superior Court (Romero)*, supra, 13 Cal.3d 497.) Penal Code Sections 12022.5 and 12022.53 both include a provision forbidding the court from dismissing an enhancement imposed under that section.

This bill provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

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

SUPPORT: (Verified 5/9/17)

Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Friends Committee on Legislation of California

OPPOSITION: (Verified 5/9/17)

California District Attorneys Association
California State Sheriffs' Association
Gun Owners of California

ARGUMENT IN SUPPORT: According to the American Civil Liberties Union:

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies

show enhancements like these have been the primary drives of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence. SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

ARGUMENT IN OPPOSITION: According to the California District Attorneys Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

Prepared by: Nico Galván / PUB. S. /
5/9/17 14:58:18

**** **END** ****



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

BACKGROUND INFORMATION REQUEST

Please complete and return 2 copies of this form and 2 copies of all supporting materials (including, press releases, support/opposition letters, proposed amendments, etc) ASAP of receipt of this form.

A bill cannot be heard if a completed worksheet is not returned.

In addition, please e-mail this background information request form electronically, **in Word**, to:
 Arnell Rusanganwa (arnell.rusanganwa@asm.ca.gov), Committee Secretary, Gary Olson
 (gary.olson@asm.ca.gov), Republican Consultant, and Anisa Jassawalla
 (anisa.jassawalla@asm.ca.gov), Speakers Office of Research **All material sent electronically should be flagged individually (i.e., support/opposition letters, proposed amendments, news articles)**

Measure: SB 620

Author: Bradford

Staff: Sue Kateley

Staff Contact Number: 651-4035

Please use Times New Roman Font and 12 point size for all responses. Thank you.

BILL ORIGIN:

1) Source: What person, organization, or governmental entity requested introduction? Please include the name, address, and phone number of the contact person.

Author

2) Similar Legislation: Has a similar bill been previously introduced? Please identify the bill number, author, appropriate legislative session, and disposition of the bill.

No

BACKGROUND:

1) What is the problem or deficiency in existing law which this bill will remedy?

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements **cause** several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

- 2) If there has been an interim committee report, study, news article, statistic or other evidence on the bill, please submit copies and/or links of these materials to the Committee.

N/A

- 3) Are there any similar federal legislation or related bills or laws in other states? Please attach or provide any information and links, as appropriate.

N/A

- 4) Please include an author's statement as you wish it to appear on the committee analysis:

SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

Longer sentences do not deter crime or protect public safety according to research on these laws.

Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice.

SUPPORT AND OPPOSITION

All letters of support or opposition must be forwarded to the committee as soon as possible. Please note that these letters will NOT be returned.

AMENDMENTS:

Do you plan ANY amendments to this bill prior to hearing? If so, please submit a copy of the language submitted to Legislative Counsel or provide a brief summary of planned amendments to the committee as soon as possible.

N/A

COMMITTEE POLICY ON AUTHOR'S AMENDMENTS

Author's amendments must be submitted to the Committee (in Legislative Counsel Form) by Wednesday, 5:00 p.m., prior to the scheduled committee hearing date. AMENDMENTS (ORIGINAL, SIGNED BY MEMBER, PLUS **EIGHT** COPIES IN LEGISLATIVE COUNSEL FORM) MUST BE **HAND DELIVERED** TO THE COMMITTEE AT 1020 "N" STREET, ROOM 111. **DO NOT** SEND AMENDMENTS THROUGH INTER-AGENCY MAIL.

PLEASE RETURN THIS FORM TO: ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Phone: 916-319-3744

Fax: 916-319-3745

e-mail to: arnell.rusanganwa@asm.ca.gov

Date of Hearing: June 13, 2017
Counsel: Cheryl Anderson

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

SB 620 (Bradford) – As Amended March 28, 2017
As Proposed to be Amended in Committee

SUMMARY: Allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of 3, 4, or 10 years, or 5, 6, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use. Specifically, **this bill:**

- 1) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.
- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing great bodily injury (GBI) or death while committing or attempting to commit a specified felony.

EXISTING LAW:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. (Pen. Code, § 12022.5, subs. (a) & (b).)¹
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement (Pen. Code, § 12022.5, subd. (c).)
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict GBI or death. (Pen. Code, § 12022.5, subd. (d).)

¹ The firearm need not be operable or loaded. (*People v. Nelums* (1982) 31 Cal.3d 355, 360; see *People v. Steele* (1991) 235 Cal.App.3d 788, 791–795.) Someone personally uses a firearm if he or she intentionally displays the firearm in a menacing manner, hits someone with the firearm, or fires the firearm. (*People v. Bland* (1995) 10 Cal.4th 991, 997; *People v. Johnson* (1995) 38 Cal.App.4th 1315, 1319–1320; see also Pen. Code, § 1203.06, subd. (b)(2).)

- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided. (Pen. Code, § 12022.5 subd. (e).)
- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement. (Pen. Code, §§ 12022.5, subd. (f), 1170.1.)
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses² is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.³ (Pen. Code, § 12022.53, subds. (b)-(d).)
- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)
- 8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)
- 9) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law. (Pen. Code, § 12022.53, subd. (g).)
- 10) Prohibits the court from striking an allegation or a true finding under the 10-20-life law. (Pen. Code, § 12022.53, subd. (h).)
- 11) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15 percent of the total term of imprisonment imposed. (Pen. Code, § 12022.53, subd. (i).)

² The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

³ The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

- 12) Authorizes a court, in furtherance of justice, to dismiss an action, absent clear legislative intent to withhold such authority. (Pen. Code, § 1385, subd. (a); *People v. Fuentes* (2016) 1 Cal.5th 218, 227.) If the court has the authority to strike or dismiss an enhancement under this provision, it may instead strike the additional punishment for the enhancement. (Pen. Code, § 1385, subd. (c).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** "SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

"Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

"And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

"SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

"Longer sentences do not deter crime or protect public safety according to research on these laws.

"Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

"SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice."

- 2) **Sentencing Enhancements:** "Generally speaking, sentencing enhancements derive their vitality from, and form a part of, the crime to which they are attached and alter the consequences the offender may suffer. The most direct consequence is additional punishment." (*People v. Fuentes, supra*, 1 Cal.5th at p. 225, citation and quotations omitted.)
- 3) **Background of "Use of a Gun and You're Done" Law (i.e., the 10-20-life Firearm Law):** "In 1997, the Legislature passed the "Use a Gun and You're Done" law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes. Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the

case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it.” (California Budget and Policy Center (2015) Sentencing in California: Moving Toward a Smarter, More Cost-Effective Approach.)

Deterrence was a driving factor behind this legislation: “The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime.” (AB 4 (Bordonaro, Chapter 503, Statutes of 1997.)

4) **Sentence Increases: Research on the Deterrent Effect and Impact on State Prisons:**

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.

(National Research Council (2014) *The Growth of Incarceration in the United States: Exploring Causes and Consequences* Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

(http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.)

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.” (National Research Council, *supra*, *The Growth of Incarceration in the United States*, p. 132.)

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 offenders must have some knowledge of criminal penalties to be deterred from committing

a crime, but in practice often do not.

(*Id.* at p. 133.) The report concludes: The incremental deterrent effect of increases in lengthy prison sentences is modest at best. “Because recidivism rates decline markedly with age, lengthy prison sentences, unless they specifically target very high-rate or extremely dangerous offenders, are an inefficient approach to preventing crime by incapacitation.” (*Id.* at p. 5.)

In a 2014 report, the Little Hoover Commission addressed the disconnect between science and sentencing – that is, putting away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit. (<http://www.lhc.ca.gov/studies/219/Report219.pdf>.)

The report also explains how California’s sentencing structure and enhancements contributed to a 20-year state prison building boom, specifically remarking on the “significant sentencing enhancements” of the 10-20-life firearm law.

(<http://www.lhc.ca.gov/studies/219/Report219.pdf>.) According to the background information provided by the author, over 30,000 persons are currently incarcerated as a result of these enhancements.

In light of the questionable deterrent effect and state prison impact of sentence increases, should these firearm enhancements be mandatory in every case irrespective of the underlying facts of a specific case?

- 5) **Practical Considerations – Restraints on a Court’s Exercise of Discretion:** This bill authorizes the trial court to strike or dismiss a firearm enhancement in the interests of justice pursuant to Penal Code section 1385. Trial courts already have this discretion with respect to many, if not most, enhancements. For example, the trial court has the discretion to strike a prior serious or violent felony conviction allegation or finding under the Three Strikes Law. (Pen. Code, § 1385; *People v. Superior Court (Romero)* 13 Cal.4th 497.) Importantly, as case law teaches, a trial court’s discretion under Penal Code section 1385 is not absolute and is subject to review for abuse of discretion. (*People v. Williams* (1998) 17 Cal.4th 148, 158 (*Williams*).)

“From the case law, several general principles emerge. Paramount among them is the rule that the language of [Penal Code section 1385(a)], ‘in furtherance of justice,’ requires consideration both of the constitutional rights of the defendant, and the interests of society represented by the People, in determining whether there should be a dismissal. . . . At the very least, the reason for dismissal must be that which would motivate a reasonable judge. . . . Courts have recognized that society, represented by the People, has a legitimate interest in the fair prosecution of crimes properly alleged. . . . [A] dismissal which arbitrarily cuts those rights without a showing of detriment to the defendant is an abuse of discretion. . . .” (*People v. Williams, supra*, 17 Cal.4th at pp. 158-159, citations and quotations omitted.) In the context of the Three Strikes law, the California Supreme Court has stated:

From these general principles it follows that a court abuses its discretion if it dismisses a case, or strikes [or vacates] a sentencing allegation [or finding], solely to accommodate judicial convenience or because of court congestion. . . . A court also abuses its discretion by dismissing a case, or a sentencing allegation [or

finding], simply because a defendant pleads guilty. . . . Nor would a court act properly if guided solely by a personal antipathy for the effect that the . . . law would have on [a] defendant, while ignoring defendant's background, the nature of his present offenses, and other individualized considerations.

(*People v. Williams, supra*, 17 Cal.4th at p. 159, citations and quotations omitted.)

To facilitate appellate review of the trial court's decision, the reasons for the dismissal must be stated orally on the record. If requested by either party, the reasons must also be set forth in a written minute order. (Pen. Code, § 1385, subd. (a).) Where the trial court's action lacks reason, it may be invalidated. (See *People v. Williams, supra*, 17 Cal.4th at p. 159.) For example, in *Williams*, the Court found that the trial court improperly struck the prior felony because the defendant could not be deemed "outside the spirit" of the three strikes law – i.e., the trial court's order fell outside the bounds of reason under the applicable law and the relevant facts. (*Id.* at pp. 161, 162-165.)

In light of the restraints placed on a trial court's exercise of discretion under Penal Code section 1385, the questionable deterrent effect of lengthy firearm enhancements, and the number of persons currently incarcerated as a result of these enhancements, should the absolute ban on a trial court's ability to strike a firearm enhancement under appropriate circumstances be reconsidered?

SB 620 provides the trial court with discretion to strike a firearm enhancement in appropriate circumstances in the interests of justice. Under SB 620, the trial court retains the ability, if not the legal obligation, to continue imposing firearm enhancements where the additional punishment is warranted.

- 5) **Argument in Support:** According to the *American Civil Liberties Union of California*, the sponsor of this bill, "California has some of the most severe sentence enhancements for gun use in the nation. Under PC §12022.53, also known as '10-20-Life,' people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,^[4] 20 years if they fired a gun, even if it misfired,^[5] and 25-years-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,^[6] and even if the individual did not personally handle or fire the weapon.^[7] There is no requirement for intent to inflict harm, as there is for other enhancements that can apply to the same offenses (see PC §12022.55; inflicting great bodily injury by shooting out of a moving vehicle). These extreme enhancements are added to sentences that are already quite long, including life terms.

"While most sentence enhancements — including enhancements for gang-related activities (PC §186.22(g)), trafficking large quantities of drugs (HSC §11370.4(e)), kidnapping (PC §667.8), aggravated white-collar crime (PC §186.11), and Three Strike^[8] — can be declined

⁴ "*People v. Grandy* (App. 2 Dist. 2006) 50 Cal.Rptr.3d 189, 144 Cal.App.4th 33."

⁵ "*Ibid.*"

⁶ "*People v. Palmer* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 373"

⁷ "*People v. Garcia* (2002) 124 Cal.Rptr.2d 464, 28 Cal.4th 1166, 52 P.3d 648."

⁸ "*People v. Romero*, 13 Cal.4th 497, 529 (1996)"

if the judge believes they are unjust in a specific case,^[9] gun enhancements are mandatory. Judges are thus forbidden from tailoring these sentences to an individual's case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

“Although the original intent of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements for gun use has failed to show conclusive evidence that they have reduced gun crimes.^[10] Indeed, studies show that increasing the severity of punishment does not increase the deterrent effect; certainty of punishment — that someone will be punished for the crime — has a far greater impact.

“Studies also show that enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage and number of prisoners serving a life or de facto life sentence.

“SB 620 does not eliminate any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the individual's culpability, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.”

- 6) **Argument in Opposition:** According to the *California District Attorneys Association*, “Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

“Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

“For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration

⁹ “*People v Thomas* (1992) 4C4th 206, 211; *People v Jones* (2007) 157 CA4th 1373 (absent clear legislative directive to contrary, court may dismiss enhancement in interest of justice under PC §1385).”

¹⁰ “*See* National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.”

under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

“SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.”

7) **Related Legislation:** SB 180 (Mitchell) would 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. SB 180 is pending hearing in this committee.

8) **Prior Legislation:**

- a) AB 4 (Bordonaro), Chapter 503, Statutes of 1997, provided for the 10-20-life firearm law.
- b) AB 2173 (Wayne), Chapter 126, Statutes of 2002, eliminated duplicative firearm and injury enhancements.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California (Sponsor)
A New Way of Life Re-Entry Project
Alliance for Boys and Men of Color
American Friends Service Committee
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
Californians for Safety and Justice
California Public Defenders Association
California United for a Responsible Budget
Center on Juvenile and Criminal Justice
Communities United for Restorative Youth Justice
Contra Costa County Defenders Association
Courage Campaign
#Cut50
Ella Baker Center for Human Rights
Fair Chance Project
Fathers & Families of San Joaquin
Free Indeed Reentry Project, Inc.
Friends Committee on Legislation of California
Homeboy Industries
Homies Unidos
Human Rights Watch
Initiate Justice

Legal Services for Prisoners with Children
Los Angeles Regional Reentry Partnership
Motivating Individual Leadership for Public Advancement
Ron Finley Project
Root and Rebound
Silicon Valley De-Bug
W. Haywood Burns Institute
Women Who Never Give Up
Youth Justice Coalition

Two Private Individuals

Opposition

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Code Enforcement Officers
California and College and University Police Chiefs Association
California District Attorneys Association
California Narcotic Officers Association
California Police Chiefs Association Inc.
California Rifle and Pistol Association
California State Sheriffs' Association
Gun Owners of California
Los Angeles County Probation Officers Union AFSCME Local 685
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Riverside Sheriffs' Association

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez Fletcher, Chair
SB 620 (Bradford) – As Amended June 15, 2017

Policy Committee: Public Safety Vote: 5 - 2

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of 3, 4, or 10 years, or 5, 6, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

FISCAL EFFECT:

Potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in SB 620, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (GF). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

COMMENTS:

- 1) **Background.** Current law provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, must be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. The additional time in custody is referred to as a sentence enhancement, and there several other enhancement provisions for the use of firearms under various other circumstances. Furthermore, under current law, under certain enhancements, the total amount of credit awarded to reduce the time served cannot exceed 15% of the total term of imprisonment served.
- 2) **Purpose.** This bill provides the court with discretion to strike a firearm enhancement in any case in which that will be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony could receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it appropriate to do so.

Trial courts already have this discretion with respect to many, if not most, enhancements. For example, the trial court has the discretion to strike a prior serious or violent felony conviction allegation or finding under the Three Strikes Law. SB 620 provides the trial court with

discretion to strike a firearm enhancement in appropriate circumstances in the interests of justice. Under SB 620, the trial court retains the ability to continue imposing firearm enhancements where the additional punishment is warranted.

- 3) **Support.** According to the American Civil Liberties Union of California, the sponsor of this bill, “While most sentence enhancements — including enhancements for gang-related activities, trafficking large quantities of drugs, kidnapping, aggravated white-collar crime, and Three Strikes — can be declined if the judge believes they are unjust in a specific case, gun enhancements are mandatory. Judges are thus forbidden from tailoring these sentences to an individual’s case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.”
- 4) **Opposition.** According to the California District Attorneys Association (CDAA), for some individuals, the enhancements are the only thing keeping them from being eligible for early parole under Proposition 57. CDAA states, “SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.”
- 5) **Related Legislation.** SB 180 (Mitchell) 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. SB 180 is pending hearing in this committee.
- 6) **Prior Legislation.** AB 4 (Bordonaro), Chapter 503, Statutes of 1997, provided for the 10-20-life firearm law, which provides that a person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison.

AB 2173 (Wayne), Chapter 126, Statutes of 2002, eliminated duplicative firearm and injury enhancements.

Analysis Prepared by: Pedro Reyes / APPR. / (916) 319-2081

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 06/15/2017
POSITION: Neutral

BILL NUMBER: SB 620
AUTHOR: Bradford, Steven

BILL SUMMARY: Firearms: crimes: enhancements.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required when a person uses or discharges a firearm while committing a felony.

FISCAL SUMMARY

By providing the option to the courts to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, this bill could result in lowering the state prison population.

As of December 2016, inmates in the California Department of Corrections and Rehabilitation (CDCR) had been sentenced to more than 33,000 enhancements under Penal Code sections 12022.5 and 12022.53. Should the courts exercise the discretion authorized in this bill, it would result in shorter sentences for felony offenders sentenced to CDCR, which would drive unknown, although potentially significant, savings to the General Fund in future years.

This bill would have no fiscal impact on the Judicial Branch.

COMMENTS

The Department of Finance is neutral on this bill because it provides judges the discretion to strike a firearm enhancement, as specified, for offenders where case factors do not indicate a need for a more severe punishment. Consequently, this bill could result in shorter sentence lengths, thereby resulting in General Fund savings by lowering the state prison population.

Existing law requires that a person who uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 3, 4, or 10 years. Existing law requires that a person who uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 5, 6, or 10 years. Existing law requires a person who uses a firearm to commit certain specified felonies be punished by an additional and consecutive term of imprisonment in state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and causes great bodily harm.

Existing law also prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, pursuant to specified provisions of existing law.

According to the author’s office, SB 620 is “consistent with other enhancement sentence laws and retains

Analyst/Principal (0233) J.Gauger	Date	Assistant Program Budget Manager Amy Jarvis	Date
Department Deputy Director			Date
Governor’s Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

BILL ANALYSIS--(CONTINUED)

AUTHOR

AMENDMENT DATE

BILL NUMBER

Bradford, Steven

06/15/2017

SB 620

COMMENTS (continued)

existing sanctions for serious crimes.”

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)						Fund Code	
	LA	(Dollars in Thousands)							
	CO	PROP							
	RV	98	FC	2016-2017	FC	2017-2018	FC	2018-2019	
5225/Corr Rehab	SO	No	A	--	U	1,000-100,000	U	1,000-100,000	0001
0250/Jud Branch	LA	No		-----	No/Minor Fiscal Impact	-----			0001

SENATE THIRD READING
SB 620 (Bradford)
As Amended June 15, 2017
Majority vote

SENATE VOTE: 22-14

Committee	Votes	Ayes	Noes
Public Safety	5-2	Jones-Sawyer, Gonzalez Fletcher, Quirk, Rubio, Santiago	Lackey, Flora
Appropriations	9-5	Gonzalez Fletcher, Bloom, Bocanegra, Bonta, Limón, Chau, Eggman, Friedman, Reyes	Bigelow, Fong, Gallagher, Muratsuchi, Obernolte

SUMMARY: Allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of 3, 4, or 10 years, or 5, 6, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use. Specifically, **this bill:**

- 1) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.
- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing great bodily injury (GBI) or death while committing or attempting to commit a specified felony.

EXISTING LAW:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison.
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of

shooting from a motor vehicle at another person with the intent to inflict GBI or death.

- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided.
- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement.
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses¹ is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.²
- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense.
- 8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision.
- 9) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law.
- 10) Prohibits the court from striking an allegation or a true finding under the 10-20-life law.
- 11) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15 percent of the total term of imprisonment imposed.
- 12) Authorizes a court, in furtherance of justice, to dismiss an action, absent clear legislative intent to withhold such authority. (Pen. Code, § 1385, subd. (a); *People v. Fuentes* (2016) 1 Cal.5th 218, 227.) If the court has the authority to strike or dismiss an enhancement under

¹ The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

² The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

this provision, it may instead strike the additional punishment for the enhancement.

FISCAL EFFECT: According to the Assembly Appropriations Committee, potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in SB 620, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (GF). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

COMMENTS: According to the author, “SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

“Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

“And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

“SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

“Longer sentences do not deter crime or protect public safety according to research on these laws.

“Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

“SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice.”

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

FN:

SENATE THIRD READING
SB 620 (Bradford)
As Amended June 15, 2017
Majority vote

SENATE VOTE: 22-14

Committee	Votes	Ayes	Noes
Public Safety	5-2	Jones-Sawyer, Gonzalez Fletcher, Quirk, Rubio, Santiago	Lackey, Flora
Appropriations	9-5	Gonzalez Fletcher, Bloom, Bocanegra, Bonta, Limón, Chau, Eggman, Friedman, Reyes	Bigelow, Fong, Gallagher, Muratsuchi, Obernolte

SUMMARY: Allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use. Specifically, **this bill:**

- 1) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.
- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing great bodily injury (GBI) or death while committing or attempting to commit a specified felony.

EXISTING LAW:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of three, four, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of five, six or 10 years in state prison.
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict GBI or death.
- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as

provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided.

- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement.
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses¹ is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison.²
- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense.
- 8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision.
- 9) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law.
- 10) Prohibits the court from striking an allegation or a true finding under the 10-20-life law.
- 11) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15% of the total term of imprisonment imposed.
- 12) Authorizes a court, in furtherance of justice, to dismiss an action, absent clear legislative intent to withhold such authority. (Penal Code, Section 1385, subdivision. (a); *People v. Fuentes* (2016) 1 Cal.5th 218, 227.) If the court has the authority to strike or dismiss an enhancement under this provision, it may instead strike the additional punishment for the enhancement.

FISCAL EFFECT: According to the Assembly Appropriations Committee, potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by

¹ The felonies which trigger the enhancements under the 10-20-life firearm law are: murder; mayhem, kidnapping; robbery; carjacking; assault with intent to commit a specified felony; assault with a firearm on a peace officer or firefighter; specified sex offenses; assault by a life prisoner; assault by a prisoner; holding a hostage by a prisoner; any felony punishable by death or life imprisonment; and any attempt to commit one of these crimes other than assault. (Pen. Code, § 12022.53, subd. (a).)

² The felonies which trigger the 25-to-life enhancement also include discharge of a firearm at an inhabited dwelling and willfully and maliciously discharging a firearm from a motor vehicle. (Pen. Code, § 12022.53, subd. (d).)

reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in this bill, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (General Fund (GF)). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

COMMENTS: According to the author, "SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

"Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

"And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

"SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

"Longer sentences do not deter crime or protect public safety according to research on these laws.

"Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

"SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice."

Analysis Prepared by: Cheryl Anderson / PUB. S. / (916) 319-3744

FN: 0001055



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Senate “Concurrence” Documents

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UNFINISHED BUSINESS

Bill No: SB 620
Author: Bradford (D)
Amended: 6/15/17
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/25/17
AYES: Skinner, Bradford, Mitchell, Wiener
NOES: Anderson, Stone
NO VOTE RECORDED: Jackson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 22-14, 5/18/17
AYES: Allen, Atkins, Beall, Bradford, De León, Dodd, Glazer, Hernandez,
Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning,
Pan, Skinner, Stern, Wieckowski, Wiener
NOES: Anderson, Bates, Berryhill, Cannella, Fuller, Gaines, Moorlach, Morrell,
Newman, Nguyen, Nielsen, Stone, Vidak, Wilk
NO VOTE RECORDED: Galgiani, Mendoza, Portantino, Roth

ASSEMBLY FLOOR: 31-34, 7/10/17 - See last page for vote (FAIL)

ASSEMBLY FLOOR: 42-33, 9/12/17 - See last page for vote

SUBJECT: Firearms: crimes: enhancements

SOURCE: Author

DIGEST: This bill allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

Assembly Amendments clarify that the court may dismiss a firearm enhancement, in addition to strike an enhancement.

ANALYSIS:

Existing law:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of three, four, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of five, six, or 10 years in state prison. (Pen. Code, § 12022.5, subs. (a) & (b).)
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement (Pen. Code, § 12022.5, subd. (c).)
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict great bodily injury (GBI) or death. (Pen. Code, § 12022.5, subd. (d).)
- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided. (Pen. Code, § 12022.5 subd. (e).)
- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement. (Pen. Code, §§ 12022.5, subd. (f), 1170.1.)
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an

additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Pen. Code, § 12022.53, subds. (b)-(d).)

- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)
- 8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)
- 9) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law. (Pen. Code, § 12022.53, subd. (g).)
- 10) Prohibits the court from striking an allegation or a true finding under the 10-20-life law. (Pen. Code, § 12022.53, subd. (h).)
- 11) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15 percent of the total term of imprisonment imposed. (Pen. Code, § 12022.53, subd. (i).)
- 12) Authorizes a court, in furtherance of justice, to dismiss an action, absent clear legislative intent to withhold such authority. (Pen. Code, § 1385, subd. (a); *People v. Fuentes* (2016) 1 Cal.5th 218, 227.) If the court has the authority to strike or dismiss an enhancement under this provision, it may instead strike the additional punishment for the enhancement. (Pen. Code, § 1385, subd. (c).)

This bill:

- 1) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.

- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing GBI or death while committing or attempting to commit a specified felony.

Background

Existing law includes Penal Code Section 1385, which grants a court the power and discretion to dismiss an action or any part of an action in the interests of justice. The Legislature can limit or prohibit the court's exercise of discretion under section 1385 for any particular crime or enhancement. However, any limits on section 1385 discretion must be clearly and specifically stated. (*People v. Superior Court (Romero)*, supra, 13 Cal.3d 497.) Penal Code Sections 12022.5 and 12022.53 both include a provision forbidding the court from dismissing an enhancement imposed under that section.

This bill provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

Comments

According to the author, "SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

"Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

"And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

"SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony

would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

"Longer sentences do not deter crime or protect public safety according to research on these laws.

"Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

"SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice."

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

According to the Assembly Appropriations Committee, potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in this bill, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (General Fund (GF)). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

SUPPORT: (Verified 9/12/17)

Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Friends Committee on Legislation of California

OPPOSITION: (Verified 9/12/17)

California District Attorneys Association
California State Sheriffs' Association
Gun Owners of California

ARGUMENTS IN SUPPORT: According to Californians for Safety and Justice:

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

ARGUMENTS IN OPPOSITION: According to the California District Attorneys Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

ASSEMBLY FLOOR: 42-33, 9/12/17

AYES: Aguiar-Curry, Berman, Bloom, Bocanegra, Bonta, Burke, Calderon, Chau, Chávez, Chiu, Chu, Dababneh, Daly, Eggman, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Levine, Limón, Low, McCarty, Medina, Mullin, O'Donnell, Quirk, Reyes, Rubio, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Arambula, Baker, Bigelow, Brough, Caballero, Cervantes, Chen, Choi, Cooley, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Harper, Irwin, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Quirk-Silva, Ridley-Thomas, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Cooper, Muratsuchi, Nazarian, Rodriguez

ASSEMBLY FLOOR: 31-34, 7/10/17 (FAIL)

AYES: Berman, Bloom, Bonta, Burke, Chau, Chiu, Chu, Daly, Eggman, Friedman, Cristina Garcia, Gonzalez Fletcher, Holden, Jones-Sawyer, Kalra, Levine, Limón, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Reyes, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Arambula, Baker, Bigelow, Brough, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Dababneh, Dahle, Flora, Fong, Frazier, Gallagher, Harper, Irwin, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Quirk-Silva, Ridley-Thomas, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Aguiar-Curry, Bocanegra, Caballero, Calderon, Chávez, Eduardo Garcia, Gipson, Gloria, Gomez, Gray, Grayson, Low, Muratsuchi, Rodriguez, Rubio

Prepared by: Gabe Caswell / PUB. S. /
9/12/17 16:57:23

**** END ****

UNFINISHED BUSINESS

Bill No: SB 620
Author: Bradford (D)
Amended: 6/15/17
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/25/17
AYES: Skinner, Bradford, Mitchell, Wiener
NOES: Anderson, Stone
NO VOTE RECORDED: Jackson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SENATE FLOOR: 22-14, 5/18/17
AYES: Allen, Atkins, Beall, Bradford, De León, Dodd, Glazer, Hernandez,
Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning,
Pan, Skinner, Stern, Wieckowski, Wiener
NOES: Anderson, Bates, Berryhill, Cannella, Fuller, Gaines, Moorlach, Morrell,
Newman, Nguyen, Nielsen, Stone, Vidak, Wilk
NO VOTE RECORDED: Galgiani, Mendoza, Portantino, Roth

ASSEMBLY FLOOR: 31-34, 7/10/17 - See last page for vote (FAIL)

ASSEMBLY FLOOR: 42-33, 9/12/17 - See last page for vote

SUBJECT: Firearms: crimes: enhancements

SOURCE: Author

DIGEST: This bill allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

Assembly Amendments clarify that the court may dismiss a firearm enhancement, in addition to strike an enhancement.

ANALYSIS:

Existing law:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of three, four, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of five, six, or 10 years in state prison. (Pen. Code, § 12022.5, subds. (a) & (b).)
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement (Pen. Code, § 12022.5, subd. (c).)
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict great bodily injury (GBI) or death. (Pen. Code, § 12022.5, subd. (d).)
- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided. (Pen. Code, § 12022.5 subd. (e).)
- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement. (Pen. Code, §§ 12022.5, subd. (f), 1170.1.)
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an

additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Pen. Code, § 12022.53, subds. (b)-(d).)

- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)
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- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing GBI or death while committing or attempting to commit a specified felony.

Background

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This bill provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

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"SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony

would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

"Longer sentences do not deter crime or protect public safety according to research on these laws.

"Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

"SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice."

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

According to the Assembly Appropriations Committee, potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in this bill, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (General Fund (GF)). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

SUPPORT: (Verified 9/12/17)

Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Friends Committee on Legislation of California

OPPOSITION: (Verified 9/12/17)

California District Attorneys Association
California State Sheriffs' Association
Gun Owners of California

ARGUMENTS IN SUPPORT: According to Californians for Safety and Justice:

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

ARGUMENTS IN OPPOSITION: According to the California District Attorneys Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

ASSEMBLY FLOOR: 42-33, 9/12/17

AYES: Aguiar-Curry, Berman, Bloom, Bocanegra, Bonta, Burke, Calderon, Chau, Chávez, Chiu, Chu, Dababneh, Daly, Eggman, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Levine, Limón, Low, McCarty, Medina, Mullin, O'Donnell, Quirk, Reyes, Rubio, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Arambula, Baker, Bigelow, Brough, Caballero, Cervantes, Chen, Choi, Cooley, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Harper, Irwin, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Quirk-Silva, Ridley-Thomas, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Cooper, Muratsuchi, Nazarian, Rodriguez

ASSEMBLY FLOOR: 31-34, 7/10/17 (FAIL)

AYES: Berman, Bloom, Bonta, Burke, Chau, Chiu, Chu, Daly, Eggman, Friedman, Cristina Garcia, Gonzalez Fletcher, Holden, Jones-Sawyer, Kalra, Levine, Limón, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Reyes, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Arambula, Baker, Bigelow, Brough, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Dababneh, Dahle, Flora, Fong, Frazier, Gallagher, Harper, Irwin, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Quirk-Silva, Ridley-Thomas, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Aguiar-Curry, Bocanegra, Caballero, Calderon, Chávez, Eduardo Garcia, Gipson, Gloria, Gomez, Gray, Grayson, Low, Muratsuchi, Rodriguez, Rubio

Prepared by: Gabe Caswell / PUB. S. /
9/13/17 10:19:30

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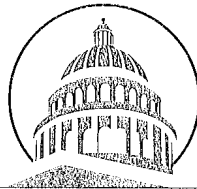


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Enrolled (Governor) Materials

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Carmelene Wong
Jenny C. Yum
Jack Zorman

September 20, 2017

Honorable Edmund G. Brown Jr.
Governor of California
Sacramento, CA 95814

SENATE BILL NO. 620

Dear Governor Brown:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Bradford and, in our opinion, the title and form are sufficient. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Robert D. Roth
Principal Deputy

RDR:dkr

Two copies to Honorable Steven Bradford,
pursuant to Joint Rule 34.

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL: SB 620 **AUTHOR:** Bradford **DATE:** 9/19/2017 **DUE:** 10/15/2017
SENATE: 22-13 **ASSEMBLY:** 42-33
PRESENTED BY: Daniel Seeman **RECOMMEND:** Sign Veto

SUMMARY

This bill allows a court, in the interest of justice, to strike a firearm enhancement.

SPONSOR: Author

SUPPORT: Department of Finance
American Civil Liberties Union of California
Anti-Recidivism Coalition
Center on Juvenile and Criminal Justice
City and County of San Francisco Public Defender, Jeff Adachi
Drug Policy Alliance
Friends Committee on Legislation of California
NextGen California

OPPOSITION: Senate Republican Caucus
State Senator Jeff Stone
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 Narcotic Officers Association
California Rifle and Pistol Association, Inc.
California State Sheriffs' Association
Gun Owners of California
Los Angeles County Probation Officers Union, AFSCME Local 685
Los Angeles County Professional Peace Officers Association
Los Angeles Police Protective League
Orange County Sheriff's Department

FISCAL IMPACT

By providing the option to the courts to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, this bill could result in lowering the state prison population.

As of December 2016, inmates in the California Department of Corrections and Rehabilitation had been sentenced to more than 33,000 enhancements under Penal Code sections 12022.5 and 12022.53. Should the courts exercise the discretion authorized in this bill, it would result in shorter sentences for felony offenders sentenced to the California Department of Corrections

and Rehabilitation, which would drive unknown, although potentially significant, savings to the General Fund in future years.

This bill would have no fiscal impact on the Judicial Branch.

PREVIOUS ACTION/SIMILAR LEGISLATION

None provided.

NOTES

DEPARTMENT OF FINANCE ENROLLED BILL REPORT

AMENDMENT DATE: 06/15/2017
RECOMMENDATION: Sign

BILL NUMBER: SB 620
AUTHOR: Bradford, Steven

ASSEMBLY: 42/33
SENATE: 22/13

BILL SUMMARY: Firearms: crimes: enhancements.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required when a person uses or discharges a firearm while committing a felony.

FISCAL SUMMARY

By providing the option to the courts to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, this bill could result in lowering the state prison population.

As of December 2016, inmates in the California Department of Corrections and Rehabilitation (CDCR) had been sentenced to more than 33,000 enhancements under Penal Code sections 12022.5 and 12022.53. Should the courts exercise the discretion authorized in this bill, it would result in shorter sentences for felony offenders sentenced to CDCR, which would drive unknown, although potentially significant, savings to the General Fund in future years.

This bill would have no fiscal impact on the Judicial Branch.


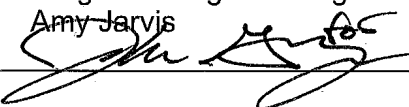
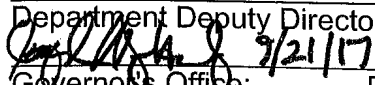
COMMENTS

The Department of Finance recommends signature of this bill because it provides judges the discretion to strike a firearm enhancement for offenders where case factors do not indicate a need for a more severe punishment. Consequently, this bill could result in shorter sentence lengths, thereby resulting in General Fund savings by lowering the state prison population.

Existing law requires that a person who uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 3, 4, or 10 years. Existing law requires that a person who uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in state prison for 5, 6, or 10 years. Existing law requires a person who uses a firearm to commit certain specified felonies be punished by an additional and consecutive term of imprisonment in state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharged the firearm and caused great bodily harm.

Existing law also prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill allows a court, in the interest of justice and at the time of sentencing or resentencing, to strike an enhancement otherwise required to be imposed when a person uses or discharges a firearm while committing a felony, pursuant to specified provisions of existing law.

	Analyst/Principal (0233) J. Gauger (Vacant)	Date	Program Budget Manager Amy Jarvis	Date
				9/21/17
	Department Deputy Director			Date
	Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____

AUTHOR

AMENDMENT DATE

BILL NUMBER

Bradford, Steven

06/15/2017

SB 620

COMMENTS (continued)

According to the author's office, SB 620 is "consistent with other enhancement sentence laws and retains existing sanctions for serious crimes."

Code/Department Agency or Revenue Type	SO LA CO RV	PROP	FC	(Fiscal Impact by Fiscal Year)			Fund Code
				(Dollars in Thousands)			
				2017-2018 FC	2018-2019 FC	2019-2020	
5225/Corr Rehab	SO	No	A	-- C	-100,000 C	-100,000	0001
0250/Jud Branch	LA	No		----- No/Minor Fiscal Impact -----			0001

SUGGESTED VETO MESSAGE

SB 620

(as amended June 15, 2017)

I am returning Senate Bill 620 without my signature.

By allowing courts the discretion to strike sentence enhancements for use of a firearm in specific crimes, this measure results in inequities in sentencing across jurisdictions. Furthermore, by effectively reducing sentences for some of the most dangerous criminals, this bill compromises public safety.

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CAPITOL OFFICE
STATE CAPITOL, ROOM 2062
SACRAMENTO, CA 95814
TEL (916) 651-4035
FAX (916) 651-4935

California State Senate

DISTRICT OFFICE
ONE WEST MANCHESTER BLVD.
SUITE 600
INGLEWOOD, CA 90301
TEL (310) 412-6120
FAX (310) 412-6125

SENATOR
STEVEN BRADFORD
THIRTY-FIFTH SENATE DISTRICT

COMMITTEES
LABOR & INDUSTRIAL
RELATIONS
CHAIR

APPROPRIATIONS
ENERGY, UTILITIES &
COMMUNICATIONS
GOVERNMENTAL
ORGANIZATION
PUBLIC SAFETY



September 14, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

REQUEST FOR SIGNATURE - SB 620 (Bradford): Judicial Discretion for Firearm Enhancements

Dear Governor Brown,

I respectfully request your signature on Senate Bill 620, which grants judges the authority to strike sentence enhancements for the use of a firearm during the commission of a felony.

This bill restores judicial discretion in such cases to judges, who will still be able to apply the firearm sentence enhancements as they deem appropriate. Crimes involving firearms must be taken seriously, but California should not continue to force judges to dole out extreme and overly punitive sentences for all cases involving a firearm.

Sentencing mandates, such as the one in current law for firearms, increase racial disparities in our prison system and has raised our prison population to numbers far exceeding capacity. They also ignore the fundamental purpose of a trial court: to adjudicate a specific case, not presume that all felonies involving a firearm are equal.

In November 2016, California voters spoke loud and clear about the need for judicial discretion when they approved Proposition 57, which authorized judges, not prosecutors, to determine whether a juvenile is tried as an adult. Let us continue on this path by providing more discretion to our courts so justice is served and individuals are held accountable, based on their involvement and the severity of their case, not that of a more serious and violent offender.

I respectfully request your signature on this critical piece of legislation, which will help create a more fair and equal justice system. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Bradford", written over a large, stylized flourish that extends across the signature line.

STEVEN BRADFORD
Senator, 35th District

This page was left intentionally blank.

October 3, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

The Alliance for Boys and Men of Color writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, improve academic success, support neighborhood safety, reduce justice system involvement, and support employment opportunities for this vulnerable population. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

⁵ See, 4 Starr, SB & Rehavi M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Alliance for Boys and Men of Color urges your signature on SB 620. Should you have any questions, please contact Rosa Aqeel at raqeel@policylink.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Philpart". The signature is fluid and cursive, with the first name "Marc" written in a larger, more prominent script than the last name "Philpart".

Marc Philpart
Principal Coordinator
Alliance for Boys and Men of Color



October 2, 2017

Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, California 95814

RE: SENATE BILL 620 (BRADFORD) FIREARM ENHANCEMENTS

Dear Governor Brown:

On behalf of Californians for Safety and Justice, I urge you to sign Senate Bill 620, which would allow a court to use judicial discretion to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony.

Californians for Safety and Justice is a nonprofit organization that promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities.

Sentences should fit the crime, effectively manage risk, and put safety first. The best sentences emphasize accountability and work to stop the cycle of crime, which reduces repeat victimization, recidivism, and taxpayer expense. Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that resulting in sentences that are disproportionate to the offense and do not further public safety.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

For the reasons stated above, Californians for Safety and Justice supports SB 620 and urges you to sign this important bill.

Sincerely,

Liah Burnley
Policy Advocate
Californians for Safety and Justice



CALIFORNIA STATE UNIVERSITY, FULLERTON

P|R PROJECT REBOUND

Supporting the higher education and successful reintegration of the formerly incarcerated

800 N. State College Blvd, Fullerton, CA 92831 | T: 657-278-7859 | E: rebound@fullerton.edu

October 3, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

Project Rebound, CSUF writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence. Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

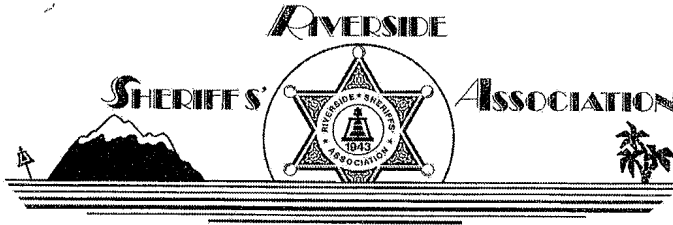
For these reasons, Project Rebound, CSUF urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Romarilyn Ralston, MLA
Program Coordinator, Project Rebound

THE CALIFORNIA STATE UNIVERSITY

Bakersfield / Channel Islands / Chico / Dominguez Hills / East Bay / Fresno / Fullerton / Humboldt / Long Beach / Los Angeles / Maritime Academy
Monterey Bay / Northridge / Pomona / Sacramento / San Bernardino / San Diego / San Francisco / San Jose / San Luis Obispo / San Marcos / Sonoma / Stanislaus



Robert Masson
President

Matthew Hughes
Vice-President

Ian Anderson,
Treasurer

Ryan Huizinga
Secretary

September 25, 2017

The Honorable Edmund G. Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 620 (Bradford) – Request for Veto

Dear Governor Brown,

The Riverside Sheriffs' Association remains strongly opposed to SB 620 that allows the court to strike a prior firearm enhancement, allowing for additional dangerous felons to become eligible for early release on parole.

For decades, California has been a national leader in the debate over gun control. The stated purpose of these restrictions is to improve public safety by reducing the number of firearms and therefore gun violence, in our communities. Improving public safety is a clearly laudable goal.

Conversely, proponents of SB 620 claim that gun-related sentence enhancements have failed as deterrents to gun violence and therefore the enhancements should be restricted. Such analysis, however, omits the 100% specific deterrence provided by these same enhancements.

On August 30, 2017, a felon killed Sacramento County Sheriff's Deputy Robert French. Similarly, on February 20, 2017, a felon killed Whittier Police Officer Keith Boyer. In both cases, their killers were freed pursuant to AB 109. Deputy French's killer had multiple prior convictions for gun crimes, including assault with a semi-automatic weapon.

Deputy French's killer is the exact type of criminal our current gun laws seek to impact. Sadly, some lawmakers believe that criminals who use these deadly, semi-automatic firearms should have their sentences reduced. Providing dangerous felons – who have a court-documented history of gun violence - with a reduced sentence is as nonsensical as it dangerous.

If our state is to continue to be a leader in efforts to reduce gun violence, felons convicted of violent and deadly gun crimes must not be afforded the opportunity of early release.

As proven by the deaths of Sacramento County Deputy Sheriff Robert French and Whittier Police Officer Keith Boyer, the early release of these proven, dangerous, gun-wielding criminals threatens the safety of our officers and communities.

For these reasons, the thousands of members of the Riverside Sheriffs' Association strongly oppose this bill and respectfully urge your veto. If you have any questions, please contact me at my office number above or Ryan Sherman at (916) 580-5464.

Sincerely,

Robert Masson
President, RSA

Ryan Sherman
Legislative Advocate, RSA

Web Address:
WWW.RCDSA.ORG



October 3, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

Fair Chance Project writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Our organization was formed in 2009 when the neither the BPH nor the Governor at the time were allowing lifers to come home. We were formed by former lifers who came home through the courts and wanted to reach out to those they left behind. Our demands included just sentencing laws. SB620 is so important as it gives judges the decision-making power which is their due; it gives the defendant a chance to be evaluated as an individual which is her/his due.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

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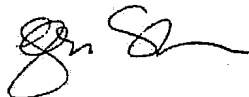
⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

⁵ See, 4 Starr, SB & Rehavi M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.

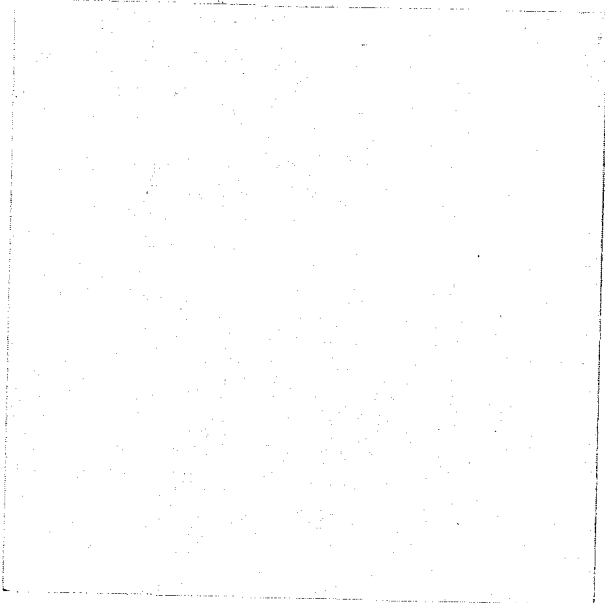
SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Fair Chance Project urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Geri Silva, Director





**American Friends
Service Committee**

65 NINTH ST. SAN FRANCISCO, CA 94103 (415) 565- 0201

October 5, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – SUPPORT

Dear Governor Brown:

The American Friends Service Committee (AFSC) is in strong support of SB 620, which will serve to protect and improve the health and safety of California communities. This bill would allow a court to strike a firearms enhancement otherwise required to be imposed by the current provisions of law. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. Traditionally, The American Friends Service Committee has stood in opposition to violence and guns but we realize applying a sentence enhancement for using or discharging a firearm will not deter the use of lethal weapons in our communities, but rather, fill up our prisons even more.

AFSC has been working on prison issues since the 1950s in California, and in that time, we have seen the exponential increases in sentences. The increases are due, to a significant extent, to the structure of sentencing enhancements which are often applied consecutively. This has made sentences very disproportionate, and has particularly impacted people of color.

Studies of these enhancements show that increasing an already long sentence does not deter others from committing a crime and in addition to this, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. Per Bradford, SB 620 does not get into that debate because it does not eliminate the enhancements. Nor does it suggest a judge should disregard enhancements. Judges should consider the circumstances of the crime and the history of the perpetrator and deal with the individual appropriately. This moves the decision about sentencing from one that is rigid and without meaningful consideration to one that is specific to the circumstances of the case. If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

Fatimeh Khan

Healing Justice Coordinator

American Friends Service Committee



SHASTA COUNTY

Office of the Sheriff



September 29, 2017

Edmund Brown, Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Tom Bosenko
SHERIFF - CORONER

Re: Senate Bill 620 - OPPOSE

Honorable Governor Brown:

As Sheriff of Shasta County I must oppose Senate Bill 620 *Firearms: crimes: enhancements*. I am joined by the California State Sheriff's Association and other groups in opposition.

Current law requires a person who uses a firearm to commit certain specified felonies to be punished by an additional consecutive term of imprisonment in state prisons. Current law prohibits the court from deleting the allegation as a "striking" offense.

This soft on crime and criminals bill would allow a court to delete the striking offense and further, to strike the sentencing enhancement.

Criminals must be held accountable for their violent gun-related offenses that victimize our citizens. This bill goes against common sense and logic in reducing gun violence. It has been shown, criminals who use a gun in a crime and are incarcerated for long terms, reduces gun violence and related crime rather than impose onerous and restrictive gun laws on law abiding gun owners. Laws that do nothing to reduce the gun violence.

I strongly urge you to veto Senate Bill 620 *Firearms: crimes: enhancements!* Hold the criminals accountable who commit violent run related crimes against others. Government's first responsibility is to protect its citizens. Senate Bill 620 endangers people if it becomes law. Violent criminals must be incarcerated.

Protect the people of California; veto Senate Bill 620.

Sincerely,

Tom Bosenko, Sheriff-Coroner
County of Shasta

TMB/ckw



October 03, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

#cut50 writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

#cut50 is a national bipartisan initiative of The Dream Corps to safely and smartly reduce our incarcerated population by 50 percent over the next 10 years. We envision a criminal justice system that recognizes the humanity of the 2.2 million people currently behind bars in America and moves toward compassion and treatment rather than punishment and incarceration.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

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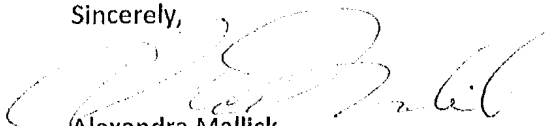
³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, #cut50 urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alexandra Mallick
California Director of Policy
#cut50

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

⁵ See, 4 Starr, SB & Rehani M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.



CALIFORNIA STATE UNIVERSITY, FULLERTON

P|R PROJECT REBOUND

Supporting the higher education and successful reintegration of the formerly incarcerated

800 N. State College Blvd, Fullerton, CA 92831 | T: 657-278-7859 | E: rebound@fullerton.edu

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

Project Rebound, CSUF writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation’s highest percentage of prisoners serving a life or de facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

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CALIFORNIA STATE UNIVERSITY, FULLERTON

P|R PROJECT REBOUND

Supporting the higher education and successful reintegration of the formerly incarcerated

800 N. State College Blvd, Fullerton, CA 92831 | T: 657-278-7859 | E: rebound@fullerton.edu

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Project Rebound, CSUF urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Romarilyn Ralston, MLA

Program Coordinator, Project Rebound

rralston@fullerton.edu

(657) 278-7859



ORANGE COUNTY SHERIFF'S DEPARTMENT

550 N. FLOWER STREET
SANTA ANA, CA 92703
714-647-7000
WWW.OCSD.ORG

SHERIFF-CORONER
SANDRA HUTCHENS

OFFICE OF THE SHERIFF

September 22, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 (Bradford) Firearms: sentence enhancements-Veto Request

Dear Governor Brown:

I am writing to advise you of my opposition to Senate Bill 620. This bill allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

I respectfully request a veto of SB 620.

Sincerely,

Sandra Hutchens
Sheriff-Coroner

SH:rg



**TONY RACKAUCKAS
ORANGE COUNTY DISTRICT ATTORNEY**

ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE
401 CIVIC CENTER DRIVE WEST • SANTA ANA, CA 92701 (714) 834-3636

September 25, 2017

The Honorable Jerry Brown
Office of the Governor
State Capitol, Suite 1173
Sacramento, CA 95814

Re: Senate Bill 620 – Oppose

Time Sensitive

Dear Governor Brown:


The Orange County District Attorney's Office (OCDA) strongly opposes Senate Bill 620 that would change firearm sentencing enhancement requirements by allowing felons who use a gun during the commission of their crimes to receive lower sentences. Under Penal Code 12022.53, "10-20-life: Use a Gun and You're Done" law, anyone who uses a gun in committing very specific violent felonies including murder, kidnapping, robbery, carjacking and rape, is subject to an enhancement which adds 10 years in prison for use of a gun, 20 years for firing the gun, and 25 years to life for killing or seriously injuring someone by firing the gun during the commission of said crime. The enhancement is in addition to and consecutive to the underlying felony conviction. Penal Code Section 12022.5 provides for mandatory consecutive sentences of three, four or 10 years in prison for use of a gun during the commission of any felony.

SB 620 would allow the judge, at the time of sentencing, to strike or dismiss firearm sentencing enhancement under these provisions. This will directly result in our most violent felons receiving lower sentences. It is incomprehensible that, at a time when California is continually increasing gun regulations to make lawful gun possession more onerous, the state is on the verge of lowering criminal penalties for the use a firearm by dangerous felons.

The gun enhancement laws have been a very effective vehicle in which to deliver public safety through the incarceration of criminals who commit the worst crimes while using a gun. SB 620 would weaken this important public safety protection.

I respectfully urge you to veto Senate Bill 620 and prioritize public safety for our community.

Sincerely,


Tony Rackauckas
District Attorney

TR:vlb



10/9/2017
The Honorable Jerry Brown
Governor of California
State Capitol
Sacramento, CA 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

Homeboy Recycling is writing to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation’s highest percentage of prisoners serving a life or de facto life sentence. Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Homeboy Recycling urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Homeboy Recycling, a California social purpose corporation
1370 E 18th Street, Los Angeles, California 90021
www.homeboyrecycling.com | (323) 222-3322 | info@homeboyrecycling.com

Sincerely,

A handwritten signature in black ink, appearing to read 'Kabira Stokes', enclosed within a faint, hand-drawn oval shape.

Kabira Stokes
CEO

Homeboy Recycling, a California social purpose corporation
www.homeboyrecycling.com | (323) 222-3322 | info@homeboyrecycling.com
Drop Off: 1769 Naud Street, Los Angeles, CA 90012 | Mailing: 130 Bruno Street, Los Angeles, CA 90012

City of Diamond Bar

21810 Copley Drive • Diamond Bar, CA 91765-4178



(909) 839-7000 • Fax (909) 861-3117

www.DiamondBarCA.gov

October 9, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: Request for Veto - SB 620 (Bradford) Firearms Enhancements (as enrolled)

Dear Governor Brown:

As a Council Member for the City of Diamond, I am alarmed with the precedent that SB 620 (Bradford) sets by reducing enhancements for crimes involving firearms.

Existing law requires that a person who personally uses a firearm to commit certain specified felonies to be punished by an additional and consecutive term of imprisonment. SB 620 would delete the prohibition and allow a court to strike or dismiss an enhancement otherwise required by current law. Therefore, I request you exercise your discretion to veto SB 620.

I thank you for your willingness to work with municipalities to make our communities safer, and your consideration of the SB 620 veto request.

Sincerely,

Ruth Low
Mayor Pro Tem

cc: Senator Josh Newman, 29th District, Fax (916) 651-4929
Assembly Member Phillip Chen, 55th District, Fax (916) 319-2155
City Council
City Manager
Jennifer Quan, League of California Cities, jquan@cacities.org
Meg Desmond, League of California Cities, mdesmond@cacities.org
Joe A. Gonsalves & Son

Jimmy Lin
Mayor

Ruth M. Low
Mayor Pro Tem

Carol Herrera
Council Member

Nancy A. Lyons
Council Member

Steve Tye
Council Member

COURAGE



682

October 11, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

On behalf of the 1,400,000 members of Courage Campaign, California's largest online, progressive organizing network, I write to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Courage Campaign urges your signature on SB 620.

Best Regards,

A handwritten signature in black ink, appearing to read "Eddie Kurtz", with a long horizontal flourish extending to the right.

Eddie Kurtz
Executive Director, Courage Campaign



CALIFORNIA STATE UNIVERSITY, FULLERTON

P|R PROJECT REBOUND

Supporting the higher education and successful reintegration of the formerly incarcerated

800 N. State College Blvd, Fullerton, CA 92831 | T: 657-278-7859 | E: rebound@fullerton.edu

October 3, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

Project Rebound, CSUF writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence. Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Project Rebound, CSUF urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Romarilyn Ralston, MLA
Program Coordinator, Project Rebound

THE CALIFORNIA STATE UNIVERSITY

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October 2, 2017

Honorable Jerry Brown
Governor, State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Re: Request for Signature on Senate Bill 620 – Bradford – Judicial Discretion on Gun Enhancements

Dear Governor Brown:

The Youth Justice Coalition urges your signature on Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The YJC is working to build a movement led by system impacted youth, formerly incarcerated people and our families to build more humane, productive and cost effective public safety solutions. More than 33,000 people incarcerated in California state prisons – 25 percent of the state's prison system – are serving time that includes gun enhancements. Last month, the Sentencing Project released a report revealing that California is tied with Utah as having the highest percentage of its state prison system – 31% of 129,805 prisoners – serving life sentences – many of which were contributed to by gun enhancements. That includes youth as young as 14 who – because of gang allegations – are subject to strict gun enhancements contributing to life sentences even when they were not accused of possessing the gun, or being the shooter.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

PO Box 73688, Los Angeles, CA 90003 / 323-235-4243 / info@youth4justice.org / www.youth4justice.org

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Youth Justice Coalition urges you to sign SB 620.

Sincerely,



Kim McGill
Organizer
Cell: 323-327-1259
E-mail: kim@youth4justice.org



CPDA

California Public Defenders Association
10324 Placer Lane
Sacramento, CA 95827
Phone: (916) 362-1690 x 8
Fax: (916) 362-3346
e-mail: cpda@cpda.org

A Statewide Association of Public Defenders and Criminal Defense Counsel

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October 5, 2017

The Honorable Edmund G. Brown,
Governor of the State of California
State Capitol Building
Sacramento, CA 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, requests that you sign SB 620 by Senator Bradford.

SB 620 will provide the court with discretion to strike or dismiss gun enhancements in the appropriate individual case while retaining the ability to impose additional punishment when the crime merits it. Mandatory sentence enhancements have contributed to prison overcrowding. Additionally, mandatory sentence enhancements do not make our communities safer because they appear to have little or no deterrent value.

SB 620 would ease prison overcrowding and make sentencing more rational. As noted by the Little Hoover Commission in 2014 evaluating the impact of sentencing structure and enhancements on California:

At the beginning of the state's prison building boom in the early 1980s, adult and youth corrections accounted for 4 percent of California's General Fund expenditures at \$1 billion per year. Today, it represents 9 percent of the total General Fund, approximately \$9.5 billion. This growth has come at the expense of other state priorities including higher education and social services. ...

...[T]he 10-20-Life "Use a Gun and You're Done" Law in 1997, added significant sentencing enhancements to certain serious felonies. In addition to being sentenced for the felony, an enhancement of 10 years of prison time is added if an offender commits certain crimes while in possession of a gun; 20 years prison time is added if the gun is fired, and 25 years to life is added if someone is killed or seriously injured. As a result of the gun enhancement law, a convicted murderer who used a gun to commit the crime could get as much or more time for the sentence enhancement than the actual murder charge. A second degree murder conviction might result

in a 15-years-to-life sentence and the gun enhancement would add a 25-years-to-life sentence for a combined 40-years-to-life sentence.

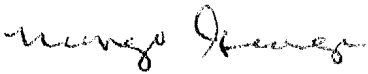
Unless lawmakers and the public they represent are willing to build more prisons and commit a greater percentage of the General Fund to corrections to pay for the ongoing expenses of running additional facilities, state prisons, under the current sentencing system likely will remain overcrowded. Without additional, long-term measures, prison overcrowding will continue to be a constant and costly battle for California. (<http://www.lhc.ca.gov/studies/219/Report219.pdf>; Citations omitted as cited in Senate Public Safety Committee Analysis 4-25-17.)

SB 620 relies on current data and studies which indicate that deterrence theory which provided the underpinning for mandatory gun use enhancements is flawed. Deterrence theory posited a rational basis for human behavior; an individual would not undertake an action if the cost outweighed the benefit. More recent studies and neurological science indicate that human behavior is more complex and influenced by many factors. For example, both case law and science recognize that young people's brains have not fully developed leaving them vulnerable to impulsive decision making that is not impacted by the deterrence of mandatory enhancements.

Consistent with other enhancement sentencing laws, SB 620 would allow a court discretion as to whether to impose a sentence enhancement on a person convicted of the use or discharge of a firearm in the commission of a felony. SB 620 retains existing sanctions for serious crimes.

For the above reasons, CPDA, on behalf of our members and clients, urges you to sign SB 620 when it comes before you. Please do not hesitate to call us with any questions or concerns.

Sincerely,



Margo George & Jennifer Friedman
Co-Chairs CPDA Legislative Committee

Cc: Senator Bradford



CALIFORNIA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

ESQUIRE PLAZA, 1215 K STREET, SUITE 1609 • SACRAMENTO, CA 95814 • (916) 498-1898 • FAX (916) 498-1895

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Area Director Coastal

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Area Director West

October 3, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

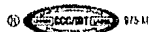
The California State Conference of the National Association for the Advancement of Colored People writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The mission statement of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.



overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the California NAACP urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alice A. Huffman, President
California State Conference NAACP

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

⁵ See, 4 Starr, SB & Rehavi M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.



September 19, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

The Advocacy Fund writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Advocacy Fund enables progressive donors and activists like Californians for Safety and Justice to run high impact legislative and political campaigns by providing a legal and fiscal home. We care very deeply about reforming mass incarceration practices across the state and the country, reversing the devastating effects of the War on Drugs and other racist policies that have led to the disproportionate caging of people of color.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴ Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.⁵

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

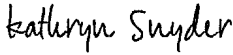
⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

⁵ See, 4 Starr, SB & Rehavi M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, The Advocacy Fund urges your signature on SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

DocuSigned by:

CF75EBE57FB1404...

Kathryn Snyder, Esq.
Senior Advisor
The Advocacy Fund



ASSOCIATION OF ORANGE COUNTY
**DEPUTY DISTRICT
ATTORNEYS**
CIVIC ACTION COMMITTEE

CYRIL YU
CHAIRMAN

JULIET OLIVER
SECRETARY

COMMITTEE MEMBERS

**FRANK ACOSTA
CLAUDIA ALVAREZ
JASON BAEZ
PAULIE FABIAN
PETER PIERCE**

September 25, 2017

Hon. Edmund G. Brown
Governor
State Capitol
Sacramento, CA 95814

Cc: Dan Seeman, Deputy Legislative Affairs Secretary

RE: Senate Bill 620 (Bradford)- REQUEST FOR VETO

Dear Governor Brown:

On behalf of the prosecutors of the Orange County District Attorney's Office, we respectfully ask that you veto Senate Bill 620 (Bradford). SB 620 would eliminate the prohibition on striking an allegation or finding that someone used a firearm during the commission of a felony under Penal Code sections 12022.5 and 12022.53.

If enacted, this measure will result in the severe reduction of prison sentences for the most dangerous and violent felons that victimize the people of California. Penal Code section 12022.53 contains the most violent crimes in our Penal Code. Efforts to reform sentencing in California should not extend to criminals that not only commit these serious and violent felonies, but choose to use real firearms during the crime. Penal Code section 12022.5 already offers our judges discretion to pick a very reasonable 3, 4, or 10-year enhancement for those who choose to personally use a firearm during a felony that is not serious or violent.

Recent sentencing reform has rationally focused on juveniles and other low level offenders that have the highest potential for rehabilitation. To the contrary, SB 620 targets the most dangerous criminals in the state. Simply put, there is too high of a public safety risk for SB 620 to become law.

For these reasons, the Association of Orange County Deputy District Attorneys respectfully requests you to veto SB 620. Should you have any questions, please feel free to contact me directly at chair@civicactionocda.org.

Sincerely,

Cyril Yu
Senior Deputy District Attorney
Chairman, AOCDDA – Civic Action Committee

PO BOX 597 SANTA ANA, CALIFORNIA 92702



October 2, 2017

Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, California 95814

RE: SENATE BILL 620 (BRADFORD) FIREARM ENHANCEMENTS

Dear Governor Brown:

On behalf of Californians for Safety and Justice, I urge you to sign Senate Bill 620, which would allow a court to use judicial discretion to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony.

Californians for Safety and Justice is a nonprofit organization that promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities.

Sentences should fit the crime, effectively manage risk, and put safety first. The best sentences emphasize accountability and work to stop the cycle of crime, which reduces repeat victimization, recidivism, and taxpayer expense. Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism.

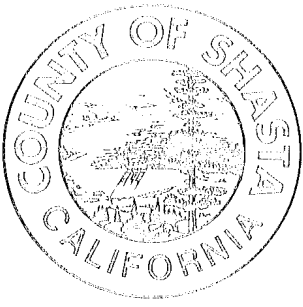
Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that resulting in sentences that are disproportionate to the offense and do not further public safety.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

For the reasons stated above, Californians for Safety and Justice supports SB 620 and urges you to sign this important bill.

Sincerely,

Liah Burnley
Policy Advocate
Californians for Safety and Justice



SHASTA COUNTY

Office of the Sheriff



Edmund Brown, Governor
State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Tom Bosenko
SHERIFF - CORONER

Re: Senate Bill 620 - OPPOSE

Honorable Governor Brown:

As Sheriff of Shasta County I must oppose Senate Bill 620 *Firearms: crimes: enhancements*. I am joined by the California State Sheriff's Association and other groups in opposition.

Current law requires a person who uses a firearm to commit certain specified felonies to be punished by an additional consecutive term of imprisonment in state prisons. Current law prohibits the court from deleting the allegation as a "striking" offense.

This soft on crime and criminals bill would allow a court to delete the striking offense and further, to strike the sentencing enhancement.

Criminals must be held accountable for their violent gun-related offenses that victimize our citizens. This bill goes against common sense and logic in reducing gun violence. It has been shown, criminals who use a gun in a crime and are incarcerated for long terms, reduces gun violence and related crime rather than impose onerous and restrictive gun laws on law abiding gun owners. Laws that do nothing to reduce the gun violence.

I strongly urge you to veto Senate Bill 620 *Firearms: crimes: enhancements!* Hold the criminals accountable who commit violent run related crimes against others. Government's first responsibility is to protect its citizens. Senate Bill 620 endangers people if it becomes law. Violent criminals must be incarcerated.

Protect the people of California; veto Senate Bill 620.

Sincerely,

Tom Bosenko, Sheriff-Coroner
County of Shasta

TMB/ckw

**ELLA BAKER
CENTER
HUMAN RIGHTS**

She led. So can you.

September 26, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814
Via: leg.unit@gov.ca.gov

Re: SB 620 (Bradford) – Request for Signature

Dear Governor Brown:

The Ella Baker Center for Human Rights writes to request your signature on Senate Bill 620 (Bradford), which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Based in Oakland, California, the Ella Baker Center is a non-profit organization that works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence. Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.



She led. So can you.

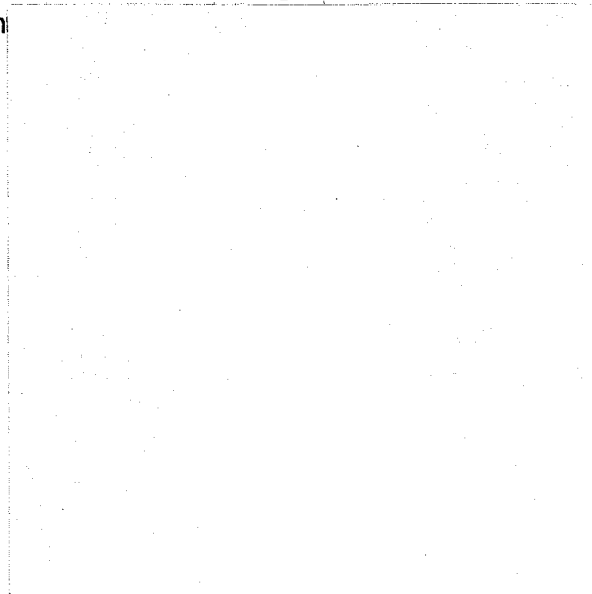
For these reasons, the Ella Baker Center for Human Rights urges your signature on SB 620. If we can be of further assistance, please contact me at (510) 285-8231 or at emily@ellabakercenter.org, or our policy consultant Glenn Backes at 916-202-2538 or glennbackes@mac.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emily Harris".

Emily Harris
State Field Director

CC: Lizzie Buchen, Legislative Advocate ACLU (lbuchen@acluca.org)
Glenn Backes, Policy Consultant





California POLICE CHIEFS Association Inc.

P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008
E-mail: lmegill@californiapolicechiefs.org • Website: californiapolicechiefs.org

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Executive Director
Ex-Officio

September 26, 2017

Honorable Edmund G. Brown Jr.
Governor of California
California State Capitol
Sacramento, CA 95814

Senate Bill 620 (Bradford) - Request for Veto

Dear Governor Brown,

On behalf of the California Police Chiefs Association, I respectfully request that you veto Senate Bill 620. SB 620 provides that a court may strike a firearm enhancement otherwise required to be imposed by Penal Code §12022.5 or 12022.53; use of a firearm during the commission of robbery, carjacking, murder, kidnapping, sexual assault or mayhem.

According to the California Department of Justice, in 2015, homicides committed with a firearm rose nearly 10 percent. Enhancements are the only thing keeping some of these offenders from being eligible for early parole. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c). We believe it was the intent of the voters in passing Proposition 57 to keep violent offenders from early parole eligibility, and this measure would violate that intent.

This measure would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community. For these reasons, we respectfully request your veto on SB 620. Please contact Jonathan Feldman at jfeldman@californiapolicechiefs.org for any further questions.

Thank you,

Edward Medrano
President

Jonathan Feldman
Legislative Advocate

CC: Dan Seeman, Public Safety Deputy, Office of the Governor

September 19, 2017

The Honorable Edmund G. Brown, Jr.
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814



RE: SB 620 (Bradford) Firearms: Crimes: Enhancements
Position: Request VETO

Dear Governor Brown:


The California Waterfowl Association (CWA) requests that you veto SB 620 by Senator Bradford. The bill will allow judges to strike an allegation or finding of use of a firearm in the commission of various serious felonies, including murder, robbery, kidnapping, and rape. Striking the allegation or finding will allow a defendant, who is otherwise guilty of a serious felony, to avoid the mandatory penalties currently prescribed for criminal misuse of a firearm.

California Waterfowl is an association that mainly comprises hunters and gun owners, who cherish their rights and heritage of safe, responsible use of firearms. California Waterfowl actively teaches and promotes gun safety and responsible use of firearms.

The criminal misuse of firearms in the commission of serious felonies by a very small minority of people is the curse and scourge of many urban and suburban communities. California Waterfowl supports the imposition of stiff penalties on these violent felons to deter them, punish them, and isolate them from society. To lessen the penalties for misuse of a firearm sends the wrong message to criminals. It also signals disrespect for their victims, and does nothing to enhance public safety.

Please veto SB 620. At a time when the Legislature is placing increasing restrictions on the legal, safe, and responsible ownership and use of firearms, it makes no sense to lessen the penalties for the criminal misuse of firearms by violent felons.

Sincerely,



Jeffrey A. Volberg
Director of Water Law & Policy

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FAX (916) 651-4936

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169 SAXONY ROAD
SUITE 103
ENCINITAS, CA 92024
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FAX (760) 642-0814

SENATOR.BATES@SENATE.CA.GOV
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California State Senate

SENATOR
PATRICIA C. BATES
THIRTY-SIXTH SENATE DISTRICT



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JOINT RULES COMMITTEE
JOINT LEGISLATIVE BUDGET
COMMITTEE
JOINT LEGISLATIVE COMMITTEE
ON EMERGENCY MANAGEMENT

September 20, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: Recommended Veto of SB 620 (Bradford)

Dear Governor Brown:

I respectfully write to request your veto of Senate Bill 620 (Bradford), which authorizes the court to strike an enhancement that is otherwise required to be imposed for using a firearm in the commission of a felony.

The author believes that the length of the underlying felony sentence constitutes an appropriate deterrent to the use of a firearm during a felony. However, the "10-20-life" enhancement only applies to eighteen enumerated crimes, including acts such as murder, mayhem, rape, sodomy, and lewd acts on a child. As the author of the original "10-20-life" bill noted; the problem is not guns, the problem is gun violence - criminals misusing guns to terrorize, injure and kill their victims." Given that we all share the goal of reducing gun violence, it is unclear why we would want to provide judges with the option of removing the enhancement for the use of a firearm during any one of these particularly violent crimes.

For these reasons, I respectfully request your veto.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

PATRICIA C. BATES
Senate Republican Leader

PB:ec/hw

California State Senate

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MURRIETA, CA 92562
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FAX (951) 894-3536

SENATOR
JEFF STONE, PHARM.D.
TWENTY-EIGHTH SENATE DISTRICT



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VICE CHAIR
LABOR & INDUSTRIAL
RELATIONS
VICE CHAIR
NATURAL RESOURCES
& WATER
MEMBER
BUDGET & FISCAL REVIEW
PUBLIC SAFETY

September 19, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: Requested Veto of SB 620 (Bradford)

Dear Governor Brown:

I would like to respectfully request that you veto SB 620, which would strike an enhancement otherwise required to be imposed for using a firearm in the commission of a felony.

This bill sends the wrong message to criminals. Under existing California law, an individual who commits a felony such as assault, robbery, carjacking, rape, or murder, while personally using a firearm, is subject to a consecutive sentence enhancement. This bill would let dangerous criminals, who have violated California strict gun laws, a chance to be released from prison much sooner than they deserve.

Why should California, which has passed numerous laws to take guns out of the hands of law abiding citizens, turn around and let criminals who use a gun in the commission of a crime, to get out of jail sooner? California cannot have it both ways.

For these reasons, I respectfully request that you veto SB 620.

Sincerely,

A handwritten signature in cursive script that reads "Jeff Stone".

Jeff Stone
State Senator, 28th District



September 14, 2017

The Honorable Edmund G. Brown
California State Capitol
Sacramento, California 95814

**Re: SB 620 – as amended 6/15/17
Request for signature**

Dear Governor Brown:

As the sponsor of Senate Bill 620 (Bradford), the American Civil Liberties Union of California requests your signature on this critical legislation, which will allow a judge, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm during the commission of a felony, consistent with other enhancements.

California has some of the most severe sentence enhancements for gun use in the nation. Under PC §12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,¹ 20 years if they fired a gun, even if it misfired,² and 25-years-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,³ and even if the individual did not personally handle or fire the weapon.⁴ There is no requirement for intent to inflict harm, as there is for other enhancements that can apply to the same offenses⁵. These extreme enhancements are added to sentences that are already quite long, including life terms.

While most sentence enhancements — including enhancements for gang-related activities (PC §186.22(g)), trafficking large quantities of drugs (HSC §11370.4(e)), kidnapping (PC §667.8), aggravated white-collar crime (PC §186.11), and Three Strikes⁶ — can be declined if the judge believes they are unjust in a specific case,⁷ gun enhancements are mandatory. Judges are thus forbidden from tailoring these sentences to an individual’s case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

¹ *People v. Grandy* (App. 2 Dist. 2006) 50 Cal.Rptr.3d 189, 144 Cal.App.4th 33

² *Ibid.*

³ *People v. Palmer* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 373

⁴ *People v. Garcia* (2002) 124 Cal.Rptr.2d 464, 28 Cal.4th 1166, 52 P.3d 648

⁵ See PC §12022.55; inflicting great bodily injury by shooting out of a moving vehicle

⁶ *People v. Romero*, 13 Cal.4th 497, 529 (1996)

⁷ *People v. Thomas* (1992) 4 Cal. 4th 206, 211; *People v. Jones* (2007) 157 Cal. 4th 1373 (absent clear legislative directive to contrary, court may dismiss enhancement in interest of justice under PC §1385)

ACLU OF NORTHERN CALIFORNIA
Abdi Soltani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
P.O. Box 87131
San Diego, CA 92138
(619) 232-2121

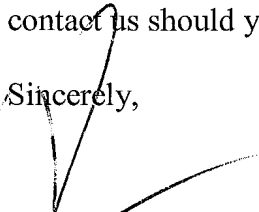
Although the original intent of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements for gun use has failed to show conclusive evidence that they have reduced gun crimes.⁸ Indeed, studies show that increasing the severity of punishment does not increase the deterrent effect; certainty of punishment — that someone will be punished for the crime — has a far greater impact.⁹

Studies also show that enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.¹⁰ California now has the regrettable distinction of imposing some of the longest sentences in the nation,¹¹ and housing the nation's highest percentage and number of prisoners serving a life or de facto life sentence.¹²

SB 620 does not eliminate any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the individual's culpability, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the ACLU of California urges you to sign SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,


Kevin G. Baker
Legislative Director


Lizzie T. Buchen
Legislative Advocate

cc: Senator Bradford

⁸ See National Research Council, "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press (2014).

⁹ The Sentencing Project, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (2014). At: <http://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>

¹⁰ See NRC, 2014.

¹¹ Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts (2012). At:

http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prison-timeservedpdf.pdf

¹² The Sentencing Project, *Still Life: America's Increasing Use of Life and Long-Term Sentences* (2017). At: <http://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/>



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September 18, 2017

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol, 1st Floor
Sacramento, CA 95814

RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support

Dear Governor Brown,

On behalf of the Anti-Recidivism Coalition (ARC), I write to respectfully request your signature on Senate Bill 620, which will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

ARC is a support network for, and comprised of, formerly incarcerated individuals devoted to changing their lives by becoming leaders in their communities. ARC accomplishes its goals by providing job training, and connecting its members to employment and educational opportunities in order to help them acquire the social capital and skills necessary to support themselves and their families. Though serving communities throughout California as advocates, community leaders and productive adults, many ARC members are still contending with the ill effects of serving very long prison sentences due to gun, and other, sentence enhancements.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. Many ARC members went into prison as young people and came out as much older men and women because they served time well beyond the sentence for the underlying offense which these individuals experienced. It must also be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety.

By granting judges discretion as to whether to apply a sentence enhancement when a person is convicted of a felony in which he used or discharged a firearm, judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, but will also help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For these reasons, ARC strongly supports SB 620 and respectfully requests your signature.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bikila Ochoa".

Bikila Ochoa
Policy Director
The Anti-Recidivism Coalition



September 14, 2017

Honorable Jerry Brown
State Capitol Suite 1173
Sacramento, CA 95814

RE: Senate Bill 620 (Bradford) - Support

Dear Governor Brown:

The Center on Juvenile and Criminal Justice strongly supports Senate Bill 620 (Bradford), which will allow judges to strike a sentence enhancement for using or discharging a firearm, when appropriate, strengthening judicial discretion and curbing the legacy of extreme sentencing that has fueled mass incarceration.

The Center on Juvenile and Criminal Justice (CJCJ) is a private non-profit organization that promotes humane criminal justice policies to reduce incarceration and foster long-term public safety in California. CJCJ pursues this mission through the development of model programs, technical assistance, and policy analysis. As such, CJCJ supports legislation that eliminates sentencing enhancements and lessens the harmful impact of mass incarceration.

California has some of the most punitive and extreme sentence enhancements for gun use in the nation. Currently, people convicted of serious felonies receive an additional sentence if their offense involved a gun. These enhancements are imposed according to the following enhancement scheme: 10 additional years if they showed a gun during the crime, 20 years if they fired a gun, and 25 years to life if firing the gun resulted in serious injury or death.

Extreme 10-20-Life gun enhancements augment sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unwarranted, gun enhancements are mandatory. Judges are forbidden from tailoring a sentence to an individual's case, circumstances, and culpability. The result is a rigid and arbitrary system that punishes with prison terms that far exceed the seriousness of the offense and undermine the goals of rehabilitation and community safety.

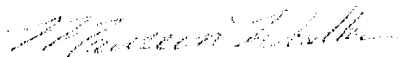
Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements indicates that the risk of an enhancement is not an effective deterrent and fails to improve public safety. Instead, enhancements have been a primary driver of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 retains all existing sanctions for gun-involved felonies, but allows a judge, rather than a prosecutor, to decide whether an individual should serve additional prison time for the use of a gun. Through SB 620, judges are permitted to consider the nature and severity of the crime, as well as other mitigating and aggravating factors in determining whether to impose a gun enhancement. This discretion ensures that judges impose sentences that fit the severity of the offense, which helps to ensure that individuals do not serve unnecessarily long sentences.

~ Changing lives. Changing systems. Changing the future. ~

SB 620 represents an important step forward in addressing California's overreliance on incarceration. Restoring the decision-making authority of trained judges will ensure that gun enhancements are used sparingly in California, limiting the devastating human impact of lengthy or life sentences. For these reasons, CJCJ strongly supports SB 620 and respectfully urges you to sign this bill into law.

Sincerely,



Maureen Washburn, Policy Analyst
Center on Juvenile and Criminal Justice

SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



September 21, 2017

The Honorable Edmund G. Brown, Jr.
Governor of the State of California
State Capitol, 1st Floor
Sacramento, CA 95814
Leg.Unit@gov.ca.gov

Re: Request Signature on SB 620 (Bradford) – Let Judges Decide

Dear Governor Brown:

As the elected Public Defender of the City and County of San Francisco, I strongly support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted of committing a felony, consistent with other enhancements.

The San Francisco Public Defender's Office represents approximately 20,000 people each year who have been accused of crimes and cannot afford to hire private attorneys. The majority of our clients are people of color, and all are low income.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose

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www.sfpUBLICDEFENDER.ORG

Juvenile Division - YGC
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F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpUBLICDEFENDER.ORG/services

Community Justice Center
P: 415.202.2832
F: 415.563.8506

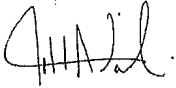
Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.567.0400
www.momagic.org

sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For the reasons stated above, I strongly support SB 620 and respectfully request your signature. Please do not hesitate to contact me if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Adachi". The signature is written in a cursive style with a large initial "J" and "A".

Jeff Adachi
San Francisco Public Defender

cc: Senator Bradford

September 21, 2017

The Honorable Edmund G. Brown
State Capitol, Suite 1173
Sacramento, California 95814
Via Fax: (916) 558-3160

Re: SB 620 (Bradford)
Position: Support



Dear Governor Brown:

On behalf of Drug Policy Alliance, I write in support of Senate Bill 620 by State Senator Steven Bradford, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted of a drug felony or other felony.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, under current state law, firearm enhancements are mandatory. Judges are prohibited from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. California has the regrettable distinction of meting out some of the longest sentences in the nation,¹ and housing the nation's highest percentage of prisoners serving a life or *de facto* life sentence.²

Further, research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are whites, even for the same crime.³ SB 620 will take a small, but urgently needed step, to rectify this racial disparity in sentencing.

For these reasons, among others, the Drug Policy Alliance supports SB 620 (Bradford). For more information on our position or our organization, please contact our policy consultant Glenn Backes at glen@drugpolicy.org or our continued leadership on behalf of

Sincerely,

Theshia Naidoo
Legal Director, Criminal Justice
Drug Policy Alliance

cc: Senator Bradford c/o Sue.Kateley@sen.ca.gov
Lizzie Buchen, ACLU lbuchen@acluca.org

Board Members
Christine Downton
Jodie Evans
James E. Ferguson, II
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Vincent Dole, MD
[1913-2006]
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Confederation Ruth Dreifuss
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Judge Nancy Gertner (Ret.)
Former Police Chief
Penny Harrington
Former President of the
Czech Republic Václav Havel
[1936-2011]
Calvin Hill
Arianna Huffington
Former Governor
Gary Johnson
Judge John Kane
Former Attorney General
Nicholas deB. Katzenbach
[1922-2012]
Former Police Chief
Joseph McNamara
[1934-2014]
Former Police Commissioner
Patrick V. Murphy
[1920-2011]
Benny J. Primm, MD
[1928-2015]
Dennis Rivera
Former Mayor Kurt Schmoke
Charles R. Schuster, PhD
[1930-2011]
Alexander Shulgin, PhD
[1925-2014]
Former Secretary of State
George P. Shultz
Russell Simmons
Sting
Judge Robert Sweet
Former Chairman of the Federal
Reserve Paul Volcker

¹ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.
² The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.
³ See, 4 Starr, SB & Rehami M, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013), Yale Law Journal.
Drug Policy Alliance | 533 Glendale Blvd, Suite 101, Los Angeles, CA 90026
213.382.6400 voice | 213.382.6425 fax | www.drugpolicy.org



**Friends Committee on
Legislation of California**

1225 8th Street, Suite 220
Sacramento, CA 95814-4809

September 20, 2017

Governor Edmund G. Brown Jr.
State Capitol
Sacramento, CA 95814

Re: Senate Bill 620 – REQUEST FOR SIGNATURE

Dear Governor Brown,

The Friends Committee on Legislation of California (FCLCA), a Quaker-based lobby that advocates for state laws that are compassionate and respectful of the inherent worth of every being, requests your approval of SB 620.

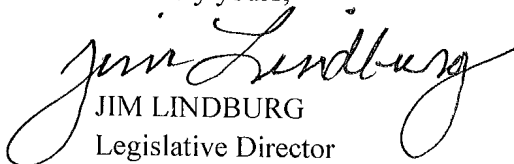
FCLCA opposes mandatory minimum sentences and automatic sentencing enhancements. These enhancements are imposed without consideration of any mitigating factors that may warrant consideration. They lengthen prison stays and increase prison overcrowding while their impact on public safety is negligible. Research indicates that the likelihood of being apprehended is a far greater deterrent to crime than a longer prison sentence. Automatic enhancements also magnify racial disparities in our criminal justice system.

Under SB 620, firearm enhancements will remain in effect, and those convicted of felonies will still serve their base sentence. The enhancement would be stricken only when a judge, at the time of sentencing, when all of the facts are known, determines that doing so would serve the interest of justice. The law should afford judges some discretion to tailor sentences based on the circumstances surrounding each individual case.

FCLCA also works to reduce gun violence. Strong communities, where everyone has access to a good education, good health and mental health care and vocational training along with a robust economy are essential elements of reducing violence. We also support sensible regulations, including background checks and legislation to reduce the proliferation of firearms. California has one of the lowest rates of gun homicides in the nation, a fact which strengthens our conviction that automatic firearm enhancements serve no meaningful public safety purpose.

For these reasons, FCLCA urges your approval of SB 620.

Sincerely yours,


JIM LINDBURG
Legislative Director

C. Senator Steven Bradford

September 20, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol, First Floor
Sacramento, CA 95814

RE: Senate Bill 620: Firearm Crime Enhancements

Request For Signature

Dear Governor Brown:

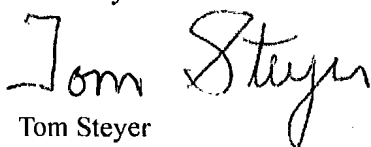
NextGen California is pleased to support SB 620 (Bradford). SB 620 provides that the court can use its judicial discretion to strike or dismiss an automatic firearm sentence enhancement in any case where such relief, in the interest of justice, could be afforded a deserving defendant. It also ensures that defendants who commit serious offenses and merit additional prison time for the use of a firearm in the commission of a felony would receive it.

Current law adds an automatic firearm sentence enhancement of anywhere between 3 years and 25 years to life in state prison term, depending on the type of firearm used and the underlying offense and manner of use. Research has found that these types of sentence enhancements cause more harm than good -- disproportionately increasing racial disparities in prisons and the overall population of incarcerated persons.

SB 620 does NOT eliminate firearm sentence enhancements. Instead, SB 620 allows a court to exercise judicial discretion when applying a firearm sentence enhancement and take into account the underlying facts and circumstances surrounding the crime and whether such an enhancement is in the interest of justice. Such judicial discretion is consistent with other sentence enhancement laws and retains existing increased sanctions for serious crimes.

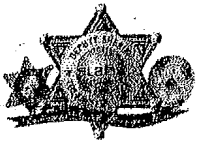
NextGen California respectfully urges your signature on SB 620.

Sincerely,



Tom Steyer

President, NextGen California



September 18, 2017

Honorable Edmund G. Brown, Jr
Governor of the State of California
State Capitol
Sacramento, CA 95814

RE: SB 180 AND SB 620 ARE INTELLECTUALLY INCONSISTENT; REQUEST APPROPRIATE VETO

Dear Governor Brown:

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 Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League are in opposition to Senate Bill 180 and Senate Bill 620. We believe each bill, in its own subject matter, represent bad public policy, which we intend to discuss here.

That said, there is an overarching reality to these two bills: They are intellectually inconsistent. Senate Bill 620 removes mandatory enhancements for crimes involving use of a firearm and leaves the issue of whether or not firearm enhancements will be imposed to judicial discretion. On the other hand, Senate Bill 180 removes all judicial discretion in connection with career drug traffickers and instead provides for a mandatory, across the board sentence that applies equally to the career drug dealer and to the first-time drug dealer. Put simply, it is not sustainable to sign both of these bills – with their diametrically opposed philosophies – into law.

Senate Bill 180

Under current law, the court has the discretion to impose an additional three years higher sanctions on those who are career drug traffickers by adding an additional three years for each prior conviction to the sentence of 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 wipes out that judicial discretion and prohibits the imposition of the enhancement for opiate, opiate derivative or hallucinogenic traffickers who have prior drug trafficking convictions. Given the opiate crisis currently facing our state, tying the hands of judges who have a career opiate dealer before them appears singularly ill-timed.

The consequence of SB 180 will be to treat a career opiate dealer the same as a person who is a first-time offender selling his or her extra personal stash of cocaine. We believe that there is an enhanced level of seriousness posed to a community by career drug traffickers that that judicial discretion to impose the enhanced sentence should be maintained. 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 SB 180; have made the case that the arc of social progress is advanced by reducing the accountability of career opiate dealers.

Senate Bill 620

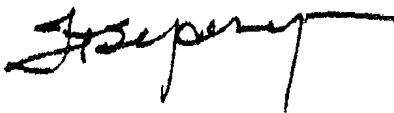
Current law has correctly required an enhancement for the use of a firearm in connection with an array of already serious crimes. The addition of a firearm to the criminal equation of those specific crimes significantly enhances the risk to the public and to our peace officers in each of those criminal instances. Senate Bill 620 will permit the court, "in the interest of justice" to vitiate those firearm enhancements. In effect, SB 620, as currently constituted permits the court to attach the "interest of justice" label (without any guidance or limitations) onto any case in which they intend to disregard the firearm enhancements.

It is simply unfathomable that striking a firearm enhancement where a gun is used in the commission of such crimes as rape, sodomy, a kidnapping, a lewd act on a child, a rape in concert, an attack on a peace officer, or a murder could ever be in the "interest of justice". The fact that an "interest of justice" boiler plate provision was placed into the bill in connection with these heinous crimes is puzzling, at the very best.

We believe that independent analysis of both SB 180 and SB 620 shows that they each fail on their own merits and merit a veto. Additionally, they are both so intellectually opposites that we cannot conceive of both of them being signed into law.

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 Associations, the Los Angeles County Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League respectfully that you veto Senate Bill 180 and Senate Bill 620.

Sincerely,



Tim Yaryan
Legislative Counsel
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
Los Angeles County Probation Officers Union AFSCME Local 685
Los Angeles Police Protective League

John Lovell

John Lovell

Legislative Counsel

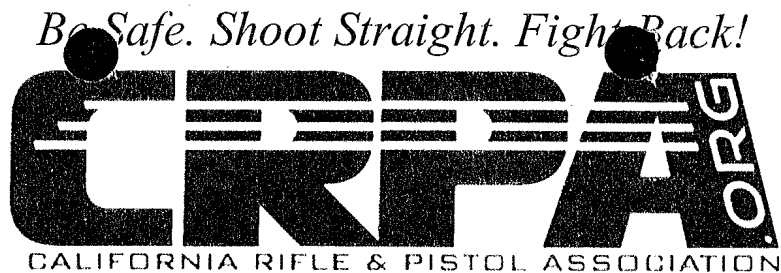
California Association of Code Enforcement Officers

California College and University Police Chiefs Association

California Narcotic Officers Association

Los Angeles County Professional Peace Officers Association

CC: Daniel Seeman, Deputy Legislative Secretary, Office of Governor Brown



September 20, 2017

The Honorable Edmund G. Brown, Jr.
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Re: Senate Bill 620 (Bradford) – Firearms: Crimes: enhancements
Position: OPPOSED – Veto Requested
Location: Governor’s Desk

Dear Governor Brown:

On behalf of the California Rifle & Pistol Association, Inc. (CRPA), and its members throughout California, I write to urge you to veto Senate Bill 620 (SB 620). The CRPA, founded in 1875, is a nonprofit membership and donor supported organization with tens of thousands of members throughout California. CRPA works tirelessly to defend the civil and constitutional rights of individuals to choose to responsibly own and use firearms and works to preserve the traditional role of the citizen to hunt, to conserve, and preserve California’s natural resources.

While defending the constitutional rights of our citizens to own and use firearms, CRPA believes that those who use firearms in the commission of crimes should be punished to the full extent of the law. We stand with law enforcement throughout California and put the safety of our citizens first. It is very hard to explain to our members how, or why, their elected politicians continually write and pass legislation that chips away at the law-abiding gun owner’s Second Amendment rights. While at the same time attempting to pass legislation like SB 620 that makes life easier on criminals, the small percentage of Californians who choose to use firearms to commit unlawful acts!

While CRPA will continue to support sound legislation aimed at reducing crime and getting criminals off our streets and out of our communities, SB 620 is no such piece of legislation. For the foregoing reasons, the CRPA strongly urges you to veto SB 620.

Sincerely,

Roy M. Griffith Jr.
Legislative Liaison
California Rifle & Pistol Association, Inc.
rgriffith@crpa.org (530)682-7087
cc Dan Seeman
Daniel Gutierrez
C.D. Michel

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Keith Royal
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Martin Ryan
Sheriff, Amador County

Laurie Smith
Sheriff, Santa Clara County

M. Carmen Green
Executive Director

Catherine M. Coyne
Deputy Executive Director

James R. Touchstone
General Counsel

Nick Warner
Policy Director

Cory Salzillo
Legislative Director



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

September 18, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 – Veto Request

Dear Governor Brown:

On behalf of the California State Sheriffs' Association (CSSA), I respectfully request that you veto Senate Bill 620, which allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

For these reasons, CSSA respectfully requests you veto SB 620.

Sincerely,

Cory M. Salzillo
Legislative Director

Cc: The Honorable Steven Bradford, California State Senate



September 18, 2017

The Honorable Jerry Brown
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: SB 620 | OPPOSE

Dear Governor Brown:

Gun Owners of California continues to respectfully request your veto of SB 620, which grants the courts discretion in existing sentencing provisions for the felony use of a firearm.

Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the "use a gun – go to prison" policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of "justice" but rather a dangerous proposition.

Thus, we strongly request your veto of this legislation. GOC would sincerely appreciate the opportunity to work with you on how we can reduce crime in California – gun-related and otherwise. The safety of our citizens is central and it has been the consistent goal of Gun Owners to advocate for common sense solutions without sacrificing our Constitutional rights and the ability of the law abiding to protect their home and families.

Respectfully,

Sam Paredes, Executive Director



GUN OWNERS OF CALIFORNIA

1831 Iron Point Road, Folsom CA 95630 – (916) 984-1400 (916) 984-1402 fax

www.GunOwnersCA.com

A Political Committee Dedicated to Crime Control – Not Gun Control



ORANGE COUNTY SHERIFF'S DEPARTMENT

550 N. FLOWER STREET
SANTA ANA, CA 92703
714-647-7000
WWW.OCS.D.ORG

SHERIFF-CORONER
SANDRA HUTCHENS

OFFICE OF THE SHERIFF

September 22, 2017

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 (Bradford) Firearms: sentence enhancements-Veto Request

Dear Governor Brown:


I am writing to advise you of my opposition to Senate Bill 620. This bill allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

I respectfully request a veto of SB 620.

Sincerely,


Sandra Hutchens
Sheriff-Coroner

SH:rg

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SB-620 Firearms: crimes: enhancements. (2017-2018)

SECTION 1. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 30510 or ~~Section~~ 30515, or a machinegun, as defined in Section 16880, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years.

~~(c) Notwithstanding Section 1385 or any other provisions of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section. The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.~~

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as ~~one~~, *one* single enhancement.

SEC. 2. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

- (1) Section 187 (murder).
- (2) Section 203 or 205 (mayhem).
- (3) Section 207, 209, or 209.5 (kidnapping).
- (4) Section 211 (robbery).
- (5) Section 215 (carjacking).
- (6) Section 220 (assault with intent to commit a specified felony).
- (7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
- (8) Section 261 or 262 (rape).
- (9) Section 264.1 (rape or sexual penetration in concert).
- (10) Section 286 (sodomy).
- (11) Section 288 or 288.5 (lewd act on a child).

(12) Section 288a (oral copulation).

(13) Section 289 (sexual penetration).

(14) Section 4500 (assault by a life prisoner).

(15) Section 4501 (assault by a prisoner).

(16) Section 4503 (holding a hostage by a prisoner).

(17) Any felony punishable by death or imprisonment in the state prison for life.

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 26100, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section 12022.7, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e) (1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated subdivision (b) of Section 186.22.

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5, or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section 12022.7, 12022.8, or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) ~~Notwithstanding Section 1385 or any other provision of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section. The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.~~

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment

authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

UNOFFICIAL BALLOT

MEASURE: SB 620

AUTHOR: Bradford

TOPIC: Firearms: crimes: enhancements.

Date: 9/12/2017

LOCATION: S - ENROLLMENT

MOTION: SB 620 Bradford Senate Third Reading By WEBER

(AYES 42- NOES 33- ABS 4) ((PASS))

AYES

Aguiar-Curry	Berman	Bloom	Bocanegra
Bonta	Burke	Calderon	Chau
Chávez	Chiu	Chu	Cristina Garcia
Dababneh	Daly	Eduardo Garcia	Eggman
Friedman	Gipson	Gloria	Gonzalez Fletcher
Gray	Grayson	Holden	Jones-Sawyer
Kalra	Levine	Limón	Low
Mark Stone	McCarty	Medina	Mullin
O'Donnell	Quirk	Rendon	Reyes
Rubio	Santiago	Thurmond	Ting
Weber	Wood		

NOES

Acosta	Arambula	Baker	Bigelow
Brough	Caballero	Cervantes	Chen
Choi	Cooley	Cunningham	Dahle
Flora	Fong	Frazier	Gallagher
Harper	Irwin	Kiley	Lackey
Maienschein	Mathis	Mayes	Melendez
Obernolte	Patterson	Quirk-Silva	Ridley-Thomas
Salas	Steinorth	Travis Allen	Voepel
Waldron			

ABSENT, ABSTAINING, OR NOT VOTING

Cooper	Muratsuchi	Nazarian	Rodriguez
--------	------------	----------	-----------

UNOFFICIAL BALLOT

MEASURE: SB 620

AUTHOR: Bradford

TOPIC: Firearms: crimes: enhancements.

Date: 9/13/2017

LOCATION: S - ENROLLMENT

MOTION: Unfinished Business SB620 Bradford Concurrence
(AYES 22- NOES 13- ABS 5) ((PASS))

AYES

Allen	Atkins	Beall	Bradford
De León	Dodd	Galgiani	Glazer
Hernandez	Hertzberg	Hill	Hueso
Jackson	Lara	Leyva	McGuire
Mitchell	Monning	Pan	Skinner
Wieckowski	Wiener		

NOES

Anderson	Bates	Berryhill	Fuller
Gaines	Moorlach	Morrell	Newman
Nguyen	Nielsen	Stone	Vidak
Wilk			

ABSENT, ABSTAINING, OR NOT VOTING

Cannella	Mendoza	Portantino	Roth
Stern			



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

Unitemized Correspondence/Materials By Source

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(916) 442.7660

Senate Policy Committee Materials

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CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

May 4, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: **SB 620 – as amended 3/28/17**
Support

Dear Senator Bradford:

The ACLU of California is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,¹ 20 years if they fired a gun, even if it misfired,² and 25-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,³ and even for an individual who did not personally handle or fire the weapon.⁴

These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory; judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.⁵ Instead, studies show enhancements like these have been the

¹ *People v. Grandy* (App. 2 Dist. 2006) 50 Cal.Rptr.3d 189, 144 Cal.App.4th 33

² *Ibid.*

³ *People v. Palmer* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 373

⁴ *People v. Garcia* (2002) 124 Cal.Rptr.2d 464, 28 Cal.4th 1166, 52 P.3d 648.

⁵ See National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and

ACLU OF NORTHERN CALIFORNIA
Abdi Soltani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Rector Vitagra, Executive Director
1311 West Eighth Street
Los Angeles, CA 90017
(213) 977-9560

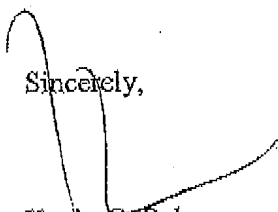
ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
P.O. Box 27131
San Diego, CA 92138
(619) 732-2121

primary drivers of prison overcrowding and our shamefully high rates of incarceration.⁶ California now has the regrettable distinction of meting out some of the longest sentences in the nation,⁷ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁸

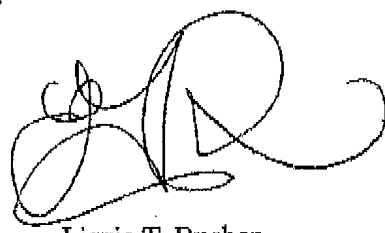
SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the ACLU of California is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Kevin G. Baker
Legislative Director



Lizzie T. Buchen
Legislative Advocate

cc: Members and Committee Staff, Senate Committee on Appropriations

S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

⁶ Ibid.

⁷ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁸ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

April 19, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: **SB 620 – as amended 3/28/17**
Support

Dear Senator Bradford:

The American Civil Liberties Union of California is pleased to support your SB 620, which will allow for judicial discretion when applying sentence enhancements for using a gun during the commission of a felony. These enhancements come at a significant cost to society, but do little to protect the public.

Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they brandished a gun during the crime, 20 years if they fired it, and 25-to-Life if firing the gun resulted in serious injury or death. These severely long enhancements are added to sentences that are already quite long, including life terms.

Although the original intention of 10-20-Life was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹

However, while enhancements like 10-20-Life do not improve public safety, they have been primary drivers of mass incarceration,² and have resulted in California’s dubious distinction of meting out some of the longest sentences in the nation.³ They also come with significant human costs, separating families and communities for decades longer than the base sentences require.

¹ See, e.g., Loftin, C., and McDowall, D. (1981). “One with a gun gets you two”: Mandatory sentencing and firearms violence in Detroit. *The ANNALS of the American Academy of Political and Social Science*, 455(1), 150-167; Loftin, C., and McDowall, D. (1984). The deterrent effects of the Florida felony firearm law. *Journal of Criminal Law and Criminology*, 75(1), 250-259. Loftin, C., Heumann, M., and McDowall, D. (1983). Mandatory sentencing and firearms violence: Evaluating an alternative to gun control. *Law and Society Review*, 17(2), 287-318. Ludwig, J. and Raphael, S. (2003). Prison sentence enhancements: The case of project exile. In J. Ludwig and P.J. Cook (Eds.), *Evaluating Gun Policy: Effects on Crime and Violence*. Washington, DC: Brookings Institution Press.

² National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

³ Pew Center on the States. (2012). “Time Served: The High Cost, Low Return of Longer Prison Terms.” Pew Charitable Trusts

ACLU OF NORTHERN CALIFORNIA
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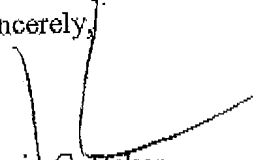
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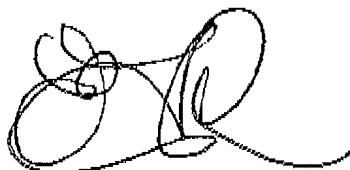
Consistent with other sentence enhancements,⁴ SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony.

For these reasons, the ACLU of California is in support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



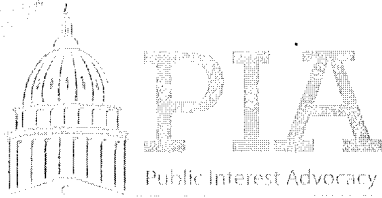
Kevin G. Baker
Legislative Director



Lizzie T. Buchen
Legislative Advocate

cc: Members and Committee Staff, Senate Committee on Public Safety

⁴ Cal. Pen. Code § 1385.



late

April 18, 2017

Senator Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814
By fax: 916-445-4688

Re: SB 620 (Bradford) - SUPPORT

Dear Senator Skinner:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 620 (Bradford).

SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Senate Public Safety Committee. Please do not hesitate to contact me at caliph@publicinterestadvocacy.com or (916) 761-4860 with any questions or concerns.

Sincerely,

Caliph Assagai,
Legislative Advocate

www.publicinterestadvocacy.com

late



Fighting for justice since 1973

California Attorneys for Criminal Justice

1555 River Park Dr., Suite 105 • Sacramento, CA 95815
Phone: (916) 643-1800 • Fax: (916) 643-1836
www.cacj.org

April 18, 2017

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Honorable Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

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**RE: Senate Bill 620 (Bradford) – Support
As Amended – March 28, 2017
Senate Public Safety Hearing – April 25, 2017**

Dear Senator Skinner:

The California Attorneys for Criminal Justice* (CACJ), a statewide association of criminal defense attorneys in private practice or working in a public defender offices, writes in support of SB 620. SB 620 would allow judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm during the commission of an offense and subsequent conviction.

Granting the courts discretion when deciding on whether or not to impose an additional sentence is consistent with other enhancement sentence laws. This is due to the importance of the courts taking into consideration other factors such as character of the defendant, external circumstances involved, likeliness of the offender to reoffend, etc., when determining a sentence. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of the crime is not a smart approach to effective punishment.

At a time when California is working to be smart on crime and reduce the impacted prison population, measures like AB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.

For these reasons, CACJ supports SB 620. Thank you for your time and consideration. If you have any questions, please feel free to contact me at Hernandez Strategy Group, 916-447-9719.

Sincerely,

Ignacio Hernandez
CACJ Legislative Advocate

CC: Members and Staff, Senate Public Safety Committee
Senator Bradford

ALLIANCE FOR
Boys and Men of Color

Invest in the Health and Success
of California's Future

April 18, 2017

Honorable Nancy Skinner
Chair, Public Safety Committee
California State Senate
State Capitol, Room 2031
Sacramento, CA 95814
Fax: (916) 445-4688

RE: Support for SB 620 (Bradford) – Judicial Discretion in Sentencing

Dear Chairperson Skinner:

The Alliance for Boys and Men of Color supports Senate Bill 620 (Bradford), which will provide courts with discretion in the application of sentence enhancements, helping to ensure that criminal sentences are fair and appropriate. Mandatory sentence enhancements do not make our communities safer; instead, they unnecessarily harm individuals, families, and communities.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, improve academic success, support neighborhood safety, reduce justice system involvement, and support employment opportunities for this vulnerable population.

Persons convicted of felonies are already sentenced to lengthy prison terms. Yet, existing state law requires sentence enhancements of up to ten years whenever a firearm is used during the commission of a felony. Studies show, however, that adding a longer sentence to an already lengthy one does not deter crime. Rather, it greatly increases prison populations and disproportionately increases racial disparities in imprisonment.

SB 620 would give courts discretion to strike a sentence enhancement if doing so is in the interest of justice. We believe that giving judges this flexibility will create a fairer and more equitable sentencing system.

For these reasons, the Alliance for Boys and Men of Color supports SB 620 and requests your "Aye" vote. Should you have any questions, please contact Rosa Aqeel at rageel@policylink.org.

Sincerely,



Marc Philpart

Principal Coordinator

Alliance for Boys and Men of Color

CC: Honorable Steven Bradford
Honorable Hannah-Beth Jackson
Honorable Holly Mitchell
Honorable Jeff Stone
Honorable Scott Wiener



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April 17, 2017

The Honorable Nancy Skinner
California State Senator
Chairperson, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

Fax: (916) 445-4688

RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support

Dear Chairperson Skinner,

The Anti-Recidivism Coalition (ARC) is excited to support the passage of SB 620, a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

ARC is a support network for, and comprised of, formerly incarcerated individuals devoted to changing their lives by becoming leaders in their communities. ARC accomplishes its goals by providing job training, and connecting its members to employment and educational opportunities in order to help them acquire the social capital and skills necessary to support themselves and their families. Though serving communities throughout California as advocates, community leaders and productive adults, many ARC members are still contending with the ill effects of serving very long prison sentences due to gun, and other, sentence enhancements.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. Many ARC members went into prison as young people and came out as much older men and women because they served time well beyond the sentence for the underlying offense which these individuals experienced. It must also be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety

By granting judges discretion as to whether to apply a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, SB 620 will help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For these reasons, among others, ARC supports SB 620, and respectfully requests that you support the bill as well

Sincerely,

A handwritten signature in cursive script, appearing to read "Bikila Ochoa".

Bikila Ochoa
Policy Director
The Anti-Recidivism Coalition



April 14, 2017

Honorable Nancy Skinner, Chair
Senate Committee on Public Safety
State Capitol Building, Room 2031
Sacramento, CA 95814

RE: SENATE BILL 620 – SUPPORT LETTER

Dear Senator Skinner:

Californians for Safety and Justice is pleased to support Senate Bill 620, which would allow a court to use judicial discretion when applying sentence enhancements when a person uses a firearm in the commission of a felony.

Californians for Safety and Justice is a nonprofit organization that promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities. Sentences should fit the crime, effectively manage risk, and put safety first. The best sentences emphasize accountability and work to stop the cycle of crime, which reduces repeat victimization, recidivism, and taxpayer expense.

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

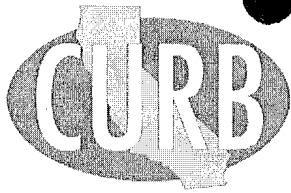
Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

On behalf of Californians for Safety and Justice and the Californians who stand to benefit from SB 620, thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Liah Burnley".

Liah Burnley
Policy Advocate
Californians for Safety and Justice



Californians United for a Responsible Budget

Oakland Office:

1322 Webster St # 210 Oakland, CA 94612
510-435-1176 (c)
510-839-7615 (f)

Los Angeles Office:

1137 E. Redondo Blvd. Inglewood, CA 90301
213-864-8931(c)
www.curbprisonspending.org

The Honorable Nancy Skinner, Chair
Senate Committee on Public Safety
State Capitol, Room 2031
Sacramento, CA 95814

Re: SB 620 (Bradford
Judicial Discretion) - **SUPPORT**

Dear Chair Skinner,

Californians United for a Responsible Budget is writing to convey our strong support for SB 620.

Californians United for a Responsible Budget (CURB) is a statewide coalition of more than 70 grassroots organizations working to stop prison and jail expansion, reduce incarceration, and invest in the social safety net. As a coalition committed to an immediate and expansive reduction in the number of people imprisoned in California, CURB supports SB 620 for the impact it could have on creating more just and humane sentencing policies in California.

SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

Thank you for your consideration,

Gabriela Pelsinger

Californians United for a Responsible Budget

cc: Members, Senate Committee on Public Safety: Senators Bradford, Jackson, Mitchell,
Stone, and Wiener



Friends Committee on Legislation of California

1225 8th Street, Suite 220
Sacramento, CA 95814-4809

April 17, 2017

Senator Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol – Room 2031
Sacramento, CA 95814

Re: Senate Bill 620 (Bradford) – SUPPORT

Dear Senator Skinner,

The Friends Committee on Legislation of California (FCLCA), a Quaker-based lobby that advocates for state laws that are compassionate and respectful of the inherent worth of every being, supports SB 620. This bill will allow a court to strike an enhancement related to the use and/or discharge of a firearm in the commission of a felony when doing so would be in the interest of justice.

FCLCA works for a society in which all individuals value and respect each other. In such a society there is no use for guns. We also support sensible firearms regulations and oppose the proliferation of firearms. We also are opposed to mandatory minimum sentences and automatic sentencing enhancements. These enhancements are imposed without consideration for any mitigating facts that may warrant consideration. They lengthen prison stays and increase prison overcrowding while their impact on public safety is negligible. Research indicates that the likelihood of being apprehended is a far greater deterrent to crime than a longer prison sentence.

Under SB 620, firearm enhancements will remain in effect, and those convicted of felonies will still serve their base sentence. The enhancement could be stricken only when a judge finds a compelling reason at the time of sentencing, when all of the facts are known, that doing so would serve the interest of justice. The law should afford judges some discretion to tailor sentences based on the circumstances surrounding each individual case.

For these reasons, FCLCA strongly supports SB 620.

Sincerely yours,


JIM LINDBURG
Legislative Director

C. Senator Steven Bradford and Members of the Senate Public Safety Committee



April 19, 2017

Senator Steven Bradford
State Capitol
Sacramento, CA 95814

RE: SB 620 | OPPOSE

Dear Senator Bradford:

Gun Owners of California is writing to respectfully oppose your SB 620, which grants the courts discretion in existing sentencing provisions for the felony use of a firearm.

Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the "use a gun – go to prison" policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of "justice" but rather a dangerous proposition.

We would appreciate the opportunity to work with you on how we can reduce crime in California – gun-related and otherwise. The safety of our citizens is central and it has been the consistent goal of Gun Owners to advocate for common sense solutions without sacrificing our Constitutional rights and the ability of the law abiding to protect their home and families.

Respectfully,

A handwritten signature in black ink, appearing to read "Sam Paredes".

Sam Paredes, Executive Director

cc: Members of the Senate Public Safety Committee
Republican Committee Consultant(s)



GUN OWNERS OF CALIFORNIA

1831 Iron Point Road, Folsom CA 95630 -- (916) 984-1400 (916) 984-1402 fax

www.GunOwnersCA.com

A Political Committee Dedicated to Crime Control – Not Gun Control



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April 17, 2017

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California State Senate

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Sacramento, CA 95814

Second Vice President

Birgit Fladager
Stanislaus County

RE: SB 620 – Oppose

Dear Senator Bradford:

Secretary-Treasurer

Nancy O'Malley
Alameda County

On behalf of the California District Attorneys Association (CDA A), I regret to inform you that we are opposed to your measure, SB 620. This bill would allow a court to disregard additional terms of imprisonment for use of a firearm or assault weapon in the commission of a felony, including those under California's "10-20-life" law.

Sergeant-At-Arms

Vern Pierson
El Dorado County

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Immediate Past President

Patrick J. McGrath
Yuba County

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

DIRECTORS

Mark Amador
San Diego County

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

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Imperial County

Jeannine Pacioni
Monterey County

Anne Marie Schubert
Sacramento County

Ryan Wagner
Contra Costa County

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

CEO

Mark Zahner



I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Hoffman", written over a horizontal line.

Sean Hoffman
Director of Legislation



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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Sheriff, Stanislaus County

Robert Doyle
Sheriff, Marin County

Keith Royal
Sheriff, Nevada County

Laurie Smith
Sheriff, Santa Clara County

M. Carmen Green
Executive Director

Catherine M. Coyne
Deputy Executive Director

James R. Touchstone
General Counsel

Nick Warner
Policy Director

Cory Salzillo
Legislative Director

April 18, 2017

The Honorable Steven Bradford
California State Senate
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 – Oppose

Dear Senator Bradford:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we are opposed to your measure, Senate Bill 620, which allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

For these reasons, CSSA must respectfully oppose SB 620.

Sincerely,

Cory M. Salzillo
Legislative Director

Cc: Members and Staff of the Senate Public Safety Committee
Eric Csizmar, Republican Consultant



LRI History LLC

intent@lrihistory.com
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(916) 442.7660

Senate Republican Fiscal Office Materials

LRI History LLC hereby certifies that the accompanying record/s is/are true and correct copies of the original/s obtained from one or more official, public sources in California unless another source is indicated, with the following exceptions : In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, for ease of reference, paging and relevant identification have been inserted.

Osterli, Matt

From: Cox, Carmen-Nicole@CDCR <Carmen-Nicole.Cox@cdcr.ca.gov>
Sent: Monday, May 01, 2017 3:02 PM
To: Osterli, Matt
Cc: Walkow, Kevin@CDCR; Wilson, Teresa@CDCR; Cote, Brian@CDCR
Subject: RE: Senate Bills--SB 620

Hello, Matt.

SB 620 gives sentencing courts discretion to strike "10-20-life" firearm enhancements when doing so would serve the interest of justice, including upon resentencing. These enhancements, found at Penal Code (PC) 12022.5 and 12022.53, are consecutive to the term for the underlying offense. On December 31, 2016, inmates in the Department of Corrections and Rehabilitation (CDCR) had been sentenced to more than 33,000 enhancements under PC 12022.5 and 12022.53. In Calendar Year 2016, CDCR admitted more than 35,000 offenders and recorded more than 2,000 enhancements under PC 12022.5 and 12022.53. If sentencing and resentencing courts exercised their discretion thereby reducing the length of stay of felony offenders, we would expect significant savings to CDCR in future years.

Let me know if you need anything further.
Carmen

Carmen-Nicole Cox
Chief, Office of Legislation
California Department of Corrections and Rehabilitation
(916) 323-3711 (desk)
916-531-4527 (mobile)

From: Osterli, Matt [<mailto:Matt.Osterli@sen.ca.gov>]
Sent: Friday, April 28, 2017 4:13 PM
To: Jolls, Mary@BSCC; Liebenbaum, Andi; Wilson, Teresa@CDCR; Shawna Tosten; Herrell, Robert; Dey, Tom@DSH; Nezhura, Lori@CalOES; Brown, Ralph@POST; Carr, A@CGCC; Harold Coburn
Cc: Walkow, Kevin@CDCR; Cox, Carmen-Nicole@CDCR; Cote, Brian@CDCR; Gear, Melissa; Figueroa, Josephine; 'Dan.Okenfuss@insurance.ca.gov'; Zoller, Kendra; Amy.Ide@insurance.ca.gov; DSH SAC Legislation; Salvador, Reggie@CalOES; Jackie Wagner (CHRB)
Subject: Senate Bills

All,

Please provide a cost/revenue estimate for your respective agency/department/branch for the bills identified below **as soon as possible, but no later than NOON on Wednesday, May 3**. As always, please make sure you are looking at the most current version of the bill, which can generally be found [here](#). If you notice that another agency is affected by a particular bill and I have not requested information from that agency in the list below, please do not hesitate to call it to my attention.

BSCC

SB 10

JC



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Office of Senate Floor Analyses Materials

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em'd to PG 5/5/17
- Jessica D.
- Sarah L.

CENTER FOR ADVOCACY & POLICY
Telephone: (916) 442-1036
Fax: (916) 442-1743

May 4, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 -- as amended 3/28/17
Support

Dear Senator Bradford:

The ACLU of California is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as "10-20-Life," people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,¹ 20 years if they fired a gun, even if it misfired,² and 25-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,³ and even for an individual who did not personally handle or fire the weapon.⁴

These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory; judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.⁵ Instead, studies show enhancements like these have been the

¹ *People v. Grandy* (App. 2 Dist. 2006) 50 Cal.Rptr.3d 189, 144 Cal.App.4th 33

² *Ibid.*

³ *People v. Palmer* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 373

⁴ *People v. Garcia* (2002) 124 Cal.Rptr.2d 464, 28 Cal.4th 1166, 52 P.3d 648.

⁵ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and

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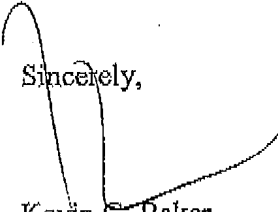
ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
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primary drivers of prison overcrowding and our shamefully high rates of incarceration.⁶ California now has the regrettable distinction of meting out some of the longest sentences in the nation,⁷ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁸

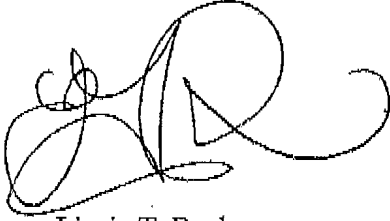
SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the ACLU of California is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Kevin G. Baker
Legislative Director



Lizzie T. Buchen
Legislative Advocate

cc: Members and Committee Staff, Senate Committee on Appropriations

S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

⁶ Ibid.

⁷ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁸ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

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DRAFT

UNFINISHED BUSINESS ✓

Bill No: SB 620
Author: Bradford (D) ✓
Amended: 6/15/17 ✓
Vote: 21 ✓

✓ SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/25/17
AYES: Skinner, Bradford, Mitchell, Wiener
NOES: Anderson, Stone
NO VOTE RECORDED: Jackson

✓ SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

✓ SENATE FLOOR: 22-14, 5/18/17
AYES: Allen, Atkins, Beall, Bradford, De León, Dodd, Glazer, Hernandez,
Hertzberg, Hill, Hueso, Jackson, Lara, Leyva, McGuire, Mitchell, Monning,
Pan, Skinner, Stern, Wieckowski, Wiener
NOES: Anderson, Bates, Berryhill, Cannella, Fuller, Gaines, Moorlach, Morrell,
Newman, Nguyen, Nielsen, Stone, Vidak, Wilk
NO VOTE RECORDED: Galgiani, Mendoza, Portantino, Roth

ASSEMBLY FLOOR: ~~31-34, 7/10/17~~ - See last page for vote (FAIL)

AF : 9/12/17

SUBJECT: Firearms: crimes: enhancements —

SOURCE: Author

DIGEST: *This bill* Allows a court, in the interest of justice, to strike or dismiss a firearm enhancement which otherwise adds a state prison term of three, four, or 10 years, or five, six, or 10 years, depending on the firearm, or a state prison term of 10 years, 20 years, or 25-years-to-life depending on the underlying offense and manner of use.

Assembly Amendments clarify that the court may dismiss a firearm enhancement, in addition to strike an enhancement.

ANALYSIS:

Existing law:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony, in addition and consecutive to the punishment for the underlying felony offense, shall be sentenced to a term of 3, 4, or 10 years in state prison, unless the use of a firearm is an element of the offense for which he or she is convicted. A person who personally uses an assault weapon or machine gun during the commission of a felony or attempted felony is subject to an additional consecutive term of 5, 6 or 10 years in state prison. (Pen. Code, § 12022.5, subds. (a) & (b).)
- 2) Prohibits the court from striking an allegation or a true finding under the firearm-use enhancement (Pen. Code, § 12022.5, subd. (c).)
- 3) States that notwithstanding the limitation that a firearm-use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict GBI or death. (Pen. Code, § 12022.5, subd. (d).)
- 4) States that when a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony, as provided and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided. (Pen. Code, § 12022.5 subd. (e).)
- 5) Provides that only a single enhancement shall be imposed for an offense under the firearm-use enhancement. (Pen. Code, §§ 12022.5, subd. (f), 1170.1.)
- 6) Provides for the 10-20-life firearm law. A person who personally uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses is subject to an additional consecutive term of 10 years in prison. If the firearm is personally and intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Pen. Code, § 12022.53, subds. (b)-(d).)

- 7) Provides that if the offense is gang-related, the 10-20-life firearm enhancements shall apply to every principal in the commission of the offense. An enhancement for participation in a criminal street gang shall not be imposed in addition to an enhancement under this provision, unless the person personally used or personally discharged a firearm in the commission of the specified offense. (Pen. Code, § 12022.53, subds. (e)(1) & (e)(2).)
- 8) Provides that only one additional term of imprisonment under the 10-20-life firearm law shall be imposed per person per crime. An enhancement for use of a firearm shall not be imposed on a person in addition to an enhancement under this provision. (Pen. Code, § 12022.53, subd. (f).)
- 9) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of the 10-20-life law. (Pen. Code, § 12022.53, subd. (g).)
- 10) Prohibits the court from striking an allegation or a true finding under the 10-20-life law. (Pen. Code, § 12022.53, subd. (h).)
- 11) Provides that if sentence is imposed pursuant to the 10-20-life law, the total amount of credits awarded shall not exceed 15 percent of the total term of imprisonment imposed. (Pen. Code, § 12022.53, subd. (i).)
- 12) Authorizes a court, in furtherance of justice, to dismiss an action, absent clear legislative intent to withhold such authority. (Pen. Code, § 1385, subd. (a); *People v. Fuentes* (2016) 1 Cal.5th 218, 227.) If the court has the authority to strike or dismiss an enhancement under this provision, it may instead strike the additional punishment for the enhancement. (Pen. Code, § 1385, subd. (c).)

This bill:

- 1) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a sentence enhancement for use of a firearm, assault weapon, or machine gun while committing or attempting to commit a felony.
- 2) Provides that the court may, in the interest of justice and at the time of sentencing, strike or dismiss a firearm enhancement for the use, discharge, or discharge causing ~~great bodily injury~~ ~~(GBI)~~ or death while committing or attempting to commit a specified felony.

Background

Existing law includes Penal Code section 1385, which grants a court the power and discretion to dismiss an action or any part of an action in the interests of justice. The Legislature can limit or prohibit the court's exercise of discretion under section 1385 for any particular crime or enhancement. However, any limits on section 1385 discretion must be clearly and specifically stated. (*People v. Superior Court (Romero)*, supra, 13 Cal.3d 497.) Penal Code sections 12022.5 and 12022.53 both include a provision forbidding the court from dismissing an enhancement imposed under that section.

This ^{bill} ~~legislation would~~ provide the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

Comments:

According to the author, "SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

"Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

"And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

"SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

"Longer sentences do not deter crime or protect public safety according to research on these laws.

"Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

"SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice."

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

According to the Assembly Appropriations Committee, potential unknown annual savings to the California Department of Corrections and Rehabilitation (CDCR) by reducing the inmate population. Currently, thousands of inmates are serving sentence enhancements. Should the courts exercise the discretion authorized in this bill, felony offenders in CDCR would serve shorter sentences. According to CDCR, the current annual contract bed cost is approximately \$29,000 (General Fund (GF)). If sentences were not enhanced by a year for 100 inmates, the GF expenditures avoided would be \$2.9 million for that year.

SUPPORT: (Verified 9/12/17)

Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition
California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Friends Committee on Legislation of California

OPPOSITION: (Verified 9/12/17)

California District Attorneys Association
California State Sheriffs' Association
Gun Owners of California

ARGUMENTS IN SUPPORT:

According to California's for Safety and Justice:

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

ARGUMENTS IN OPPOSITION:

According to the California District Attorneys Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition

57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).


SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

✓ ASSEMBLY FLOOR: 31-34, 7/10/17

AYES: Berman, Bloom, Bonta, Burke, Chau, Chiu, Chu, Daly, Eggman, Friedman, Cristina Garcia, Gonzalez Fletcher, Holden, Jones-Sawyer, Kalra, Levine, Limón, McCarty, Medina, Mullin, Nazarian, O'Donnell, Quirk, Reyes, Santiago, Mark Stone, Thurmond, Ting, Weber, Wood, Rendon

NOES: Acosta, Travis Allen, Arambula, Baker, Bigelow, Brough, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Dababneh, Dahle, Flora, Fong, Frazier, Gallagher, Harper, Irwin, Kiley, Lackey, Maienschein, Mathis, Mayes, Melendez, Obernolte, Patterson, Quirk-Silva, Ridley-Thomas, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Aguiar-Curry, Bocanegra, Caballero, Calderon, Chávez, Eduardo Garcia, Gipson, Gloria, Gomez, Gray, Grayson, Low, Muratsuchi, Rodriguez, Rubio

 Prepared by: Gabe Caswell / PUB. S. /
9/12/2017 2:56:39

**** END ****

THIRD READING

Bill No: SB 620
Author: Bradford (D) ✓
Amended: 3/28/17 ✓
Vote: 21 ✓

✓ SENATE PUBLIC SAFETY COMMITTEE: 4-2, 4/25/17
AYES: Skinner, Bradford, Mitchell, Wiener
NOES: Anderson, Stone
NO VOTE RECORDED: Jackson
Sen APPR 28.6

SUBJECT: Firearms: crimes: enhancements

SOURCE: Author

DIGEST: This bill will ~~allow~~ the court, in the interest of justice and at the time of sentencing, strike a firearm enhancement, as specified.

ANALYSIS: *40*

Existing law:

- 1) Provides that any person who personally uses a firearm in the commission or attempted commission of a felony in addition and consecutive to the punishment for the underlying felony offense be sentenced to a term of ~~3, 4, or~~ 10 years in the state prison unless the use of a firearm is an element of the offense for which he or she is convicted. (Penal Code § 12022.5(a).)
- 2) Provides that a person who personally uses an assault weapon or machine gun during the commission of a felony is subject to an additional and consecutive term of ~~5, 6 or~~ 10 years in state prison. (Penal Code § 12022.5(b).)
- 3) Allows a court, in the interests of justice, to dismiss an action, allegation or enhancement, except where specifically and clearly prohibited by statute. (*People v. Superior Court (Romero)* (1996) 13 Cal. 3d 497; Penal Code § 1385.)

- 4) States that the court may not strike an allegation that a person personally used a firearm in the commission of a felony or a finding bringing a person within the provisions of this enhancement. (Penal Code § 12022.5(c).)
- 5) States that notwithstanding the limitation that a firearm use enhancement may not be imposed if use of a firearm is an element of an offense, the enhancement shall be imposed in a case involving assault with a firearm or for murder if the killing is committed by means of shooting from a motor vehicle at another person with the intent to inflict great bodily injury (GBI) or death. (Penal Code § 12022.5(d).)
- 6) States that, for purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement. (Penal Code § 12022.5(f).)
- 7) Provides for the "10-20-life" law relating to the use of a firearm. A person who uses a firearm, whether or not the firearm was operable or loaded, during the commission of certain enumerated offenses (robbery, carjacking, murder, kidnapping, sexual assault, and mayhem) is subject to an additional consecutive term of 10 years in prison. If the firearm was intentionally discharged during the crime, the defendant is subject to an additional consecutive term of 20 years in prison. If discharging the firearm results in GBI or death, the defendant is subject to an additional, consecutive term of 25-years-to-life in prison. (Penal Code § 12022.53.)
- 8) States that probation cannot be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section. (Penal Code § 12022.53(g).)
- 9) States that the court cannot strike an allegation under this section or a finding bringing a person within the provisions of this section. (Penal Code § 12022.53(h).)
- 10) Provides that total amount of credits awarded not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section. (Penal Code § 12022.53(i).)

This bill: ~~Will~~ provide that the court may, in the interest of justice and at the time of sentencing, strike an enhancement otherwise required to be imposed by 12022.5 or 12022.53. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

Background

Firearms Enhancements: Impact on State Prison Population and Deterrence

The impact that “Use a Gun and You’re Done” law would have on California’s prison system was evident at the time it was passed, but the focus was seemingly on the legislation’s deterrent value:

The toughest gun-sentencing law in the nation will go into effect Thursday when California imposes a new statute that dramatically increases prison terms for anyone who wields a firearm while committing a crime.

Through a massive advertising campaign initiated in recent days, state officials are warning would-be criminals that the law requires that 10 years be added to the sentence of anyone over 14 years old who simply carries a gun -- loaded or unloaded -- in the commission of a serious crime. It requires that 20 years be amended to a term for firing the gun -- even if the bullet hits no one, and that 25 years to life be mandated for seriously injuring a victim.

Although numerous states in recent years have initiated gun bans and other efforts to curb the use of firearms, no other state has so drastically increased the punishments.

All sentences under the new law, which was signed by Gov. Pete Wilson (R) on Sept. 25 with little fanfare or controversy, will be added to whatever punishment is imposed for the crime that was committed with the gun.

This makes it, in the words of Attorney General Dan Lungren, “quite simply the toughest gun-abuse control measure in the nation.”

The additional sentences cannot be suspended, probation cannot be recommended and persons convicted will be required to serve at least 85 percent of the additional prison terms after credit for good behavior is deducted.

The sentencing add-ons will apply to gun possession during the commission of 17 crimes, including robbery, kidnapping, rape and assault with intent to commit a felony.

California law enforcement officials predict that the new "10-20-life" law will be copied elsewhere in the country just as the state's 1994 "three-strikes-and-you're-out" law mandating life sentences for third-time felons has been adopted by about two dozen states in one form or another.

Critics of the new law say it is a well-intentioned but misguided measure that will simply fuel an explosion in new prison construction without addressing either the proliferation of guns or the root causes of crime.

"These types of excessive laws lead to an enormous waste of government resources without solving anything. The government instead should look more closely at regulating the possession of guns in a much stricter fashion so that the use of guns is no longer a possibility," said Elizabeth Schroeder, associate director of the Southern California branch of the American Civil Liberties Union.

The ACLU opposed the measure when it was enacted almost unanimously by the state legislature, calling it "excessive and gratuitous" because existing law already allows for sentence enhancements of up to 10 years when a person uses a firearm in the commission of a felony.

What's different, however, is that the new law mandates the additional sentences.

And that change, according to proponents, is not only critical but won't necessarily swell the ranks of prisons. "We'd rather fill up the prisons than fill the cemeteries," said Sean Walsh, Wilson's press secretary. "But we also believe that when the word gets out there will be fewer crimes committed with guns. We believe it will be a deterrent."

Prison officials have said the short-term impact on the inmate population will be negligible because criminals would be serving time for the basic crime they committed anyway. They said the longer-term impact of the enhanced sentences will be determined by how effective a deterrent the 10-20-life law becomes....

(Starting Today, California Packs Toughest Gun-Sentencing Law;
William Claiborne; Washington Post; January 1, 1998.)

The findings of the legislation echoed the deterrence value of this legislation:

The Legislature finds and declares that substantially longer prison sentences must be imposed on felons who use firearms in the commission of their crimes, in order to protect our citizens and to deter violent crime. (Assembly Bill 4 (Bordonaro), Chap. 503, Stats of 1997.)

Over twenty years later, the research has demonstrated that lengthy sentences may not be an effective deterrent. 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.

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

¹ *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),

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

Given that, according to the author, there are "over 30,000 persons currently incarcerated" as a result of these enhancements, members may wish to discuss the deterrent value of these enhancements.

Effect of This Legislation

Existing law includes Penal Code section 1385, which grants a court the power and discretion to dismiss an action or any part of an action in the interests of justice. The Legislature can limit or prohibit the court's exercise of discretion under section 1385 for any particular crime or enhancement. However, any limits on section 1385 discretion must be clearly and specifically stated. (*People v. Superior Court (Romero)*, supra, 13 Cal.3d 497.) Penal Code sections 12022.5 and 12022.53 both include a provision forbidding the court from dismissing an enhancement imposed under that section.

This legislation would provide the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. By doing this, relief would be available to a deserving defendant, while a defendant who merited additional punishment for the use of a firearm in the commission of a felony would receive it.

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

SUPPORT: (5/9/2017)

Alliance for Boys and Men of Color
American Civil Liberties Union
Anti-Recidivism Coalition

² Id. at 132-133.

California Attorneys for Criminal Justice
California Public Defenders Association
Californians for Safety and Justice
Californians United for a Responsible Budget
Friends Committee on Legislation of California

OPPOSITION: ^{Verified} (5/9/2017)

California District Attorneys Association
California State Sheriffs' Association
Gun Owners of California

ARGUMENT IN SUPPORT:

According to the American Civil Liberties Union:

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drives of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence. SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

ARGUMENT IN OPPOSITION:

According to the California District Attorneys Association:

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already

has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.

Prepared by: Nico Galván / PUB. S. /
5/9/2017 1:36:43

**** **END** ****



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**JACKIE LACEY
LOS ANGELES COUNTY DISTRICT ATTORNEY**

HALL OF JUSTICE
211 WEST TEMPLE STREET, SUITE 1200 LOS ANGELES, CA 90012-3205 (213) 874-3500

June 30, 2017

The Honorable Anthony Rendon
Speaker of the California State Assembly
State Capitol, Room 219
Sacramento, California 95814

**SENATE BILL 620 (BRADFORD)
OPPOSE**

Dear Speaker Rendon:

The Los Angeles County District Attorney's Office respectfully opposes Senate Bill 620 which seeks to amend gun use enhancements pursuant to Penal Code (PC) §§ 12022.5 and 12002.53 and allows the courts to strike these enhancements at the time of sentencing.

Crimes involving firearms present the greatest threat of harm to victims and public safety. The use of a firearm in any crime, particularly the heinous crimes enumerated in PC §12022.53, signifies premeditation, preparation, and planning. A criminal armed with a firearm has both physically and mentally prepared himself or herself to use that weapon to kill or seriously injure another human being, including law enforcement officers.

Over the past 20 years, California has consistently enacted firearms legislation designed to lessen the prevalence of gun violence. These carefully crafted laws address the possession and use of assault weapons, high-capacity magazines, gun violence restraining orders, and the purchase of ammunition. Now is not the time to turn back the clock on those efforts.

Senate Bill 620 takes a giant and contradictory step backward. Senate Bill 620 allows a judge at sentencing, to dismiss a gun allegation that had been appropriately pled and proven at trial. The judge would not even be required to state the reasons justifying the dismissal on the record or otherwise explain to the victim how the interests of justice would be served by the dismissal. These circumstances will leave victims feeling even more vulnerable and disenfranchised from the criminal justice system.

The Honorable Anthony Rendon
June 30, 2017
Page 2

Furthermore, some amount of judicial discretion is already provided when imposing sentence on firearms enhancements. Under PC §12022.5, a sentencing judge has the discretion to impose a sentence of either three, four or ten years. Similarly, PC §12022.53 imposes fixed terms depending upon the criminal behavior of the defendant and the actual harm inflicted on crime victims when discharging a firearm: 10 years for using or displaying a firearm during the commission of an enumerated felony, 20 years for personally and intentionally discharging a firearm during the commission of the underlying enumerated violent offense, and 25 years-to-life where the defendant personally and intentionally discharges a firearm causing great bodily injury or death to his or her victim, other than an accomplice.

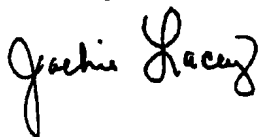
Penal Code § 12022.53 applies only to the most serious and violent enumerated felonies, such as murder, rape and robbery, among other *enumerated* crimes, and only under circumstances where a firearm is actually used during the commission of a violent crime. The allegation the defendant *personally used a firearm* is applicable when he or she either purposefully displayed it, fired it, or struck another person with it. Public safety is enhanced by these additional penalties, which are limited to the most serious and violent offenses. Firearm violence must not be excused or tolerated.

Additionally, it is important to remember that these firearm use allegations are only applicable in cases where a *real firearm* is actually used in the commission of a felony offense. BB guns, replica guns, and toy guns are not punished by either of the impacted existing laws.

These laws as enacted are sensible and have proven themselves to be an effective means of uniformly reducing violent criminal behavior in communities throughout the State of California. It would be disappointing if the legislature were to listen to the inaccurate testimony of a biased witness who does not portray the true effects of these carefully crafted laws. Simply put, this legislation introduces elements of arbitrariness and inconsistency in sentencing that will cause harm to the people of California.

The Los Angeles County District Attorney's Office will continue to work with the legislature to draft sensible gun safety and gun violence prevention laws. While Senate Bill 620 is not a law my office supports, we are happy to participate in any dialogue that furthers the mission of protecting Californians from gun violence.

Yours in justice,



JACKIE LACEY
District Attorney

pn

c: The Honorable Steven Bradford
Members, California State Assembly

SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI — PUBLIC DEFENDER
MATT GONZALEZ — CHIEF ATTORNEY



June 28, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

As the elected Public Defender of the City and County of San Francisco, I strongly support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted of committing a felony, consistent with other enhancements.

The San Francisco Public Defender's Office represents approximately 20,000 people each year who have been accused of crimes and cannot afford to hire private attorneys. The majority of our clients are people of color, and all are low income.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

Adult Division - HQJ
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F: 415.553.8810
www.sfpublicdefender.org

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7801
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94118
P: 415.753.8174
F: 415.753.8178

Clean Slate
P: 415.553.8337
www.sfpublicdefender.org/services

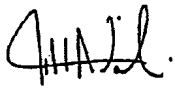
Community Justice Center
P: 415.202.2832
F: 415.583.8508

Bayview Magic
P: 415.658.2428
www.bayviewmagic.org

MoMagic
P: 415.587.0400
www.momagic.org

For the reasons stated above, I strongly support SB 620 and will advocate for its passage. Please do not hesitate to contact me if you would like to discuss this further.

Sincerely,



Jeff Adachi
San Francisco Public Defender

cc: Assembly Committee on Public Safety

Association of Deputy District Attorneys



555 W. 5th St. • Ste. 31101
Los Angeles, CA 90013
213-533-4227

June 15, 2017

Cheryl Anderson
Assembly Public Safety Committee
Legislative Office Building
1020 N Street, Room 111
Sacramento, CA 95814

Dear Ms. Anderson,

As the association representing over 1,000 Los Angeles County Deputy District Attorneys, we write you in strong opposition to Senate Bill 620. We oppose the bill because mandatory enhancements for using a gun in a crime are vital for public safety. In addition, as we exposed in our article (*attached*), a deliberate lie was a key to passage of SB 620 before the Senate Public Safety Committee.

When SB 620 was before the Senate Public Safety Committee on April 25, 2017, Kim McGill of the Youth Justice Coalition sat next to the bill's author, Senator Bradford. She spun a tale to the committee of a man without a criminal record imprisoned for a long period because the judge said the mandatory gun law mandated that sentence. The video of the hearing shows that testimony was referred to by several senators as a reason for the vote in favor of SB 620.

However, as our attached article details, Ms. McGill told multiple lies regarding the defendant and his crime. She lied when she said Manning only had a BB gun. This law applies only to real firearms and it was proven at trial that Manning used a real firearm. More importantly, her claims regarding the judge saying mandatory gun laws forced the sentence he imposed were false. The truth was the defendant was a felon on probation when he committed the robbery with a gun, and the sentence was far more than the minimum required by law because the judge imposed consecutive sentences for the crimes the defendant committed.

The emptiness of arguments for SB 620 is demonstrated by the fact that proponents had to invent a story to justify its passage. Our experience as front-line prosecutors shows that mandatory sentencing for gun use during a crime is both an effective deterrent to gun usage and appropriate punishment for the trauma inflicted on victims during a crime.

In an era where the legislature has sought to curb the availability of firearms to keep the public safe, it makes no sense that the legislature would vote to allow lesser penalties for those who use a gun in a crime.

We have spoken to countless victims sexually assaulted or robbed at gunpoint. The common thread is how that one event forever changed their sense of safety and normalcy. They recount how close they felt to death, knowing their life could have been ended on the whim of a criminal who thought that the victim was not moving fast enough, or who decided they did not want to leave a witness alive to testify.

SB 620 is a terrible retreat in our efforts to combat gun violence. It removes an effective deterrent against gun usage in crime, and is out of step with the will of the voters regarding gun violence. We urge you to vote "no" on SB 620 and would be glad to further discuss our position with you.

Sincerely,

A handwritten signature in black ink that reads "Michele Hanisee". The signature is written in a cursive, flowing style.

Michele Hanisee
President

Attachment



BONNIE M. DUMANIS
SAN DIEGO COUNTY DISTRICT ATTORNEY

June 12, 2017

The Honorable Reginald B. Jones-Sawyer, Chair
Assembly Public Safety Committee
Capitol Office, Room 2117
Sacramento, CA 95814

RE: SENATE BILL 620 (BRADFORD) – OPPOSE

Dear Assemblyman Jones-Sawyer:

The District Attorney of the County of San Diego respectfully opposes Senate Bill 620, which seeks to abrogate California's gun enhancement laws including "10-20-life" which enhances penalties for the use of a firearm or assault weapon in the commission of the most egregious felonies, including murder, kidnapping, robbery or rape.

Specifically, under the current law, if a defendant *personally* uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she personally and intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death while using the firearm, the additional term is 25 years to life.

For all but these most egregious crimes, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. In these cases, the court already has the discretion to impose the low, middle, or high term of that additional sentence, allowing the court to tailor the sentence based on the circumstances of the case and the culpability of the defendant.

Senate Bill 620 takes away the mandatory imposition of gun enhancements and essentially allows the court to disregard additional terms of imprisonment for what is recognized as the most violent of circumstances, the use of a gun during the commission of a crime, when determining the defendant's sentence.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer, in and of itself, is not a violent felony under Penal Code section 667.5(c).

For these reasons, the Office of the San Diego County District Attorney respectfully opposes Senate Bill 620.

If you have any questions or concerns, please contact our Legislative Director, Gail Stewart, at (619) 895-0327.

Sincerely,

Bonnie M. Dumanis
San Diego County District Attorney



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Sacramento, CA 95814
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Fax: 916.442.0976

3055 Wilshire Blvd.
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www.seiucal.org

June 12, 2017

The Honorable Reginald Jones-Sawyer
Chair, Assembly Public Safety
State Capitol, Room 111
Sacramento, CA 95814

RE: SUPPORT - SB 630 (Skinner)- Support

Dear Assembly Member Jones-Sawyer:

The Service Employees International Union (SEIU) supports **SB 630 (Skinner)**, which will ensure that state funds are not used to construct new county jails that are leased to outside entities.

Following the United States Supreme Court's ruling in 2011 that California's prisons were overcrowded and in violation the Eighth Amendment, several laws were passed to reduce state prison populations. Prison realignment shifted the responsibilities of offender housing and rehabilitation from the state to the county level. Some counties have also chosen to lease beds in their facilities to address non-county, and often federal, needs.

Current law prohibits counties from receiving jail construction funding from the state if their new jail plan increases jail bed capacity, and allows the county to lease beds to outside entities (including the federal government). However, the current law still allows counties to lease bed capacity to public or private entity.

SB 630 requires that a county applying for jail construction funding from the state must certify in writing that it is not, and will not be leasing jail capacity to any other public or private entity, except for leases with the state or another county, for a period of 10 years beyond the completion date of facility's construction. This will ensure that state funds continue to be prioritized for state and local needs. This bill defends immigrants and their families against senseless detention by preventing county jails from leasing beds to groups like ICE.

SEIU is committed to strong dedication to reducing our rates of incarceration & recidivism protecting the civil rights of all Californians. For this reason SEIU supports **SB 630 (Skinner)** and respectfully requests your "Aye" vote when it comes before your committee.

Sincerely,

Tiffany Whiten
Long Term Care, Director

CC: Members of the Assembly Public Safety Committee
The Honorable Nancy Skinner



June 6, 2017

Honorable Steven Bradford
 Member of the Senate
 State Capitol
 Sacramento, CA 95814

Dear Senator Bradford:

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 Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League regret that we must oppose Senate Bill 620 as amended on March 28, 2017.

Current law has correctly required an enhancement for the use of a firearm in connection with an array of already serious crimes. The addition of a firearm to the criminal equation of those specific crimes significantly enhances the risk to the public and to our peace officers in each of those criminal instances. Senate Bill 620 will permit the court, "in the interest of justice" to vitiate those firearm enhancements. In effect, SB 620, as currently constituted permits the court to attach the "interest of justice" label onto any case in which they intend to disregard the firearm enhancements.

We believe that giving the court the unfettered ability to flout current law is an error. The court should be required, if it is going to disregard an enhancement, to state on the record the specific reasons for disregarding the enhancement that are applicable to the specific case before them.

Included in that enumeration should be a specific factual discussion of the case related factors utilized by the court in determining to strike the enhancement for that named defendant.

Current law is good public policy and any decision by a court to strike the enhancements of current law should be the exception, not the rule. We regret that we must oppose SB 620 in its current form.

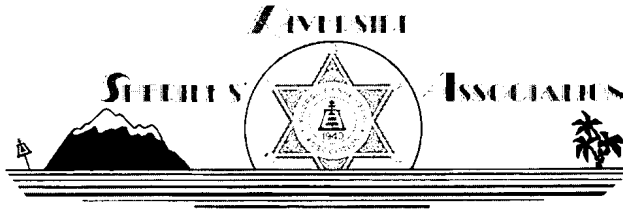
Page 1 of 2

Sincerely,



Tim Yaryan
Legislative Counsel
Association for Los Angeles Deputy Sheriffs
Association of Deputy District Attorneys
Los Angeles County Probation Officers Union AFSCME Local 685
Los Angeles Police Protective League

CC: Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety
Gary Olson, Republican counsel, Assembly Committee on Public Safety
Sue Kateley, Chief of Staff



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June 8, 2017

The Honorable Reggie Jones-Sawyer
Chair, Assembly Public Safety Committee
State Capitol
Sacramento, CA 95814

RE: SB 620 (Bradford) – Oppose

Dear Assemblymember Jones-Sawyer,

The Riverside Sheriffs' Association must oppose SB 620 that allows the court to strike a prior firearm enhancement, allowing for additional dangerous felons to become eligible for early release on parole.

For decades, California has been a national leader in the debate over gun control. Firearms and firearms components have been repeatedly restricted over the years in an effort to combat gun violence. While critics may disagree over the effectiveness of such gun control policies, the stated purpose of these restrictions is to improve public safety by reducing the number of firearms in our communities. Improving public safety is a clearly laudable goal.

Conversely, proponents of SB 620 claim that gun-related sentence enhancements have failed as deterrents to gun violence and therefore the enhancements should be restricted. Such analysis, however, omits the 100% specific deterrence provided by these same enhancements.

If our state is to continue to be a leader in efforts to reduce gun violence, felons convicted of dangerous and deadly gun crimes must not be afforded the opportunity of early release. Early release of these violent criminals will threaten the safety of our families and communities.

For these reasons, the thousands of dedicated members of the Riverside Sheriffs' Association must strongly oppose SB 620 and respectfully urge your NO vote.

Sincerely,

Robert Masson
President, RSA

Ryan Sherman
RSA Legislative Advocate

21810 Cactus Ave.
Riverside, Ca. 92518
(951) 653-5152
(951) 653-1943 - Fax

Web Address:
WWW.RCDSA.ORG



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

June 8, 2017

The Honorable Steven Bradford
California State Senate
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 – Oppose

Dear Senator Bradford:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we are opposed to your measure, Senate Bill 620, which allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

For these reasons, CSSA must respectfully oppose SB 620.

Sincerely,

Cory M. Salzillo
Legislative Director

cc: Members and Staff of the Assembly Public Safety Committee
Gary Olson, Republican Consultant

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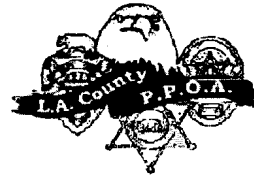
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General Counsel

Nick Warner
Policy Director

Cory Salzillo
Legislative Director



June 6, 2017

Honorable Steven Bradford
Member of the Senate
State Capitol
Sacramento, CA 95814

Dear Senator Bradford:

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 Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League regret that we must oppose Senate Bill 620 as amended on March 28, 2017.

Current law has correctly required an enhancement for the use of a firearm in connection with an array of already serious crimes. The addition of a firearm to the criminal equation of those specific crimes significantly enhances the risk to the public and to our peace officers in each of those criminal instances. Senate Bill 620 will permit the court, "in the interest of justice" to vitiate those firearm enhancements. In effect, SB 620, as currently constituted permits the court to attach the "interest of justice" label onto any case in which they intend to disregard the firearm enhancements.

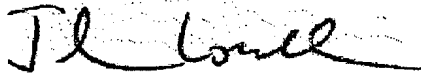
We believe that giving the court the unfettered ability to flout current law is an error. The court should be required, if it is going to disregard an enhancement, to state on the record the specific reasons for disregarding the enhancement that are applicable to the specific case before them.

Included in that enumeration should be a specific factual discussion of the case related factors utilized by the court in determining to strike the enhancement for that named defendant.

Current law is good public policy and any decision by a court to strike the enhancements of current law should be the exception, not the rule. We regret that we must oppose SB 620 in its current form.

Page 1 of 2

Sincerely,



John Lovell

Legislative Counsel

California Association of Code Enforcement Officers

California College and University Police Chiefs Association

California Narcotic Officers Association

Los Angeles County Professional Peace Officers Association

CC: Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety

Gary Olson, Republican counsel, Assembly Committee on Public Safety

Sue Kateley, Chief of Staff



California POLICE CHIEFS Association Inc.

P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008
E-mail: lmcgill@californiapolicechiefs.org • Website: californiapolicechiefs.org

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May 30, 2017

Honorable Steven Bradford
California State Senate
California State Capitol
Sacramento, CA 95814

Senate Bill 620 (Oppose)

Dear Senator Bradford:

The California Police Chiefs Association regrets to inform you of its opposition to SB 620, which provides that a court may strike a firearm enhancement otherwise required to be imposed by Penal Code §12022.5 or 12022.53; use of a firearm during the commission of robbery, carjacking, murder, kidnapping, sexual assault or mayhem. Under this enhancement, if a defendant personally uses a firearm in the commission of the aforementioned crimes, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

According to the California Department of Justice, in 2015, homicides committed with a firearm rose nearly 10 percent. For some of these individuals, the enhancements are the only thing keeping them from being eligible for early parole. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community. For these reasons, we must respectfully oppose SB 620. For additional questions, please contact Jonathan Feldman at jfeldman@californiapolicechief.org.

Thank you,

Edward Medrano
President

Jonathan Feldman
Legislative Advocate

Cc: Assembly Committee on Public Safety



FREE INDEED REENTRY PROJECT, INC.
P.O. Box 2213
Canyon Country, CA 91386-2213
Direct: 323.397.4025
Freenclear09@yahoo.com

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Assistant to President

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Free Indeed Reentry Project, Inc. is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements. Free Indeed Reentry Project, Inc. works with other non-profit organizations, faith-based organizations, governmental agencies, civil rights organizations, etc. in an effort to reduce recidivism using demonstrated practices of implementing a system of services, education, information and resources, and to build safer communities and strengthen families through successful reentry and reintegration of previously incarcerated persons back into society.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Free Indeed Reentry Project, Inc. is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Juanita Watson
President/CEO/Founder
Free Indeed Reentry Project, Inc.



She led. So can you.

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The Ella Baker Center for Human Rights is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Based in Oakland, California, the Ella Baker Center is a non-profit organization that works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Ella Baker Center for Human Rights is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Harris", with a stylized flourish at the end.

Emily Harris
State Field Director
cc: Members and Committee Staff, Assembly Committee on Public Safety

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

MILPA is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Motivating Individual Leadership for Public Advancement (MILPA) is a trans-disciplinary, purpose-oriented collective committed to transforming organizations, institutions and systems by advocating for racial equity and healing for all. We achieve this by promoting relational versus transactional approaches within our overall work.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, MILPA is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

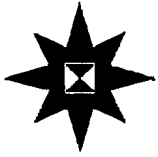
Sincerely,

David Johnson
Program and Health Equity Assistant

MILPA

MILPACOLLECTIVE.ORG ▣ FACEBOOK.COM/MILPAEASTSALINAS
339 MELODY LANE ▣ SALINAS, CA 93901

CULTIVATING CHANGE MAKERS FOR THE NEXT SEVEN GENERATIONS



**American Friends
Service Committee**

65 NINTH ST. SAN FRANCISCO, CA 94103 (415) 565- 0201

June 6, 2017

Assembly Committee on Public Safety
California State Capitol
1020 N Street, Room 111
Sacramento, CA 95814

Re: SB 620 (Bradford) -- SUPPORT

Dear Assembly Member Reginald Jones-Sawyer:

The American Friends Service Committee (AFSC) is in strong support of SB 620, which will serve to protect and improve the health and safety of California communities. This bill would allow a court to strike a firearms enhancement otherwise required to be imposed by the current provisions of law. Traditionally, The American Friends Service Committee has stood in opposition to violence and guns. We realize applying a sentence enhancement for using or discharging a firearm will not deter the use of lethal weapons in our communities, but rather, fill up our prisons even more.

AFSC has been working on prison issues since the 1950s in California, and in that time, we have seen the exponential increases in sentences. The increases are due, to a significant extent, to the structure of sentencing enhancements which are often applied consecutively. This has made sentences very disproportionate, and has particularly impacted people of color.

Studies of these enhancements show that increasing an already long sentence does not deter crime. Per Bradford, SB 620 does not get into that debate because it does not eliminate the enhancements. Nor does it suggest a judge should disregard enhancements. Judges should consider the circumstances of the crime and the history of the perpetrator and deal with the individual appropriately. This moves the decision about sentencing from one that is rigid and without meaningful consideration to one that is specific to the circumstances of the case. If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

Fatimeh Khan

American Friends Service Committee

cc: Assembly Committee on Public Safety [fax: (916) 319-3745]



June 6, 2017

Assemblymember Jones-Sawyer
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, CA 95814
By fax: 916-319-3745

Re: SB 620 (Bradford) - SUPPORT

Dear Assemblymember Jones-Sawyer:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 620 (Bradford).

SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

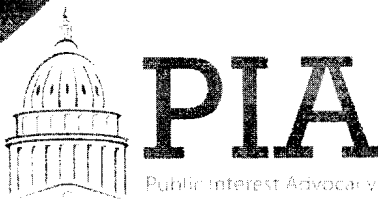
Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Assembly Public Safety Committee. Please do not hesitate to contact me at caliph@publicinterestadvocacy.com or (916) 761-4860 with any questions or concerns.

Sincerely,

Caliph Assagai,
Legislative Advocate

www.publicinterestadvocacy.com



June 6, 2017

Assemblymember Jones-Sawyer
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, CA 95814
By fax: 916-319-3745

Re: SB 620 (Bradford) - SUPPORT

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On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Assembly Public Safety Committee. Please do not hesitate to contact me at caliph@publicinterestadvocacy.com or (916) 761-4860 with any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Caliph Assagai". The signature is written in a cursive style with a long, vertical flourish extending downwards from the end of the name.

Caliph Assagai,
Legislative Advocate

www.publicinterestadvocacy.com



April 19, 2017

Senator Steven Bradford
State Capitol
Sacramento, CA 95814

RE: SB 620 | OPPOSE

Dear Senator Bradford:

Gun Owners of California is writing to respectfully oppose your SB 620, which grants the courts discretion in existing sentencing provisions for the felony use of a firearm.

Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the "use a gun – go to prison" policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of "justice" but rather a dangerous proposition.

We would appreciate the opportunity to work with you on how we can reduce crime in California – gun-related and otherwise. The safety of our citizens is central and it has been the consistent goal of Gun Owners to advocate for common sense solutions without sacrificing our Constitutional rights and the ability of the law abiding to protect their home and families.

Respectfully,

Sam Paredes, Executive Director

cc: Members of the Senate Public Safety Committee
Republican Committee Consultant(s)



GUN OWNERS OF CALIFORNIA

1831 Iron Point Road, Folsom CA 95630 – (916) 984-1400 (916) 984-1402 fax

www.GunOwnersCA.com

A Political Committee Dedicated to Crime Control – Not Gun Control



**American Friends
Service Committee**

65 NINTH ST. SAN FRANCISCO, CA 94103 (415) 565- 0201

June 6, 2017

Assembly Committee on Public Safety
California State Capitol
1020 N Street, Room 111
Sacramento, CA 95814

Re: SB 620 (Bradford) – SUPPORT

Dear Assembly Member Reginald Jones-Sawyer:

The American Friends Service Committee (AFSC) is in strong support of SB 620, which will serve to protect and improve the health and safety of California communities. This bill would allow a court to strike a firearms enhancement otherwise required to be imposed by the current provisions of law. Traditionally, The American Friends Service Committee has stood in opposition to violence and guns. We realize applying a sentence enhancement for using or discharging a firearm will not deter the use of lethal weapons in our communities, but rather, fill up our prisons even more.

AFSC has been working on prison issues since the 1950s in California, and in that time, we have seen the exponential increases in sentences. The increases are due, to a significant extent, to the structure of sentencing enhancements which are often applied consecutively. This has made sentences very disproportionate, and has particularly impacted people of color.

Studies of these enhancements show that increasing an already long sentence does not deter crime. Per Bradford, SB 620 does not get into that debate because it does not eliminate the enhancements. Nor does it suggest a judge should disregard enhancements. Judges should consider the circumstances of the crime and the history of the perpetrator and deal with the individual appropriately. This moves the decision about sentencing from one that is rigid and without meaningful consideration to one that is specific to the circumstances of the case. If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

Fatimeh Khan

American Friends Service Committee

cc: Assembly Committee on Public Safety [fax: (916) 319-3745]

homies unidos

June 6, 2017

Alex Sanchez
Executive Director

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Board of Directors

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Steven Osuna
Board member

Dear Senator Bradford:

My name is Alex Sanchez, Executive Director of Homies Unidos, We are pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Homies Unidos is a Non-Profit Organization working to diminish violence and provide positive alternatives for youth and adults in our community who are looking to better their lives. We work on issue of juvenile justice and criminal justice.

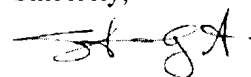
Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Homies Unidos is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alex Sanchez
Executive Director

Homies Unidos
1625 W. Olympic Blvd
Suite 706
Los Angeles CA 90015

www.homiesunidos.org



June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Fair Chance Project strongly supports your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

As an organization working towards just sentencing laws and fair parole practices, we are adamantly against all mandatory sentencing as it leaves out the human factor.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

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For these reasons, Fair Chance Project, is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Geri Silva".

Geri Silva, Director



California POLICE CHIEFS Association Inc.

P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008
E-mail: lmcgill@californiapolicechiefs.org • Website: californiapolicechiefs.org

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LESUE MCGILL, CAE, Executive Director, Ex-Officio

May 30, 2017

Honorable Steven Bradford
California State Senate
California State Capitol
Sacramento, CA 95814

Senate Bill 620 (Oppose)

Dear Senator Bradford:

The California Police Chiefs Association regrets to inform you of its opposition to SB 620, which provides that a court may strike a firearm enhancement otherwise required to be imposed by Penal Code §12022.5 or 12022.53; use of a firearm during the commission of robbery, carjacking, murder, kidnapping, sexual assault or mayhem. Under this enhancement, if a defendant personally uses a firearm in the commission of the aforementioned crimes, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

According to the California Department of Justice, in 2015, homicides committed with a firearm rose nearly 10 percent. For some of these individuals, the enhancements are the only thing keeping them from being eligible for early parole. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community. For these reasons, we must respectfully oppose SB 620. For additional questions, please contact Jonathan Feldman at jfeldman@californiapolicechief.org.

Thank you,

[Signature of Edward Medrano]

Edward Medrano
President

[Signature of Jonathan Feldman]

Jonathan Feldman
Legislative Advocate

Cc: Assembly Committee on Public Safety

SILICON VALLEY
DE-BUG

701 Lenzen Ave. San José, CA. 95126 • info@siliconvalleydebug.org • 408.971.4965

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Silicon Valley De-Bug is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Based in San Jose, CA, Silicon Valley De-Bug works with families with loved ones who are facing charges in the criminal justice, juvenile justice, and immigration systems to impact the outcomes of their cases through their active participation. We have seen the impact of long sentences on individuals and families, especially the ones imposed by mandatory enhancements that tie judges' hands and remove their ability to consider a sentence that is tailored to an individual's cases and culpabilities, as well as consider the collateral impacts of their incarceration.

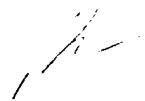
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SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Silicon Valley De-Bug is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Raj Jayadev
Executive Director
Silicon Valley De-Bug



Charisse Domingo
Associate Director
Silicon Valley De-Bug



California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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Nick Warner
Policy Director
Cory Salzillo
Legislative Director

April 18, 2017

The Honorable Steven Bradford
California State Senate
State Capitol Building
Sacramento, CA 95814

Subject: SB 620 – Oppose

Dear Senator Bradford:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we are opposed to your measure, Senate Bill 620, which allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

For these reasons, CSSA must respectfully oppose SB 620.

Sincerely,

Cory M. Salzillo
Legislative Director

Cc: Members and Staff of the Senate Public Safety Committee
Eric Csizmar, Republican Consultant



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California Attorneys for Criminal Justice

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Lisa Zhao Liu, *South Pasadena*
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Robert Marshall, *Chico*
Barry Melton, *Clearlake*
Maria Moraga, *Oakland*
Jessie Morris, *Sacramento*
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Julie Traun, *San Francisco*
Orchid Vaghti, *Santa Rosa*
Allison Zuvela, *Woodland*

June 7, 2017

Honorable Reggie Jones-Sawyer
Chair, Assembly Public Safety Committee
1020 N Street, Room 111
Sacramento, CA 95814

**RE: Senate Bill 620 (Bradford) – Support
As Amended – March 28, 2017
Assembly Public Safety Hearing – June 13, 2017**

Dear Assemblyman Jones-Sawyer:

The California Attorneys for Criminal Justice (CACJ), a statewide association of criminal defense attorneys in private practice or working in public defender offices, writes in support of SB 620. SB 620 would allow judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm during the commission of an offense and subsequent conviction.

Granting the courts discretion when deciding on whether or not to impose an additional sentence is consistent with other enhancement sentence laws. This is due to the importance of the courts taking into consideration other factors such as character of the defendant, external circumstances involved, likeliness of the offender to reoffend, etc., when determining a sentence. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of the crime is not a smart approach to effective punishment.

At a time when California is working to be smart on crime and reduce the impacted prison population, measures like SB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.

For these reasons, CACJ supports SB 620. Thank you for your time and consideration. If you have any questions, please feel free to contact me at Hernandez Strategy Group, 916-447-9719.

Sincerely,

Ignacio Hernandez
CACJ Legislative Advocate

CC: Members and Staff, Assembly Public Safety Committee
Senator Bradford

611 East Kelso Street, #1
Inglewood, CA 90301
June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

As a college professor and local small business owner, I am pleased to enthusiastically support your Senate Bill 620. This small but crucial step could make an enormous difference to so many in Inglewood and the surrounding areas.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, I enthusiastically support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Mildred Inez Lewis
424.750.0930
Lewis3748@sbcglobal.net

Women Who Never Give-Up

770 Marne Hwy Suite 2D
Moorestown, New Jersey 08057

Tel: 609-346-2521

Email: Gale@wwng.org



June 7, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Women Who Never Give-Up (WWNG) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

WWNG is a 501(c)(3) nonprofit organization that confronts a wide range of criminal justice and prison-related issues. Adopting both an individual and a systemic approach to public advocacy, WWNG fights for incarcerated persons and their families, and also works with correctional facilities, state agencies, and lawmakers seeking to improve prison conditions, reduce terms of imprisonment, and decrease racial and economic disparity in the justice system. One of our core principles is opposition to mandatory sentencing.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation’s highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, WWNG is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

s/ Gale Muhammad,
WWNG, Inc., President & Founder

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300; 917-591-3452

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June 7, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Human Rights Watch is writing to support California Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm.

Human Rights Watch is a non-profit, independent organization that investigates human rights violations in more than 90 countries around the world, including in the United States. Using our proven methodology of “investigate, expose, change,” we advocate for the enforcement of human rights with governments and international organizations and mobilize public pressure for change.

Unlike many sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements under California law are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

International human rights law requires that punishment should be proportionate to the offense and the individual’s blameworthiness and no greater than necessary. Consistent with this basic principle, we regularly recommend that legislators ensure that the severity of the punishment does not exceed the gravity of the crime; and reform or eliminate mandatory minimum sentencing laws that prevent judges from being able to tailor sentences to the individual crime and the particular defendant. Our investigation of federal drug prosecutions found that mandatory federal firearm enhancements often led to astonishing sentences that one federal public defender described as “irrational, inhumane, and absurd.” California law,



HRW.org

given the mandatory nature of gun enhancements, can have the same disproportionate impact.

SB 620 would address these concerns by allowing a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, are tailored to an individual offender, and are no longer than necessary to serve the purposes of punishment.

For these reasons, Human Rights Watch is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alison Parker
Co-Director, US Program

cc: The Honorable Reginald Byron Jones-Sawyer, Sr., The Honorable Tom Lackey, The Honorable Heath Flora, The Honorable Lorena S. Gonzalez Fletcher, The Honorable Bill Quirk, The Honorable Blanca E. Rubio, The Honorable Miguel Santiago, Youth Justice Coalition

Be Safe. Shoot Straight. Fight Back!



June 7th, 2017

Honorable Reginald Jones-Sawyer
Assembly Committee on Public Safety
1020 N Street, Room 111
Sacramento, CA 95814

RE: Senate Bill 620 (Bradford) Firearms: Crimes: enhancements
Position: OPPOSE

Dear Assemblyman Jones-Sawyer,

On behalf of the California Rifle and Pistol Association (CRPA), and its members throughout California, I write to express our opposition to Senate Bill 620 (SB 620). The California Rifle and Pistol Association (CRPA), founded in 1875, is a nonprofit membership and donor supported organization with tens of thousands of members throughout California. CRPA works tirelessly to defend the civil and constitutional rights of individuals to choose to responsibly own and use firearms and works to preserve the traditional role of the citizen to hunt, to conserve, and preserve California's natural resources.

While defending the constitutional rights of our citizens to own and use firearms, CRPA believes those who use firearms in the commission of crimes should be punished to the full extent of the law. We stand with law enforcement throughout California and put the safety of our citizens first. It is very hard to explain to our members how, or why, their elected politicians continually write and pass legislation that chips away at the law-abiding gun owner's Second Amendment rights. While at the same time attempting to pass legislation like SB 620 that makes life easier on criminals, the small percentage of Californians who choose to use firearms to commit unlawful acts!

CRPA will continue to support sound legislation aimed at reducing crime and getting criminals off our streets and out of our communities, this is no such piece of legislation. For the foregoing reasons, the California Rifle and Pistol Association strongly opposes SB 620.

Sincerely,

Roy M. Griffith Jr.
Legislative Liaison
California Rifle and Pistol Association, Inc.
rgriffith@crpa.org (530)682-7087

CC. Gregory Pagan, Chief Counsel
Senator Bradford, author

271 E. Imperial Highway, Suite 620, Fullerton, CA 92835
(714) 992-2772 (800) 305-2772

www.CRPA.org

7050 S La Cienega Blvd
Apt 3
Inglewood, CA 90302

6/8/2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

I am pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, I strongly support of SB 620.

Sincerely,

Katherine V Burns, Esq.

cc: Members and Committee Staff, Assembly Committee on Public Safety

611 East Kelso Street, #1
Inglewood, CA 90301
June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

As a college professor and local small business owner, I am pleased to enthusiastically support your Senate Bill 620. This small but crucial step could make an enormous difference to so many in Inglewood and the surrounding areas.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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For these reasons, I enthusiastically support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Mildred Inez Lewis
424.750.0930
Lewis3748@sbcglobal.net



Communities united for Restorative Youth Justice

Building community from the ground up!

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June 7, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Communities United for Restorative Youth Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

Office: 2285 International Blvd. Oakland, CA 94606
Phone: 510-842-9365

Mailing: 490 Lake Park Ave #16086 Oakland, CA 94610
www.curyj.org



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Building community from the ground up!

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For these reasons, Communities United for Restorative Youth Justice in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,
Mar Velez

Policy and Organizing Campaign Manager
Communities United for Restorative Youth Justice (CURYJ)
Office: 2289 International Blvd. Oakland, CA 94606
Mailing: 490 Lake Park Ave #16086 Oakland, CA 94610
Website: www.curyj.org . Tel: 510-842-9365 Ext. 705

cc: Members and Committee

Office: 2285 International Blvd. Oakland, CA 94606
Phone: 510-842-9365

Mailing: 490 Lake Park Ave #16086 Oakland, CA 94610
www.curyj.org

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May 31, 2017

The Honorable Nancy Skinner
California State Senator
Chairperson, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

Fax: (916) 445-4688

RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support

Dear Chairperson Skinner,

The Los Angeles Regional Reentry Partnership (LARRP) supports the passage of SB 620 (Bradford), a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

LARRP is a network of public, community and faith-based agencies and advocates working together to ensure that our reentry system meets the needs of our agencies, communities, and the people we serve, both in terms of capacity and public policy by providing a strong community voice in public policy and funding decisions; by serving as a convener of reentry service providers, advocates, and other stakeholders; and by building capacity across the county to meet the needs of the reentry community.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. It must be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety.

By granting judges discretion as to whether to apply a sentence enhancement when a person is convicted of a felony in which he used or discharged a firearm, judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, but will also help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For the reasons stated above, the Los Angeles Reentry Partnership supports SB 620 (Bradford). Should you have any questions regarding this letter, please contact me at (310) 528-4538 or troyvaughn@lareentry.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy Vaughn', with a horizontal line extending to the right.

Troy Vaughn
Executive Director
Los Angeles Regional Reentry Partnership (LARRP)



June 6, 2017

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The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Homeboy Industries is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Homeboy Industries provides hope, training, and support to formerly gang-involved and previously incarcerated men and women allowing them to redirect their lives and become contributing members of our community.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

Hope has an address

130 West Bruno Street, Los Angeles, California 90012 • 323.526.1254 • homeboyindustries.org



For these reasons, Homeboy Industries is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Donna Harati
Donna Harati
Staff Attorney
Homeboy Industries

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Hope has an address

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Mark Zahner

April 17, 2017

The Honorable Steven Bradford
California State Senate
State Capitol
Sacramento, CA 95814

RE: SB 620 – Oppose

Dear Senator Bradford:

On behalf of the California District Attorneys Association (CDAA), I regret to inform you that we are opposed to your measure, SB 620. This bill would allow a court to disregard additional terms of imprisonment for use of a firearm or assault weapon in the commission of a felony, including those under California's "10-20-life" law.

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.



I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Hoffman".

Sean Hoffman
Director of Legislation



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Mark Zahner

April 17, 2017

The Honorable Steven Bradford
California State Senate
State Capitol
Sacramento, CA 95814

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Dear Senator Bradford:

On behalf of the California District Attorneys Association (CDA A), I regret to inform you that we are opposed to your measure, SB 620. This bill would allow a court to disregard additional terms of imprisonment for use of a firearm or assault weapon in the commission of a felony, including those under California’s “10-20-life” law.

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.



CALIFORNIA
DISTRICT
ATTORNEYS
ASSOCIATION

921 11th Street, Suite 300
Sacramento, CA 95814
916.443.2017
www.cdaa.org

I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Hoffman", with a horizontal line extending to the right.

Sean Hoffman
Director of Legislation



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Mark Zahner

June 6, 2017

The Honorable Steven Bradford
California State Senate
State Capitol
Sacramento, CA 95814

RE: SB 620 – Oppose

Dear Senator Bradford:

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I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

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A handwritten signature in black ink, appearing to read "Sean Hoffman", with a stylized flourish at the end.

Sean Hoffman
Director of Legislation

Cc: Members and Staff of the Assembly Committee on Public Safety
Gary Olson, Republican Consultant



June 5, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Initiate Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Initiate Justice is a policy-driven organization created by and for people directly impacted by incarceration. We work to engage incarcerated people and their loved ones on policy changes that may have an impact on their life.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

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OAKLAND, CA 94605



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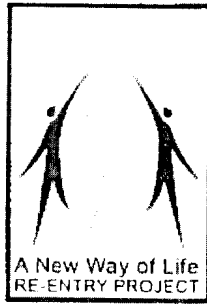
For these reasons, Initiate Justice is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Taina Vargas-Edmond
Founder & Executive Director

cc: Members and Committee Staff, Assembly Committee on Public Safety

INITIATE JUSTICE
PO BOX 4962
OAKLAND, CA 94605



A New Way of Life Re-Entry Project

June 2, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

A New Way of Life Reentry Project (ANWOL) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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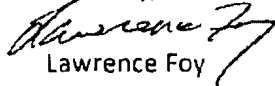
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For these reasons, ANWOL is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Foy", written over the printed name.

Lawrence Foy

cc: Members and Committee Staff, Assembly Committee on Public Safety



JUNE 5, 2017

THE HONORABLE STEVEN BRADFORD
CALIFORNIA STATE CAPITOL, ROOM 2054
SACRAMENTO, CALIFORNIA 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Root & Rebound is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements. Root & Rebound is a reentry legal education and resource center whose mission is to increase access to justice and opportunity for people in reentry from prison and jail, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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For these reasons, Root & Rebound is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Katherine Katcher', written over a horizontal line.

Katherine Katcher
Executive Director, Root & Rebound
1730 Franklin St., Suite 300
Oakland, CA 94612

cc: Members and Committee Staff, Assembly Committee on Public Safety

ALLIANCE FOR
Boys and Men of Color

Invest in the Health and Success
 of California's Future

June 6, 2017

The Honorable Steven Bradford
 California State Capitol, Room 2054
 Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The Alliance for Boys and Men of Color is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth and young men of color get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, support neighborhood safety, and reduce justice system involvement for this vulnerable population.

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of California's Future

fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Alliance for Boys and Men of Color is in strong support of SB 620. Should you have any questions, please reach out to Rosa Aqeel at raqeel@policylink.org.

Sincerely,



Marc Philpart
Principal Coordinator
Alliance for Boys and Men of Color

cc: Members and Committee Staff, Assembly Committee on Public Safety



June 5, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Initiate Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Initiate Justice is a policy-driven organization created by and for people directly impacted by incarceration. We work to engage incarcerated people and their loved ones on policy changes that may have an impact on their life.

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OAKLAND, CA 94605



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For these reasons, Initiate Justice is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Taina Vargas-Edmond
Founder & Executive Director

cc: Members and Committee Staff, Assembly Committee on Public Safety

INITIATE JUSTICE
PO BOX 4952
OAKLAND, CA 94605



June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Fathers & Families of San Joaquin is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Fathers & Families of San Joaquin (FFSJ) is a community-based organization that works to address the varying needs of men, women, youth, their families and communities. Our mission is to support the cultural, spiritual, social and economic renewal of the most vulnerable families in Stockton and the greater San Joaquin Valley. FFSJ addresses critical problems such as institutional inequity, fatherless homes, widespread poverty, employment disparities, inadequate access to health services, punitive school discipline, youth arrests, community re-entry, and violence. We work to build communities that are safe, strong and resourceful; treat individuals and families equitably and honestly; and create opportunities for individuals and families to achieve health, wellness and their human potential through education, job opportunities and equitable systems.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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Fathers & Families of San Joaquin
PO Box 30674
Stockton, CA 95213

Tax ID No. 32-0171398

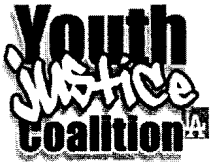
not serve unnecessarily long sentences.

For these reasons, Fathers & Families of San Joaquin is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



CaseyAnn Carbonell
Management Assistant



March 27, 2017

Honorable Reginald Jones-Sawyer
Chair, California State Assembly Public Safety Committee
State Capitol, P.O. Box 942849, Sacramento, CA 94249-0059
Public Safety Committee: Legislative Office Building
1020 N Street, Room 111, Sacramento, CA 94249-0020

Re: Sponsorship of Senate Bill 620 – Bradford – Gun Enhancements – Judicial Discretion

Dear Assemblymember Jones-Sawyer:

The Youth Justice Coalition is honored to be a sponsor of SB 620, and we are urging your full support. Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The YJC is working to build a movement led by system impacted youth, formerly incarcerated people and our families to build more humane, productive and cost effective public safety solutions. More than 33,000 people incarcerated in California state prisons – 25 percent of the state's prison system – are serving time that includes gun enhancements. Last month, the Sentencing Project released a report revealing that California is tied with Utah as having the highest percentage of its state prison system – 31% of 129,805 prisoners – serving life sentences – many of which were contributed to by gun enhancements. That includes youth as young as 14 who – because of gang allegations – are subject to strict gun enhancements contributing to life sentences even when they were not accused of possessing the gun, or being the shooter.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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For these reasons, the Youth Justice Coalition urges your support of SB 620.

Sincerely,



Kim McGill
Organizer
Cell: 323-327-1259
E-mail: kim@youth4justice.org

ALLIANCE FOR
Boys and Men of Color

Invest in the Health and Success
of California's Future

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

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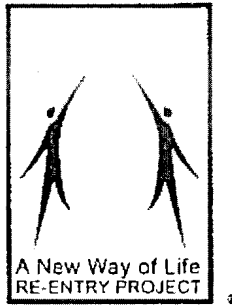
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Sincerely,



Marc Philpart
Principal Coordinator
Alliance for Boys and Men of Color

cc: Members and Committee Staff, Assembly Committee on Public Safety



A New Way of Life Re-Entry Project

June 2, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

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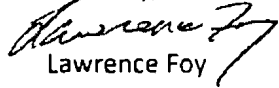
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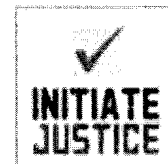
For these reasons, ANWOL is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Foy", written over the printed name.

Lawrence Foy

cc: Members and Committee Staff, Assembly Committee on Public Safety



June 5, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Initiate Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Initiate Justice is a policy-driven organization created by and for people directly impacted by incarceration. We work to engage incarcerated people and their loved ones on policy changes that may have an impact on their life.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

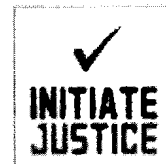
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INITIATE JUSTICE
PO BOX 4962
OAKLAND, CA 94605



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For these reasons, Initiate Justice is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Taina Vargas-Edmond
Founder & Executive Director

cc: Members and Committee Staff, Assembly Committee on Public Safety

INITIATE JUSTICE
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June 5, 2017

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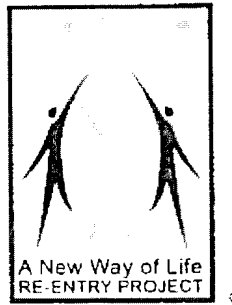
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cc: Members and Committee Staff, Assembly Committee on Public Safety

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PO BOX 4962
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A New Way of Life Re-Entry Project

June 2, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

A New Way of Life Reentry Project (ANWOL) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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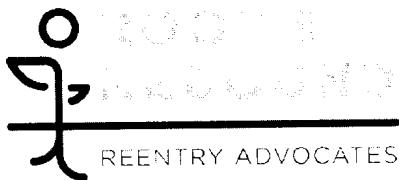
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Sincerely,



Lawrence Foy

cc: Members and Committee Staff, Assembly Committee on Public Safety



JUNE 5, 2017

THE HONORABLE STEVEN BRADFORD
CALIFORNIA STATE CAPITOL, ROOM 2054
SACRAMENTO, CALIFORNIA 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Root & Rebound is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements. Root & Rebound is a reentry legal education and resource center whose mission is to increase access to justice and opportunity for people in reentry from prison and jail, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

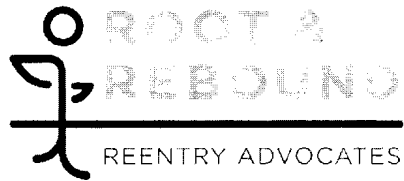
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⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



For these reasons, Root & Rebound is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Katcher", written over a horizontal line.

Katherine Katcher
Executive Director, Root & Rebound
1730 Franklin St., Suite 300
Oakland, CA 94612

cc: Members and Committee Staff, Assembly Committee on Public Safety



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

May 26, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: **SB 620 – as amended 3/28/17**
Sponsor

Dear Senator Bradford:

The ACLU of California is pleased to sponsor your Senate Bill 620, which will allow a judge, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

California has some of the most severe sentence enhancements for gun use in the nation. Under PC §12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,¹ 20 years if they fired a gun, even if it misfired,² and 25-years-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,³ and even if the individual did not personally handle or fire the weapon.⁴ There is no requirement for intent to inflict harm, as there is for other enhancements that can apply to the same offenses (*see* PC §12022.55; inflicting great bodily injury by shooting out of a moving vehicle). These extreme enhancements are added to sentences that are already quite long, including life terms.

While most sentence enhancements — including enhancements for gang-related activities (PC §186.22(g)), trafficking large quantities of drugs (HSC §11370.4(e)), kidnapping (PC §667.8), aggravated white-collar crime (PC §186.11), and Three Strikes⁵ — can be declined if the judge believes they are unjust in a specific case,⁶ gun enhancements are mandatory. Judges are forbidden thus from tailoring these sentences to an individual’s case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intent of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements for gun use has failed to

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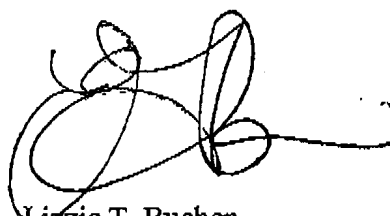
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Kevin G. Baker
Legislative Director



Lizzie T. Buchen
Legislative Advocate

cc: Members and Committee Staff, Assembly Committee on Public Safety

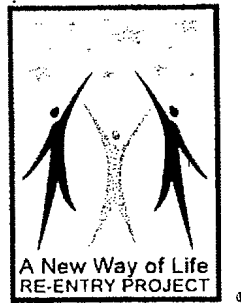
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A New Way of Life Re-Entry Project

June 2, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

A New Way of Life Reentry Project (ANWOL) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

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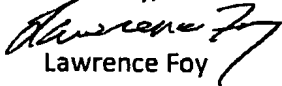
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For these reasons, ANWOL is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

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Lawrence Foy

cc: Members and Committee Staff, Assembly Committee on Public Safety

COURAGE



May 31, 2017

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Dear Senator Bradford:

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Best Regards,

A handwritten signature in black ink, appearing to read "Eddie Kurtz", with a long horizontal flourish extending to the right.

Eddie Kurtz
Executive Director, Courage Campaign

cc: Members and Committee Staff, Assembly Committee on Public Safety



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

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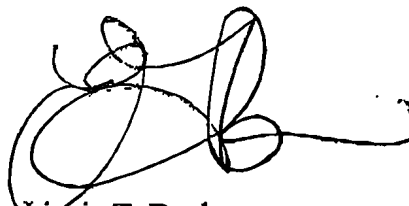
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Kevin G. Baker
Legislative Director



Lizzie T. Buchen
Legislative Advocate

cc: Members and Committee Staff, Assembly Committee on Public Safety

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COURAGE CAMPAIGN

May 31, 2017

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California State Capitol, Room 2054
Sacramento, California 95814

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² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

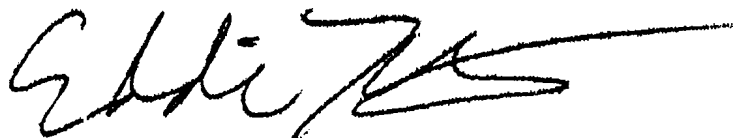
⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

Courage Campaign, 7119 W. Sunset Boulevard, No. 195, Los Angeles, CA 90046
323.556.7220 (phone) www.couragecampaign.org

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

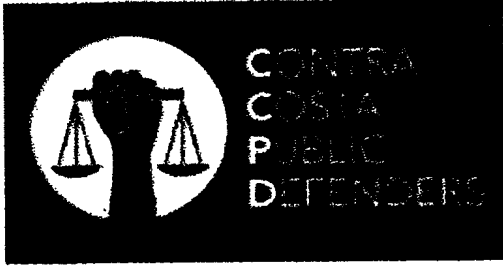
For these reasons, Courage Campaign is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read 'Eddie Kurtz', with a long horizontal flourish extending to the right.

Eddie Kurtz
Executive Director, Courage Campaign

cc: Members and Committee Staff, Assembly Committee on Public Safety



Contra Costa County Defenders Association

Brandon Banks
President

June 1, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The Contra Costa County Defenders Association is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Contra Costa County Defender Association is comprised of deputy public defenders who represent indigent children and adults charged with criminal offenses in Contra Costa County. We also represent indigent members of our community post disposition as they try to reconstruct their lives and overcome the stigma of a criminal conviction. We witness firsthand the long-term effects that onerous prison sentences impose on vulnerable populations of our county and our state.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Contra Costa County Defenders Association is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Brandon Banks
President

cc: Members and Committee Staff, Assembly Committee on Public Safety

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



Ron Finley Project
PO BOX 3664
Beverly Hills CA, 90212
760.475.1681
ashleigh@ronfinley.com
www.ronfinley.com

June 6, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The Ron Finley Project is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Ron Finley Project is a non profit located in the heart of South Los Angeles that aims to eradicate food injustice and inequality by creating empowered, self reliant communities through urban gardening, artistic expression and employment opportunities. It is for these reasons that we are particularly passionate about social justice issues.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing.

Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, The Ron Finley Project is in strong support of SB 620. Please do not hesitate to contact us should you have any questions. I can be reached directly at (760) 475 -1681 or ashleigh@ronfinley.com

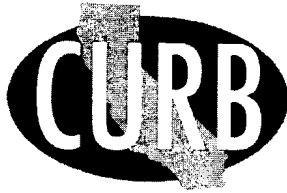
Sincerely,

A handwritten signature in black ink, appearing to read "Ashleigh Carter". The signature is fluid and cursive, with a large loop at the end.

Ashleigh Carter

Executive Administrator
The Ron Finley Project

cc: Members and Committee Staff, Assembly Committee on Public Safety



Californians United for a Responsible Budget

Oakland Office:

1322 Webster St # 210 Oakland, CA 94612
510-435-1176 (c)
510-839-7615 (f)

Los Angeles Office:

1137 E. Redondo Blvd. Inglewood, CA 9
213-864-8931(c)
www.curbprisonspending.org

The Honorable Nancy Skinner, Chair
Senate Committee on Public Safety
State Capitol, Room 2031
Sacramento, CA 95814

Re: SB 620 (Bradford)
Judicial Discretion) - **SUPPORT**

Dear Chair Skinner,

Californians United for a Responsible Budget is writing to convey our strong support for SB 620.

Californians United for a Responsible Budget (CURB) is a statewide coalition of more than 70 grassroots organizations working to stop prison and jail expansion, reduce incarceration, and invest in the social safety net. As a coalition committed to an immediate and expansive reduction in the number of people imprisoned in California, CURB supports SB 620 for the impact it could have on creating more just and humane sentencing policies in California.

SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

Thank you for your consideration,

Gabriela Pelsinger

Californians United for a Responsible Budget

cc: Members, Senate Committee on Public Safety: Senators Bradford, Jackson, Mitchell,
Stone, and Wiener



Friends Committee on Legislation of California

1225 8th Street, Suite 220
Sacramento, CA 95814-4809

April 17, 2017

Senator Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol – Room 2031
Sacramento, CA 95814

Re: Senate Bill 620 (Bradford) – SUPPORT

Dear Senator Skinner,

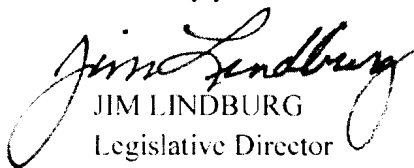
The Friends Committee on Legislation of California (FCLCA), a Quaker-based lobby that advocates for state laws that are compassionate and respectful of the inherent worth of every being, supports SB 620. This bill will allow a court to strike an enhancement related to the use and/or discharge of a firearm in the commission of a felony when doing so would be in the interest of justice.

FCLCA works for a society in which all individuals value and respect each other. In such a society there is no use for guns. We also support sensible firearms regulations and oppose the proliferation of firearms. We also are opposed to mandatory minimum sentences and automatic sentencing enhancements. These enhancements are imposed without consideration for any mitigating facts that may warrant consideration. They lengthen prison stays and increase prison overcrowding while their impact on public safety is negligible. Research indicates that the likelihood of being apprehended is a far greater deterrent to crime than a longer prison sentence.

Under SB 620, firearm enhancements will remain in effect, and those convicted of felonies will still serve their base sentence. The enhancement could be stricken only when a judge finds a compelling reason at the time of sentencing, when all of the facts are known, that doing so would serve the interest of justice. The law should afford judges some discretion to tailor sentences based on the circumstances surrounding each individual case.

For these reasons, FCLCA strongly supports SB 620.

Sincerely yours,


JIM LINDBURG
Legislative Director

C. Senator Steven Bradford and Members of the Senate Public Safety Committee

late



Fighting for justice since 1973
California Attorneys for Criminal Justice

1555 River Park Dr., Suite 105 • Sacramento, CA 95815
Phone: (916) 643-1800 • Fax: (916) 643-1836
www.cacl.org

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Eric Schweitzer, Secretary

April 18, 2017

Honorable Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

**RE: Senate Bill 620 (Bradford) – Support
As Amended – March 28, 2017
Senate Public Safety Hearing – April 25, 2017**

Dear Senator Skinner:

The California Attorneys for Criminal Justice (CACJ), a statewide association of criminal defense attorneys in private practice or working in a public defender offices, writes in support of SB 620. SB 620 would allow judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm during the commission of an offense and subsequent conviction.

Granting the courts discretion when deciding on whether or not to impose an additional sentence is consistent with other enhancement sentence laws. This is due to the importance of the courts taking into consideration other factors such as character of the defendant, external circumstances involved, likeliness of the offender to reoffend, etc., when determining a sentence. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of the crime is not a smart approach to effective punishment.

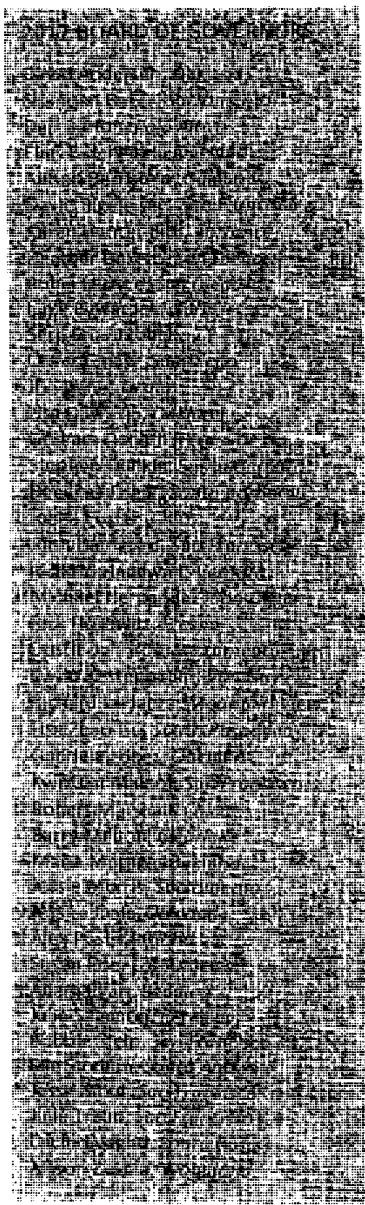
At a time when California is working to be smart on crime and reduce the impacted prison population, measures like AB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.

For these reasons, CACJ supports SB 620. Thank you for your time and consideration. If you have any questions, please feel free to contact me at Hernandez Strategy Group, 916-447-9719.

Sincerely,

Ignacio Hernandez
CACJ Legislative Advocate

CC: Members and Staff, Senate Public Safety Committee
Senator Bradford



late

April 18, 2017

Senator Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814
By fax: 916-445-4688

Re: SB 620 (Bradford) - SUPPORT

Dear Senator Skinner:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 620 (Bradford).

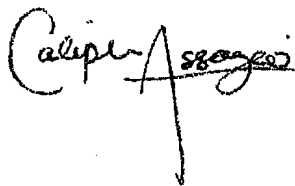
SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Senate Public Safety Committee. Please do not hesitate to contact me at caliph@publicinterestadvocacy.com or (916) 761-4860 with any questions or concerns.

Sincerely,



Caliph Assagai,
Legislative Advocate

late



Fighting for justice since 1973
California Attorneys for Criminal Justice

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Phone: (916) 643-1800 • Fax: (916) 643-1836
www.cacj.org

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Steve Rease, Vice-President
Jacqueline Goodman, Treasurer
Eric Schweitzer, Secretary

April 18, 2017

Honorable Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

**RE: Senate Bill 620 (Bradford) – Support
As Amended – March 28, 2017
Senate Public Safety Hearing – April 25, 2017**

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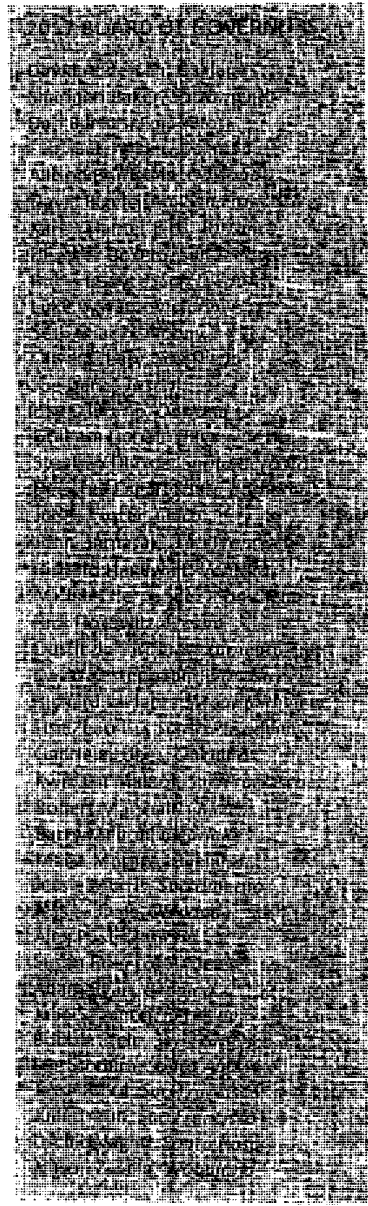
At a time when California is working to be smart on crime and reduce the impacted prison population, measures like AB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.

For these reasons, CACJ supports SB 620. Thank you for your time and consideration. If you have any questions, please feel free to contact me at Hernandez Strategy Group, 916-447-9719.

Sincerely,

Ignacio Hernandez
CACJ Legislative Advocate

CC: Members and Staff, Senate Public Safety Committee
Senator Bradford



late

April 18, 2017

Senator Nancy Skinner
Chair, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814
By fax: 916-445-4688

Re: SB 620 (Bradford) - SUPPORT

Dear Senator Skinner:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 620 (Bradford).

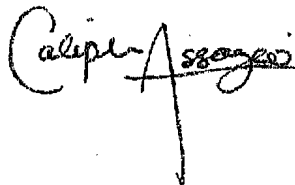
SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Senate Public Safety Committee. Please do not hesitate to contact me at caliph@publicinterestadvocacy.com or (916) 761-4860 with any questions or concerns.

Sincerely,



Caliph Assagai,
Legislative Advocate



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April 17, 2017

The Honorable Nancy Skinner
California State Senator
Chairperson, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

Fax: (916) 445-4688

RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support

Dear Chairperson Skinner,

The Anti-Recidivism Coalition (ARC) is excited to support the passage of SB 620, a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

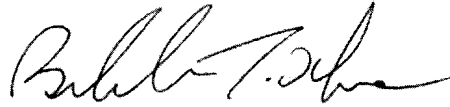
ARC is a support network for, and comprised of, formerly incarcerated individuals devoted to changing their lives by becoming leaders in their communities. ARC accomplishes its goals by providing job training, and connecting its members to employment and educational opportunities in order to help them acquire the social capital and skills necessary to support themselves and their families. Though serving communities throughout California as advocates, community leaders and productive adults, many ARC members are still contending with the ill effects of serving very long prison sentences due to gun, and other, sentence enhancements.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. Many ARC members went into prison as young people and came out as much older men and women because they served time well beyond the sentence for the underlying offense which these individuals experienced. It must also be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety.

By granting judges discretion as to whether to apply a sentence enhancement when a person is convicted of a felony in which he used or discharged a firearm, judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, but will also help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For these reasons, among others, ARC supports SB 620, and respectfully requests that you support the bill as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Bikila Ochoa". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bikila Ochoa
Policy Director
The Anti-Recidivism Coalition



May 5, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

#cut50 is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

#cut50 is a national bipartisan initiative of The Dream Corps to safely and smartly reduce our incarcerated population by 50 percent over the next 10 years. We envision a criminal justice system that recognizes the humanity of the 2.2 million people currently behind bars in America and moves toward compassion and treatment rather than punishment and incarceration.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, 20 years if they fired a gun, and 25-to-Life if firing the gun resulted in serious injury or death. These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out

¹ See National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, #cut50 is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alexandra Mallick
California Policy Director
#cut50

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



Center on Juvenile and Criminal Justice

40 Boardman Place
San Francisco, CA 94103
415 621-5661
415 621-5466 fax
www.cjcj.org

May 25, 2017

The Honorable Steven Bradford
California State Senator
State Capitol, Room 2062
Sacramento, CA 95814

**RE: Support for Senate
Bill 620 (Bradford)**

Dear Senator Bradford:

The Center on Juvenile and Criminal Justice strongly supports Senate Bill 620 (Bradford), which will allow judges to strike a sentence enhancement for using or discharging a firearm, when appropriate, strengthening judicial discretion and curbing the legacy of extreme sentencing that has fueled mass incarceration.

The Center on Juvenile and Criminal Justice (CJCJ) is a private non-profit organization that promotes humane criminal justice policies to reduce incarceration and foster long-term public safety in California. CJCJ pursues this mission through the development of model programs, technical assistance, and policy analysis. As such, CJCJ supports legislation that eliminates sentencing enhancements and lessens the harmful impact of mass incarceration.

California has some of the most punitive and extreme sentence enhancements for gun use in the nation. Currently, people convicted of serious felonies receive an additional sentence if their offense involved a gun. These enhancements are imposed according to the following enhancement scheme: 10 additional years if they showed a gun during the crime, 20 years if they fired a gun, and 25 years to life if firing the gun resulted in serious injury or death.

Extreme 10-20-Life gun enhancements augment sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unwarranted, gun enhancements are mandatory. Judges are forbidden from tailoring a sentence to an individual's case, circumstances, and culpability. The result is a rigid and arbitrary system that punishes with prison terms that far exceed the seriousness of the offense and undermine the goals of rehabilitation and community safety.

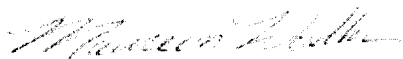
Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements indicates that the risk of an enhancement is not an effective deterrent and fails to improve public safety. Instead, enhancements have been a primary driver of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 retains all existing sanctions for gun-involved felonies, but allows a judge, rather than a prosecutor, to decide whether an individual should serve additional prison time for the use of a gun. Through SB 620, judges are permitted to consider the nature and severity of the crime, as well as other mitigating and aggravating factors in determining whether to impose a gun enhancement. This discretion ensures that judges impose sentences that fit the severity of the offense, which helps to ensure that individuals do not serve unnecessarily long sentences.

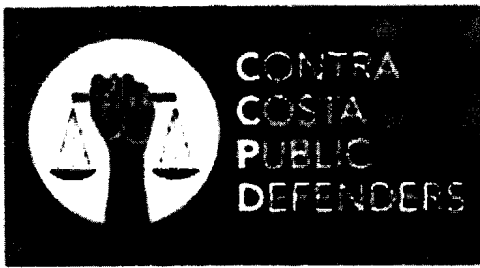
~ Changing lives. Changing systems. Changing the future. ~

SB 620 represents an important step forward in addressing California's overreliance on incarceration. Restoring the decision-making authority of trained judges will ensure that gun enhancements are used sparingly in California, limiting the devastating human impact of lengthy or life sentences. For these reason, CJCJ strongly supports SB 620 and thanks you for your important leadership on this bill. Please feel free to reach out to me at maureen@cjcj.org with any questions.

Sincerely,



Maureen Washburn, Policy Analyst
Center on Juvenile and Criminal Justice



Contra Costa County Defenders Association

Brandon Banks
President

June 1, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The Contra Costa County Defenders Association is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Contra Costa County Defender Association is comprised of deputy public defenders who represent indigent children and adults charged with criminal offenses in Contra Costa County. We also represent indigent members of our community post disposition as they try to reconstruct their lives and overcome the stigma of a criminal conviction. We witness firsthand the long-term effects that onerous prison sentences impose on vulnerable populations of our county and our state.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

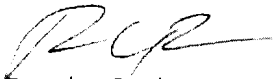
² Ibid.

sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Contra Costa County Defenders Association is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Brandon Banks

President

cc: Members and Committee Staff, Assembly Committee on Public Safety

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



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April 17, 2017

The Honorable Nancy Skinner
California State Senator
Chairperson, Senate Public Safety Committee
State Capitol, Room 2031
Sacramento, CA 95814

Fax: (916) 445-4688

RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support

Dear Chairperson Skinner,

The Anti-Recidivism Coalition (ARC) is excited to support the passage of SB 620, a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

ARC is a support network for, and comprised of, formerly incarcerated individuals devoted to changing their lives by becoming leaders in their communities. ARC accomplishes its goals by providing job training, and connecting its members to employment and educational opportunities in order to help them acquire the social capital and skills necessary to support themselves and their families. Though serving communities throughout California as advocates, community leaders and productive adults, many ARC members are still contending with the ill effects of serving very long prison sentences due to gun, and other, sentence enhancements.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. Many ARC members went into prison as young people and came out as much older men and women because they served time well beyond the sentence for the underlying offense which these individuals experienced. It must also be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety

By granting judges discretion as to whether to apply a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, SB 620 will help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For these reasons, among others, ARC supports SB 620, and respectfully requests that you support the bill as well

Sincerely,

A handwritten signature in black ink, appearing to read "Bikila Ochoa". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping tail.

Bikila Ochoa
Policy Director
The Anti-Recidivism Coalition

COURAGE



May 31, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

On behalf of the 1,300,000 members of Courage Campaign, California's largest online, progressive organizing network, I write in strong support of your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

¹ See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Courage Campaign is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Best Regards,

A handwritten signature in black ink, appearing to read "Eddie Kurtz", with a long horizontal flourish extending to the right.

Eddie Kurtz
Executive Director, Courage Campaign

cc: Members and Committee Staff, Assembly Committee on Public Safety



April 14, 2017

Honorable Nancy Skinner, Chair
Senate Committee on Public Safety
State Capitol Building, Room 2031
Sacramento, CA 95814

RE: SENATE BILL 620 – SUPPORT LETTER

Dear Senator Skinner:

Californians for Safety and Justice is pleased to support Senate Bill 620, which would allow a court to use judicial discretion when applying sentence enhancements when a person uses a firearm in the commission of a felony.

Californians for Safety and Justice is a nonprofit organization that promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities. Sentences should fit the crime, effectively manage risk, and put safety first. The best sentences emphasize accountability and work to stop the cycle of crime, which reduces repeat victimization, recidivism, and taxpayer expense.

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

On behalf of Californians for Safety and Justice and the Californians who stand to benefit from SB 620, thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in black ink that reads "Liah Burnley". The signature is written in a cursive, flowing style.

Liah Burnley
Policy Advocate
Californians for Safety and Justice

CC Senator Joel Anderson, Vice Chair
Senator Steven Bradford
Senator Hannah-Beth Jackson
Senator Holly Mitchell
Senator Jeff Stone
Senator Scott Wiener
Jessica Devencenzi, Counsel

ALLIANCE FOR
Boys and Men of Color

Invest in the Health and Success
of California's Future

April 18, 2017

Honorable Nancy Skinner
Chair, Public Safety Committee
California State Senate
State Capitol, Room 2031
Sacramento, CA 95814
Fax: (916) 445-4688

RE: Support for SB 620 (Bradford) – Judicial Discretion in Sentencing

Dear Chairperson Skinner:

The Alliance for Boys and Men of Color supports Senate Bill 620 (Bradford), which will provide courts with discretion in the application of sentence enhancements, helping to ensure that criminal sentences are fair and appropriate. Mandatory sentence enhancements do not make our communities safer; instead, they unnecessarily harm individuals, families, and communities.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, improve academic success, support neighborhood safety, reduce justice system involvement, and support employment opportunities for this vulnerable population.

Persons convicted of felonies are already sentenced to lengthy prison terms. Yet, existing state law requires sentence enhancements of up to ten years whenever a firearm is used during the commission of a felony. Studies show, however, that adding a longer sentence to an already lengthy one does not deter crime. Rather, it greatly increases prison populations and disproportionately increases racial disparities in imprisonment.

SB 620 would give courts discretion to strike a sentence enhancement if doing so is in the interest of justice. We believe that giving judges this flexibility will create a fairer and more equitable sentencing system.

For these reasons, the Alliance for Boys and Men of Color supports SB 620 and requests your "Aye" vote. Should you have any questions, please contact Rosa Aqeel at raqeel@policylink.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Philpart". The signature is fluid and cursive, with the first name "Marc" written in a larger, more prominent script than the last name "Philpart".

Marc Philpart
Principal Coordinator
Alliance for Boys and Men of Color

CC: Honorable Steven Bradford
Honorable Hannah-Beth Jackson
Honorable Holly Mitchell
Honorable Jeff Stone
Honorable Scott Wiener



THE W. HAYWOOD BURNS INSTITUTE
For Justice Fairness and Equity

May 31, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

The W. Haywood Burns Institute (BI) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The W. Haywood Burns Institute (BI) is a national non-profit organization based in Oakland, California. We seek to protect and improve the lives of people of color by promoting restorative and equitable practices that recognize the value of all human beings. Specifically, we work with local justice system decision-makers and community members to reduce racial and ethnic disparities using a data driven, collaborative approach. BI has achieved measurable reductions in racial and ethnic disparities working with dozens of jurisdictions across the nation, including 17 counties in California.

Nationally, firearm sentencing enhancements have been shown to disparately impact people of color, with White people accounting for 41 percent of households with firearms, yet only 27 percent of people incarcerated for firearms offences. Meanwhile, Black people account for 19 percent of gun ownership and 49 percent of people incarcerated for firearms offenses.¹

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.² Instead, studies show

¹ See Justice Policy Institute (August 2016). "Defining Violence: Reducing Incarceration by Rethinking America's Approach to Violence. Justice Policy Institute." Available Online:

http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_definingviolence_final_report_9.7.2016.pdf

² See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.



THE W. HAYWOOD BURNS INSTITUTE
For Justice Fairness and Equity

enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.³ California now has the regrettable distinction of meting out some of the longest sentences in the nation,⁴ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁵

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the W. Haywood Burns Institute is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Laura John Ridolfi
Director of Policy
The W. Haywood Burns Institute

cc: Members and Committee Staff, Assembly Committee on Public Safety

³ Ibid.

⁴ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁵ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



May 5, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

#cut50 is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

#cut50 is a national bipartisan initiative of The Dream Corps to safely and smartly reduce our incarcerated population by 50 percent over the next 10 years. We envision a criminal justice system that recognizes the humanity of the 2.2 million people currently behind bars in America and moves toward compassion and treatment rather than punishment and incarceration.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, 20 years if they fired a gun, and 25-to-Life if firing the gun resulted in serious injury or death. These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.¹ Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.² California now has the regrettable distinction of meting out

¹ See National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

² Ibid.

some of the longest sentences in the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, #cut50 is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alexandra Mallick
California Policy Director
#cut50

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



May 18, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Legal Services for Prisoners with Children is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Founded in 1978, LSPC enjoys a long history advocating for the civil and human rights of people in prison, their loved ones and the broader community. Our vision of public safety is more than a lock and key. We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that all people have access to adequate housing, quality health care and education, healthy food, meaningful work and the ability to fully participate in the democratic process, regardless of their involvement with the criminal justice system.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, 20 years if they fired a gun, and 25-to-Life if firing the gun resulted in serious injury or death. These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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² Ibid.

1540 Market St., Suite 490
San Francisco, CA 94102
Phone: (415) 625-7040
Fax: (415) 552-3160

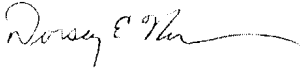
www.PrisonersWithChildren.org
Endria@PrisonersWithChildren.org

the nation,³ and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.⁴

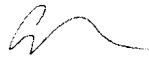
SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, LSPC is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Dorsey Nunn
Executive Director



Endria Richardson
Policy Director

³ Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

⁴ The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

Anderson, Cheryl

From: Kateley, Sue
Sent: Wednesday, June 07, 2017 9:24 AM
To: Anderson, Cheryl; Olson, Gary; Rusanganwa, Arnell; Jassawalla, Anisa
Subject: RE: SB 620 - position letters

Only because I used to be a committee consultant and you might appreciate being able to copy-and-paste the list, here's what I have so far.

SB 620 Position Letters – as of June 7, 2017

Support:

~~American Civil Liberties Union (Sponsor)~~
~~A New Way of Life~~
~~Alliance for Boys and Men of Color~~
~~American Friends Service Committee~~
~~Anti-Reidivism Coalition~~
~~California Attorneys for Criminal Justice~~
~~California Public Defenders Association~~
~~Californians for Safety and Justice~~
~~Californians United for a Responsible Budget~~
~~Center on Juvenile and Criminal Justice~~
~~Centro Costa Public Defender~~
~~Courage Campaign~~
~~Gov 60~~
~~Ellie Robson Center for Human Rights~~
~~Fathers & Families of San Joaquin~~
~~Fair Chance Project~~
~~Free Indeed Reentry Project~~
~~Friends Committee on Legislation of California~~
~~Initiate Justice~~
~~Legal Services for Prisoners with Children~~
~~Los Angeles Regional Reentry Partnership~~
~~Homeboy Industries~~
~~homicidios~~
~~Motivating Individual Leadership for Public Advancement (MILEPA)~~
~~Root and Rebound~~
~~Silicon Valley Do-Do~~
~~Youth Justice Coalition~~
~~W. Howard Burns Institute~~

Opposition:

~~California District Attorneys Associations~~
~~California Police Chiefs Association~~
~~California Sheriffs Association~~
~~Gun Owners of California~~

From: Kateley, Sue
Sent: Wednesday, June 07, 2017 9:09 AM
To: Anderson, Cheryl; Olson, Gary; Rusanganwa, Arnell; Jassawalla, Anisa
Subject: RE: SB 620 LPO Position letters

A few more:
Sue

From: Kateley, Sue
Sent: Tuesday, June 06, 2017 1:44 PM
To: Anderson, Cheryl; Olson, Gary; Rusanganwa, Arnell; Jassawalla, Anisa
Subject: RE: SB 620 - position letters

Here are a few more – thanks for your patience.

Sue

From: Kateley, Sue
Sent: Monday, June 05, 2017 4:34 PM
To: Anderson, Cheryl; Olson, Gary; Rusanganwa, Arnell; Jassawalla, Anisa
Subject: RE: SB 620 - position letters

These are trickling in – my apologies for multiple emails.

From: Kateley, Sue
Sent: Monday, June 05, 2017 4:09 PM
To: Anderson, Cheryl; Olson, Gary; Rusanganwa, Arnell; Jassawalla, Anisa
Subject: SB 620 - position letters

Hi all,

I received these letters – just passing them along.

Best,

Sue

Sue Kateley
Chief of Staff
Office of Senator Steve Bradford
Senate District 35
State Capitol, Room 2062
Sacramento CA 95814
Office: 916-651-4035
sue.kateley@sen.ca.gov

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COPS ROUTE SLIP

DATE: _____

FROM: _____

ROUTE TO:

Greg _____

Arnell _____

Sandy _____

Liz (2) _____

Gabe _____

Cheryl (1) ✓ _____

David _____

Other _____

Return to: _____

Comments: _____

Committee amended BK?

C blif

92638

06/13/17 02:28 PM
RN 17 15878 PAGE 1
Substantive

AMENDMENTS TO SENATE BILL NO. 620
AS AMENDED IN SENATE MARCH 28, 2017

Amendment 1

On page 2, in line 9, strike out the second "Section"

Amendment 2

On page 2, in line 17, after "justice" insert:

pursuant to Section 1385

Amendment 3

On page 2, in line 18, after "strike" insert:

or dismiss

Amendment 4

On page 3, in line 6, strike out "one," and insert:

one

Amendment 5

On page 5, in line 4, after "justice" insert:

pursuant to Section 1385

Amendment 6

On page 5, in line 5, after "strike" insert:

or dismiss

- 0 -



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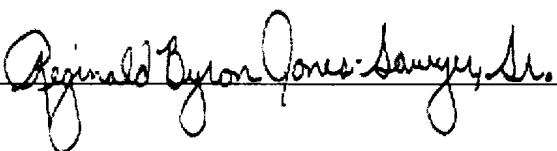
Assembly Committee Rollcalls

Public Safety

Date of Hearing: June 13, 2017

BILL NO.	SB 610	SB 620	SB 630	SB 644
ACTION VOTED ON	Do pass as amended	Do pass as amended and re-refer to Cmte on Appr.	Do pass	Do pass as amended and re-refer to Cmte on Appr., Rec. Consent
	Aye : No	Aye : No	Aye : No	Aye : No
Jones-Sawyer, Chair	X :	X :	X :	X :
Lackey, V. Chair	X :	: X	: X	X :
Flora	X :	: X	: X	X :
Gonzalez Fletcher	X :	X :	X :	X :
Quirk	X :	X :	X :	X :
Rubio	X :	X :	X :	X :
Santiago	X :	X :	X :	X :
	Ayes : 7 Noes : 0	Ayes : 5 Noes : 2	Ayes : 5 Noes : 2	Ayes : 7 Noes : 0

RECEIVED: _____


 _____, CHAIR



LRI History LLC

intent@lrihistory.com
www.lrihistory.com
(916) 442.7660

Assembly Fiscal Committee Materials

LRI History LLC hereby certifies that the accompanying record/s is/are true and correct copies of the original/s obtained from one or more official, public sources in California unless another source is indicated, with the following exceptions : In some cases, pages may have been reduced in size to fit an 8 ½" x 11" sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, for ease of reference, paging and relevant identification have been inserted.

Association of Deputy District Attorneys



555 W. 5th St. • Ste. 31101
Los Angeles, CA 90013
213-533-4227

June 16, 2017

Pedro R. Reyes, Chief Consultant
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Dear Mr. Reyes,

As the association representing over 1,000 Los Angeles County Deputy District Attorneys, we write you in strong opposition to Senate Bill 620. We oppose the bill because mandatory enhancements for using a gun in a crime are vital for public safety. In addition, as we exposed in our article (*attached*), a deliberate lie was a key to passage of SB 620 before the Senate Public Safety Committee.

When SB 620 was before the Senate Public Safety Committee on April 25, 2017, Kim McGill of the Youth Justice Coalition sat next to the bill's author, Senator Bradford. She spun a tale to the committee of a man without a criminal record imprisoned for a long period because the judge said the mandatory gun law mandated that sentence. The video of the hearing shows that testimony was referred to by several senators as a reason for the vote in favor of SB 620.

However, as our attached article details, Ms. McGill told multiple lies regarding the defendant and his crime. She lied when she said Manning only had a BB gun. This law applies only to real firearms and it was proven at trial that Manning used a real firearm. More importantly, her claims regarding the judge saying mandatory gun laws forced the sentence he imposed were false. The truth was the defendant was a felon on probation when he committed the robbery with a gun, and the sentence was far more than the minimum required by law because the judge imposed consecutive sentences for the crimes the defendant committed.

The emptiness of arguments for SB 620 is demonstrated by the fact that proponents had to invent a story to justify its passage. Our experience as front-line prosecutors shows that mandatory sentencing for gun use during a crime is both an effective deterrent to gun usage and appropriate punishment for the trauma inflicted on victims during a crime.

In an era where the legislature has sought to curb the availability of firearms to keep the public safe, it makes no sense that the legislature would vote to allow lesser penalties for those who use a gun in a crime.

We have spoken to countless victims sexually assaulted or robbed at gunpoint. The common thread is how that one event forever changed their sense of safety and normalcy. They recount how close they felt to death, knowing their life could have been ended on the whim of a criminal who thought that the victim was not moving fast enough, or who decided they did not want to leave a witness alive to testify.

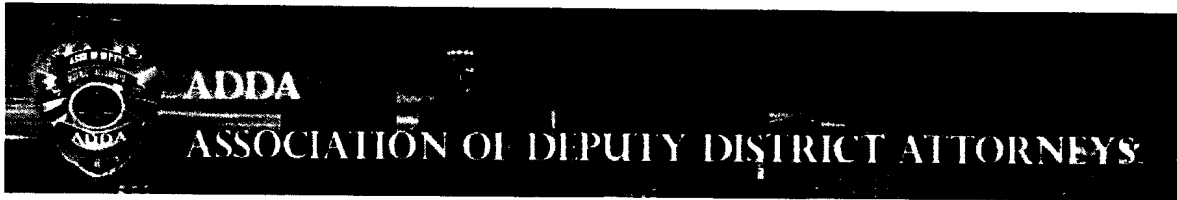
SB 620 is a terrible retreat in our efforts to combat gun violence. It removes an effective deterrent against gun usage in crime, and is out of step with the will of the voters regarding gun violence. We urge you to vote "no" on SB 620 and would be glad to further discuss our position with you.

Sincerely,

A handwritten signature in black ink that reads "Michele Hanisee". The signature is written in a cursive, flowing style.

Michele Hanisee
President

Attachment



Outright Lies Grease Passage of Bill That Eliminates Mandatory Gun Enhancements

By Michele Hanisee & Eric Siddall

Regardless of how you feel about the legislation, we are disturbed, and every legislator should be disturbed, that a witness called to testify in support of Senate Bill 620 told multiple lies to the California Senate. Kim McGill of the Youth Justice Coalition sat next to the bill author, Senator Steven Bradford, as she addressed the Public Safety Committee on April 25, 2017. McGill claimed, "one case in particular, stands out" to exemplify the unfairness of mandatory gun enhancements and then detailed the "facts" of a robbery case involving Travis Manning.

Ms. McGill testified that Manning was a 19-year-old man who had never been arrested. According to McGill, he entered a GameStop, asked for a \$100 game while holding a BB gun, and then took the same game back to GameStop a month later, not understanding the consequences of his act. McGill claimed the sentencing judge "stated under California law he could not make any adjustments due to Travis' cognitive disabilities or his lack of a past criminal record." PBS NewsHour, relying upon McGill and Senator Bradford's information, repeated these statements in a story where Manning was made the "poster child" for SB 620.

The actual facts show McGill lied to the Senate Committee. On the day he robbed the GameStop, Manning was a 23-year-old convicted felon. His criminal history included possession of cocaine base for sale. The jury found -- and it was affirmed on appeal -- that Manning pulled out and cocked a real gun while committing the robbery. Manning did not request a "\$100 game" as McGill testified but demanded and received a Wii console, games, accessories, as well as the \$600-700 in the cash register.

Ms. McGill also did not tell the truth about Manning's actions after the robbery. He did not take the "same game" back to GameStop. Instead, on two separate occasions Manning sold portions of the stolen loot to another GameStop store. This was not a misunderstood youth. Mr. Manning was a felon who after committing robbery then committed a burglary by entering a business to sell property he had stolen at gunpoint. The connection was finally made when the store clerks from two different locations independently identify Manning.

Finally, Ms. McGill was dishonest in her description of the judge's remarks which she embellished to support her key point--that inflexible sentencing laws led to Manning's sentence. Clearly the judge never claimed he could not adjust the sentence despite Manning's "lack of a past criminal record," since Manning did have a prior record at the time he committed the robbery. Mr. Manning was on active probation with a prior felony conviction (Case number MA029937) when he committed the robbery and that led to his being charged and convicted of being a felon with a firearm. (Case number TA095435)

Equally importantly, the sentence length proved McGill was dishonest when she purported to quote the judge. This is the point that first caused us to take notice of her claims. As Ms. McGill was weaving her tale about the judge's statement, anybody who understands sentencing laws (be they prosecutor, defense attorney, or legislator sitting on the Public Safety Committee) should have instantly recognized without even knowing the facts of the case that McGill's tale did not ring true.

The sentence length for the crimes charged reflected that the judge had selected the longer of possible terms for Manning's sentence. California law allowed the sentencing judge to run Manning's convictions for two robberies and a burglary concurrently, resulting in a shorter prison sentence than the 18 years imposed. Instead, the sentence length reflected consecutive sentences, emphatically disproving McGill's recitation that the sentencing judge stated California law precluded a reduced sentence length.

We believe that McGill's misstatements were deliberate and calculated. According to her own words when she testified, she was involved in the Manning case before his trial and sentencing. Ms. McGill stated to the committee that she helped Manning get a new lawyer pending trial, "packed the court," and coordinated the presentation of "several powerful testimonies" at sentencing.

It is shocking that Ms. McGill felt comfortable sitting next to Senator Bradford while calmly uttering false statements during public testimony to a Senate Committee. Also alarming is that when the ADDA contacted PBS reporter Kamala Kelkar to request a correction of her inaccurate story, we were informed that Senator Bradford's office repeated McGill's false statements about Manning, including the absurd claim that he had no prior record. Didn't the Senator or anybody on his staff wonder how Manning was convicted of being a felon in possession of a gun if he had never been convicted of a prior felony? Why didn't the Senator or his staff verify any of the facts of the case they chose to use as the "poster child" for the need to overturn mandatory gun enhancements? The information is, after all, public record.

Criminal justice reform advocates who wish to take the system to task should remember that in criminal trials, the standard of proof is beyond a reasonable doubt, and that everything is documented in the public record. If you misrepresent the facts that are in the public record, we will know. This sordid episode points out the need for legislators and the media to carefully vet the stories and ideas being peddled in furtherance of "criminal justice reform."

Michele Hanisee is President and Eric Siddall is Vice President of the Association of Los Angeles Deputy District Attorneys, the collective bargaining agent representing nearly 1,000 Deputy District Attorneys who work for the County of Los Angeles. To contact a Board member, click here.

June 12, 2017

The Honorable Steven Bradford
California State Capitol, Room 2054
Sacramento, California 95814

Re: SB 620 – as amended 3/28/17

Dear Senator Bradford:

I am a professor of law at McGeorge School of Law and represent, pro bono, Denzel Crisp, a young man currently serving a sentence of 30-years-to-life under P.C. § 12022.53 for a 2010 conviction on charges related to discharge of a firearm from a motor vehicle in 2009. At the time of the offense, Denzel was 17-years-old. The shooting resulted in an individual being wounded in the buttock, receiving out-patient treatment, and suffering no permanent injury. I write in strong support of SB 620.

Before joining academia, I worked as an attorney-advisor at the Office of Legal Counsel, U.S. Department of Justice, in Washington D.C., where I provided legal counsel to the executive branch on constitutional matters, with a particular focus on criminal justice issues; then, as a trial and appellate deputy federal public defender in Los Angeles; and most recently, as a staff attorney for the Ninth Circuit. In that capacity, I reviewed and made recommendations to the court on hundreds of habeas petitions challenging state and federal convictions. Since joining McGeorge, I have taught an array of subjects pertaining to the criminal justice system, including criminal procedure, evidence, criminal law, federal habeas corpus, and sentencing law. My scholarship focuses on federal habeas corpus and the post-conviction process.

Since December 2014, together with Sacramento criminal defense attorney, Clyde Blackmon, and with assistance from several other McGeorge faculty members and students, I have represented Denzel Crisp in state and federal habeas litigation. This litigation has involved constitutional challenges to both his conviction – since his arrest, he has consistently maintained his innocence -- and the length of his sentence. Denzel, who, despite his youth, was prosecuted as an adult, received 5 years for the base offense of conviction, plus an additional, mandatory 25-years-to-life pursuant to P.C. § 12022.53.

Denzel and co-defendant Steven Brown, who was the owner and driver of the vehicle involved in the shooting and was found in possession of the discharged weapon when the two were arrested shortly after the incident, were convicted after a jury trial. The jury found true the allegation pursuant to P.C. § 12022.53 that

The Honorable Steven Bradford

June 12, 2017
Page 2

Denzel, a passenger in the vehicle, discharged, through the passenger's side window, the firearm.

At sentencing, Denzel presented a compelling case for leniency. At the time of the December 2009 shooting, he was a well-liked, 17-year-old senior at Monterey Trail High School in Elk Grove, on track to graduate in the spring and with plans to go to college. By all accounts, he was a "good kid," who had never been in any kind of legal trouble or been involved with firearms or gang activity. Despite the constraints imposed by his pretrial incarceration, he had persevered and earned his high school diploma while in custody. At his trial, high school teachers, his pastor, and, remarkably, the probation officer charged with his pretrial detention in Juvenile Hall all attested to a young man with an easy disposition and depth of character.

Denzel's history teacher described him as a very kind, conscientious, polite, respectful, gentle, and sweet person with a "really big heart," who was not only honest but also strove to be a highly moral person, very active in his church, and not known to be associated in any way with firearms. His English literature teacher described him as extremely honest, even-tempered, respected by his peers, and mature beyond his years. His pastor, who had known him since infancy and in whose church Denzel had served as Junior Deacon and in the youth ministry, echoed the teachers' assessment of him as very honest and conscientious, respectful and well-respected, laid back, and with a high level of integrity. Finally, the probation officer in charge of Denzel's pretrial detention in Juvenile Hall described how Denzel had devoted a lot of time in custody to earning his high school diploma despite his incarceration and, in a custodial setting, was honest, laid back, had good humor, and was "not a troublemaker."

The trial judge agreed that the punishment dictated by the penal code was "extremely severe" in light of the facts of the case and Denzel's personal background. He also indicated being troubled by the disparity in punishment between what he believed to be two equally culpable actors, Mr. Crisp, who, under P.C. § 12022.53, faced 30-years-to-life, with eligibility to earn only 15% good time credit, and Mr. Brown, who, without the P.C. § 12022.53 enhancement, faced seven years, eight months, with the ability to earn 50% good time credit. (Mr. Brown has already been released from custody, while Denzel still faces approximately 17 ½ more years' incarceration before being eligible for parole release.) But the court noted it could not, under the law as written, supplant its judgment for that of the legislature's: its hands were tied by the mandatory nature of P.C. § 12022.53.

Similarly, in reviewing Denzel's constitutional challenge to his sentence on direct appeal, the Court of Appeal for the Third Appellate District grappled with the severity of the sentence, noting the compelling nature of Denzel's personal characteristics and background. But like the trial court had, the appellate court noted it is for the legislature to define crimes and prescribe punishments, that it

The Honorable Steven Bradford

June 12, 2017

Page 3

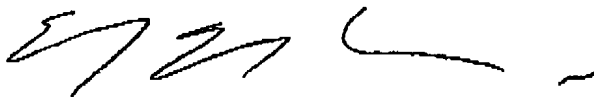
could not override that judgment. The Court concluded further that, despite Denzel being a juvenile at the time of the shooting, because he will be parole-eligible at some point in his life, his 30-years-to-life sentence is not unconstitutional.

The impact of Denzel's continued incarceration on his close-knit family has been devastating. His father collapsed from grief at sentencing. His mother, Lawana Williams, had to take an early retirement from the Franchise Tax Board, where she had a long career as an analyst, because she was no longer able to concentrate well enough to do her work. For the past seven years, the two have taken turns making the long trip to Corcoran, and now High Desert, state prisons to see their son, doing what they can to make sure he has money in his account and the provisions he needs; most importantly, that he knows how much he is still loved.

For Denzel, only 17-years-old at the time of his arrest, 30 years-to-life will mean spending much of his life in the dehumanizing condition of a prisoner. It will mean little chance to find his independence in adulthood, to experience college, to build a career, to marry, to have children of his own. If he is released on parole in his 40s, he will be entering a world dramatically different than the one he left, lacking the years of life experience of one's 20s and 30s to guide him.

Sentencing is an intricate balance of legislative determination and judicial judgment. The challenge of any legislative body is to craft laws that reflect the gravity of an offense yet still allow room for the judge to sentence justly the individual who stands before him or her in court. As written, P.C. § 12022.53 forecloses individual judgment: each defendant found to have discharged a firearm out of a moving vehicle and to have inflicted serious bodily injury is treated, at minimum, as someone deserving of 25-years-to-life behind bars. No differentiation is allowed based on the background of the defendant, the intent or motive involved, or the severity of the injury suffered by the victim. The result in cases such as Denzel's that call out for leniency is a length of incarceration that is inconsistent with legitimate goals of the criminal justice system and grossly exceeds the interests of civil society. The change proposed by this bill is a modest one: simply vest discretion in trial judges to dismiss the enhancement where the interest of justice so demands, in a case such as Denzel Crisp's that compels a lesser sentence.

Sincerely,



Emily Garcia Uhrig



June 19, 2017

Senator Steven Bradford
State Capitol
Sacramento, CA 95814

RE: SB 620 | OPPOSE

Dear Senator Bradford:

Gun Owners of California continues to respectfully oppose your SB 620, which grants the courts discretion in existing sentencing provisions for the felony use of a firearm.

Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the "use a gun – go to prison" policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of "justice" but rather a dangerous proposition.

We would appreciate the opportunity to work with you on how we can reduce crime in California – gun-related and otherwise. The safety of our citizens is central and it has been the consistent goal of Gun Owners to advocate for common sense solutions without sacrificing our Constitutional rights and the ability of the law abiding to protect their home and families.

Respectfully,

Sam Paredes, Executive Director

cc: Members of the Assembly Appropriations Committee
Republican Committee Consultant(s)



GUN OWNERS OF CALIFORNIA
 1831 Iron Point Road, Folsom CA 95630 - (916) 984-1400 (916) 984-1402 fax
www.GunOwnersCA.com
A Political Committee Dedicated to Crime Control – Not Gun Control

**CITY OF GLENDORA CITY HALL**

(626) 914-8200

116 East Foothill Blvd., Glendora, California 91741
www.ci.glendora.ca.us

June 26, 2017

The Honorable Blanca E. Rubio
California State Assembly
State Capitol, Room 5061
Sacramento, CA 95814**RE: SB 620 (Bradford) – OPPOSE**

Dear Assemblywoman Rubio:

The City of Glendora opposes SB 620 which would give Judges the discretion whether or not to apply enhancement sentencing when a person uses or discharges a firearm in the commission of a felony to be punished by an additional and consecutive term of imprisonment in state prison for 3 to 20-years depending on the underlying crime committed.

State Senator Bradford states his purpose for the bill is his concern that the current sentence enhancement greatly increases the population of incarcerated people and that this requirement disproportionately increases racial disparities in imprisonment. Opponents to SB 620 point out that the courts already have the discretion of imposing a low, middle or high term of additional sentencing (i.e. 2, 4 or 10-years) based on the circumstances of the case. Opponents further point out that for some of these individuals who use a firearm, these additional sentences are the only thing keeping them from being eligible for parole under Proposition 57, which allows for the early parole for non-violent felonies.

The City of Glendora believes that individuals who choose to use a firearm in a criminal act do so without regard to the safety of the victim or as in many cases the innocent bystander. The use or threat of use of a firearm is not a racial issue as alluded to by the author of this bill. In fact, the sad fact is that most of these crimes where a firearm is used occur more often in communities with high poverty and/or where ethnic classes disproportionately already exist. All Californians deserve to live and work in their communities with the expectation of being safe.

SB 620 will further erode the safety of every community in California. For these reasons, the City of Glendora opposes SB 620 and strongly urges you to cast your vote opposing SB 620.

Sincerely,

CITY OF GLENDORA

Gary Boyer, Mayor

Cc: Assembly Speaker Anthony Rendon, 63rd Assembly District
Glendora City Council
League of California Cities
Contract Cities
Joe A. Gonsalves & Son**PRIDE OF THE FOOTHILLS**

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AMENDED IN ASSEMBLY JUNE 15, 2017

AMENDED IN SENATE MARCH 28, 2017

SENATE BILL

No. 620

Introduced by Senator Bradford

February 17, 2017

An act to amend Sections 12022.5 and 12022.53 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Bradford. Firearms: crimes: enhancements.

Existing law requires that a person who personally uses a firearm in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years. Existing law requires that a person who personally uses an assault weapon or a machinegun in the commission of a felony be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years. Existing law requires a person who personally uses a firearm to commit certain specified felonies to be punished by an additional and consecutive term of imprisonment in the state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm. Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

This bill would delete the prohibition on striking an allegation or finding and, instead, would allow a court, in the interest of justice and at the time of sentencing or resentencing, to strike *or dismiss* an enhancement otherwise required to be imposed by the above provisions of law.

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Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12022.5 of the Penal Code is amended
2 to read:

3 12022.5. (a) Except as provided in subdivision (b), any person
4 who personally uses a firearm in the commission of a felony or
5 attempted felony shall be punished by an additional and
6 consecutive term of imprisonment in the state prison for 3, 4, or
7 10 years, unless use of a firearm is an element of that offense.

8 (b) Notwithstanding subdivision (a), any person who personally
9 uses an assault weapon, as specified in Section 30510 or ~~Section~~
10 30515, or a machinegun, as defined in Section 16880, in the
11 commission of a felony or attempted felony, shall be punished by
12 an additional and consecutive term of imprisonment in the state
13 prison for 5, 6, or 10 years.

14 (c) The court may, in the interest of justice *pursuant to Section*
15 *1385* and at the time of sentencing, *strike or dismiss* an
16 enhancement otherwise required to be imposed by this section.
17 The authority provided by this subdivision applies to any
18 resentencing that may occur pursuant to any other law.

19 (d) Notwithstanding the limitation in subdivision (a) relating to
20 being an element of the offense, the additional term provided by
21 this section shall be imposed for any violation of Section 245 if a
22 firearm is used, or for murder if the killing is perpetrated by means
23 of shooting a firearm from a motor vehicle, intentionally at another
24 person outside of the vehicle with the intent to inflict great bodily
25 injury or death.

26 (e) When a person is found to have personally used a firearm,
27 an assault weapon, a machinegun, or a .50 BMG rifle, in the
28 commission of a felony or attempted felony as provided in this
29 section and the firearm, assault weapon, machinegun, or a .50
30 BMG rifle, is owned by that person, the court shall order that the
31 firearm be deemed a nuisance and disposed of in the manner
32 provided in Sections 18000 and 18005.

33 (f) For purposes of imposing an enhancement under Section
34 1170.1, the enhancements under this section shall count as ~~one~~;
35 *one* single enhancement.

1 SEC. 2. Section 12022.53 of the Penal Code is amended to
2 read:

3 12022.53. (a) This section applies to the following felonies:

4 (1) Section 187 (murder).

5 (2) Section 203 or 205 (mayhem).

6 (3) Section 207, 209, or 209.5 (kidnapping).

7 (4) Section 211 (robbery).

8 (5) Section 215 (carjacking).

9 (6) Section 220 (assault with intent to commit a specified
10 felony).

11 (7) Subdivision (d) of Section 245 (assault with a firearm on a
12 peace officer or firefighter).

13 (8) Section 261 or 262 (rape).

14 (9) Section 264.1 (rape or sexual penetration in concert).

15 (10) Section 286 (sodomy).

16 (11) Section 288 or 288.5 (lewd act on a child).

17 (12) Section 288a (oral copulation).

18 (13) Section 289 (sexual penetration).

19 (14) Section 4500 (assault by a life prisoner).

20 (15) Section 4501 (assault by a prisoner).

21 (16) Section 4503 (holding a hostage by a prisoner).

22 (17) Any felony punishable by death or imprisonment in the
23 state prison for life.

24 (18) Any attempt to commit a crime listed in this subdivision
25 other than an assault.

26 (b) Notwithstanding any other provision of law, any person
27 who, in the commission of a felony specified in subdivision (a),
28 personally uses a firearm, shall be punished by an additional and
29 consecutive term of imprisonment in the state prison for 10 years.
30 The firearm need not be operable or loaded for this enhancement
31 to apply.

32 (c) Notwithstanding any other provision of law, any person
33 who, in the commission of a felony specified in subdivision (a),
34 personally and intentionally discharges a firearm, shall be punished
35 by an additional and consecutive term of imprisonment in the state
36 prison for 20 years.

37 (d) Notwithstanding any other provision of law, any person
38 who, in the commission of a felony specified in subdivision (a),
39 Section 246, or subdivision (c) or (d) of Section 26100, personally
40 and intentionally discharges a firearm and proximately causes great

1 bodily injury, as defined in Section 12022.7, or death, to any person
2 other than an accomplice, shall be punished by an additional and
3 consecutive term of imprisonment in the state prison for 25 years
4 to life.

5 (e) (1) The enhancements provided in this section shall apply
6 to any person who is a principal in the commission of an offense
7 if both of the following are pled and proved:

8 (A) The person violated subdivision (b) of Section 186.22.

9 (B) Any principal in the offense committed any act specified
10 in subdivision (b), (c), or (d).

11 (2) An enhancement for participation in a criminal street gang
12 pursuant to Chapter 11 (commencing with Section 186.20) of Title
13 7 of Part 1 shall not be imposed on a person in addition to an
14 enhancement imposed pursuant to this subdivision, unless the
15 person personally used or personally discharged a firearm in the
16 commission of the offense.

17 (f) Only one additional term of imprisonment under this section
18 shall be imposed per person for each crime. If more than one
19 enhancement per person is found true under this section, the court
20 shall impose upon that person the enhancement that provides the
21 longest term of imprisonment. An enhancement involving a firearm
22 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
23 or 12022.55 shall not be imposed on a person in addition to an
24 enhancement imposed pursuant to this section. An enhancement
25 for great bodily injury as defined in Section 12022.7, 12022.8, or
26 12022.9 shall not be imposed on a person in addition to an
27 enhancement imposed pursuant to subdivision (d).

28 (g) Notwithstanding any other provision of law, probation shall
29 not be granted to, nor shall the execution or imposition of sentence
30 be suspended for, any person found to come within the provisions
31 of this section.

32 (h) The court may, in the interest of justice *pursuant to Section*
33 *1385* and at the time of sentencing, *strike or dismiss* an
34 enhancement otherwise required to be imposed by this section.
35 The authority provided by this subdivision applies to any
36 resentencing that may occur pursuant to any other law.

37 (i) The total amount of credits awarded pursuant to Article 2.5
38 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
39 3 or pursuant to Section 4019 or any other provision of law shall
40 not exceed 15 percent of the total term of imprisonment imposed

1 on a defendant upon whom a sentence is imposed pursuant to this
2 section.

3 (j) For the penalties in this section to apply, the existence of any
4 fact required under subdivision (b), (c), or (d) shall be alleged in
5 the accusatory pleading and either admitted by the defendant in
6 open court or found to be true by the trier of fact. When an
7 enhancement specified in this section has been admitted or found
8 to be true, the court shall impose punishment for that enhancement
9 pursuant to this section rather than imposing punishment authorized
10 under any other provision of law, unless another enhancement
11 provides for a greater penalty or a longer term of imprisonment.

12 (k) When a person is found to have used or discharged a firearm
13 in the commission of an offense that includes an allegation pursuant
14 to this section and the firearm is owned by that person, a
15 coparticipant, or a coconspirator, the court shall order that the
16 firearm be deemed a nuisance and disposed of in the manner
17 provided in Sections 18000 and 18005.

18 (l) The enhancements specified in this section shall not apply
19 to the lawful use or discharge of a firearm by a public officer, as
20 provided in Section 196, or by any person in lawful self-defense,
21 lawful defense of another, or lawful defense of property, as
22 provided in Sections 197, 198, and 198.5.

O



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SENSIBLE SENTENCING FOR A SAFER CALIFORNIA



LITTLE HOOVER COMMISSION

February 2014

Little Hoover Commission

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Former Commissioners Who Served During the Study

Virginia Ellis

Bill Emmerson
Senator

Tom Quinn

Commission Staff

Carole D'Elia
Executive Director

Krystal Beckham
Research Analyst

To Promote Economy and Efficiency

The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

In creating the Commission in 1962, the Legislature declared its purpose:

...to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives....

The Commission fulfills this charge by listening to the public, consulting with the experts and conferring with the wise. In the course of its investigations, the Commission typically empanels advisory committees, conducts public hearings and visits government operations in action.

Its conclusions are submitted to the governor and the Legislature for their consideration. Recommendations often take the form of legislation, which the Commission supports through the legislative process.

Contacting the Commission and Copies of Reports

All correspondence should be addressed to the Commission at:

- ❖ 925 L St., Suite 805, Sacramento, CA 95814
- ❖ E-mail: littlehoover@lhc.ca.gov
- ❖ Telephone: (916) 445-2125 Fax: (916) 322-7709
- ❖ Worldwide Web: www.lhc.ca.gov

This report is available from the Commission's Web site.

February 27, 2014

The Honorable Edmund G. Brown Jr.
Governor of California

The Honorable Darrell Steinberg
President pro Tempore of the Senate
and members of the Senate

The Honorable Robert Huff
Senate Minority Leader

The Honorable John A. Pérez
Speaker of the Assembly
and members of the Assembly

The Honorable Connie Conway
Assembly Minority Leader

Dear Governor and Members of the Legislature:

California's correctional system is a slow-motion disaster. Seven years ago, the Little Hoover Commission issued an unusually blistering report warning that time was running out for California policymakers to resolve the state's corrections crisis. In its study, *Solving California's Corrections Crisis: Time is Running Out*, the Commission urged then-Governor Arnold Schwarzenegger and the Legislature to immediately devise a comprehensive strategy and implement reforms, based on the decades of research, to avoid abdicating governance of California's correctional system to the federal courts.

Later in 2007, the federal courts found that prison overcrowding is the cause of unconstitutional levels of health and mental health care in California prisons and mandated the state reduce its prison population. For several years after, the state unsuccessfully tried to avoid the inevitable through legal maneuvers. In 2011, the state took its first serious step toward resolving the problem by implementing public safety realignment, a historic transfer of low-level offenders from state to local supervision. This move, however important, was not enough to stop the long-term trajectory of prison population growth.

On February 10, 2014, the courts gave California its final reprieve, extending the deadline to reduce prison overcrowding until February 2016. This time, however, the reprieve has teeth. If the state does not meet benchmarks for prison population reductions, it must release offenders early. In return, the state has agreed to stop appealing the court rulings and to implement changes that will provide a long-term solution.

Elected officials can no longer shift the blame onto the federal courts. The three-judge panel waived virtually all laws that might impede the state's ability to achieve the population reduction benchmarks. District attorneys who collectively have opposed even the slightest changes to sentencing laws are going to have to compromise. Judges, who refused to be held accountable in imposing sentences knowing many offenders serve very little time behind bars, must weigh in on system reforms. Sheriffs, part of California's "catch and release" criminal justice system, also must be willing to look beyond bars for solutions. California policymakers and their criminal justice partners must implement reforms to reduce the prison population that have been impossible in the past or be prepared to be held accountable. The prison population reduction cannot be achieved without eliminating the state's chronic imbalance between what its sentencing laws require and the resources available to incarcerate offenders.

Across the nation, there has been a significant attitude shift regarding incarceration. Taxpayers do not want to pay for failed policies that cycle offenders in and out of prison or incarcerate the mentally ill and the addicted for lengthy sentences without access to quality treatment. Research has shown programs and services that provide treatment can be effective in reducing crime.

Scientific research in the past 40 years has led to significant progress in many areas in California. When it comes to criminal justice sentencing, however, California has ignored the science. When policymakers enacted the Uniform Determinate Sentencing Act of 1976, at a time when many believed “nothing works” in reducing crime other than incapacitation, punishment replaced rehabilitation as the purpose of prison time. The law also was designed to create certainty and equality in sentencing. But nearly four decades later, more than a 1,000 laws and dozens of sentencing enhancements have led to a system that no longer makes sense. No longer is there truth or certainty in sentencing. At the same time, the system puts away offenders for increasingly longer periods of time, with no evidence that lengthy incarceration, for many, brings any additional public safety benefit.


California did not arrive at this moment in a vacuum. For most of the 20th century, rehabilitation was the purpose of incarceration. The current crisis provides a moment of opportunity, a time for California to think beyond court compliance. The Commission urges policymakers to amend the penal code to reflect that the purpose of incarceration cannot just be punishment, but also reduced recidivism and successful community reintegration. Rehabilitative programs and reducing crime are not mutually exclusive.

The Commission also urges policymakers to establish a Criminal Justice Information Center that would collect data on sentencing policies and best practices and provide recommendations on opportunities to improve sentencing and public safety. The information, data and guidance provided by this center could establish a path toward an independent sentencing commission, recommended twice before by this Commission and many others. A bill that creates a criminal justice policy institute is under consideration in the Legislature in 2014.

Realignment was a bold beginning. Implemented effectively with community-based programs and services, realignment holds the promise that many offenders will turn their lives around. In this review, the Commission saw opportunities to improve realignment, including requiring all offenders serving local jail time be supervised upon release and have access to appropriate programs and services. The Commission also urges the state to provide incentives to ensure that all counties use some of the billion dollars in realignment funding provided each year and require any new funding from the Recidivism Reduction Fund to pay for proven programs and services through public-private partnerships.

The Commission stands ready to assist you in solving California’s corrections crisis.

Most sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Shapiro". The signature is fluid and cursive, with the first name "Jonathan" written in a larger, more prominent script than the last name "Shapiro".

Jonathan Shapiro
Chairman

SENSIBLE SENTENCING FOR A SAFER CALIFORNIA

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Background

Seven years ago, the Little Hoover Commission warned policymakers to act decisively to address California's correctional crisis or risk ceding control of the system to the federal courts.

Foreseeing the political difficulty in tackling the problem, the Commission also recommended that if elected officials were unable or unwilling to advance reforms, they should turn the job over to an independent board of directors with the power and authority to enact reforms, modeled after the federal Base Realignment and Closure Commission (BRAC). The Commission recommended expanding community-based corrections for low-level, short-term offenders and establishing an independent sentencing commission to assess the state's sentencing laws.

Over the past seven years the corrections time bomb has kept ticking. Despite the Commission's sense of urgency in 2007, Governor Arnold Schwarzenegger and the Legislature allowed the problem to fester. Six months after the Commission issued its report, federal judges appointed a three-judge panel who subsequently found that prison overcrowding was the cause of unconstitutional deficits in health and mental health care. At the time, the agency was recording one avoidable inmate death a week due to insufficient health care. With no support or money to expand prison capacity, reducing the prison population became the only alternative. Eventually, the three-judge panel ruled that California had to reduce the population confined in its prisons to 137.5 percent of capacity. The case ultimately was heard by the U.S. Supreme Court, which in May 2011 upheld the panel's ruling.

Public Safety Realignment

As the three-judge panel ruling was winding its way through the courts, Governor Edmund G. Brown, Jr., and the Legislature historically enacted AB 109, public safety realignment, which shifted responsibility for thousands of low-level offenders and parolees to local authorities. This led to a reduction in the state prison population from an all-time high in 2007 of 173,000 offenders to 134,339 inmates at the end of 2013. Of the new total, approximately 118,700 are incarcerated in the state's 34 prisons.¹ The rest, for the most part, are in out-of-state contract

placements, in-state contract beds or fire camps. The courts have ordered the state to shed thousands more offenders to meet the population cap.²

Realignment has demonstrated that California is serious about addressing its prison overcrowding problem. But even with the historic population reductions, California in January 2013 signaled that it would not be able to achieve additional population reduction requirements set by the court, stating that “the population reductions currently required by the Court cannot be achieved by means that are consistent with sound prison policy or public safety.”³ The state asked the federal court to terminate the population reduction requirement, arguing that it had made significant progress in reducing its prison population through realignment and that its prisons were providing an adequate level of health and mental health care. An April 2012 report issued by the California Department of Corrections and Rehabilitation (CDCR) had previously projected that “realignment alone will not be enough to bring the department into compliance with the Supreme Court order.”⁴ The California prison population reduction effect from realignment bottomed out in February 2013, when total in-custody population dropped to 132,367.⁵ By December 2013, the prison population had grown by nearly 2,000 offenders.⁶

Recent Court Rulings on Overcrowding

In April 2013, the court denied the state’s motion to vacate or modify the population reduction and ordered the state to immediately come up with a plan for compliance to achieve the population reduction by December 31, 2013.

Under threat of contempt, Governor Brown in May 2013 provided a plan to the court on how this additional reduction could be achieved. He proposed accelerated good time credits, which would result in some prisoners getting released sooner, contracting with counties for additional bed space, slowing the planned return of prisoners housed in out-of-state facilities and maximizing offender participation in fire camps. Additionally, the plan included gradually moving seriously ill and some mentally ill offenders to a new 1,800-bed prison health care facility in Stockton, which opened in July 2013.

In June 2013, the court ordered the state to implement the May 2013 plan. In July 2013, the state filed an appeal to the U.S. Supreme Court on the three-judge panel ruling that did not allow the state to vacate or modify the population reduction requirement. In August 2013, the Supreme Court dismissed the state’s request.

In September 2013, policymakers enacted SB 105, which authorized \$315 million in the 2014-15 budget and a total of \$1 billion in additional funding over three years for the state to lease additional prison cells, either county jail space or private correctional facilities both in and outside of California. The same law provided that the state may direct some of the money to programs through a newly established Recidivism Reduction Fund. The Governor's Budget released on January 9, 2014, recommended \$81 million of the budget be directed to the Recidivism Reduction Fund with \$40 million for community-based programs and services and the rest to fund various in-prison and parole programs.⁷

SB 105 also directed the administration "in consultation with stakeholders, including appropriate legislative committees, to assess the state prison system, including capacity needs, prison population levels, recidivism rates, and factors affecting crime levels, and to develop recommendations on balanced solutions that are cost effective and protect public safety."⁸ The chair of the Board of State and Community Corrections has been tasked with leading this initiative.⁹ An interim plan is due in April 2014, and a final plan is due in January 2015.

In the fall of 2013 the three-judge panel ordered the parties in the lawsuit to meet and confer to come up with a plan that would meet and sustain the population reduction requirement. As a result of these meetings, the court initially granted the state additional short-term reprieves to meet the reduction. Also in the fall of 2013, the Assembly convened a Select Committee on Justice Reinvestment, which held hearings to potentially develop legislative proposals to resolve the prison overcrowding crisis.

On January 13, 2014, the court ordered both sides in the lawsuit to file updated briefings indicating how and when prison overcrowding should be reduced. On January 24, 2014, the state requested an additional two years to meet the population reduction deadline. On February 10, 2014, the three-judge panel granted California the two-year reprieve and ordered the state to reduce the adult prison population to 137.5 percent of design capacity by February 28, 2016.

Unlike past reprieves, the February 2014 order requires the establishment of a compliance officer who has the authority to release offenders if the state does not meet the following interim benchmark targets:¹⁰

- 143 percent of design capacity by June 30, 2014
- 141.5 percent of design capacity by February 28, 2015

In granting the extension, the court order indicates the state has agreed to “develop comprehensive and sustainable prison population-reduction reforms and will consider the establishment of a commission to recommend reforms of state penal and sentencing laws.”¹¹ The state also agreed not to appeal the February 2014 court order. The order also directs the state not to increase the number of offenders housed in out-of-state facilities and encourages the state to explore ways to reduce its use of out-of-state facilities. In an opinion related to the court order, the three-judge panel labeled the out-of-state housing solution as neither “durable nor desirable.”¹²

The court, as part of the order, also has waived any laws that might impede the state’s ability to reduce the prison population:

*“To the extent that any state statutory, constitutional, or regulatory provisions, except the California Public Resources Code, impede the implementation of this order or defendants’ ability to achieve the population reduction benchmarks, all such laws and regulations are waived.”*¹³

Measures that Governor Brown proposed in the 2014-15 budget that are now required per the February 2014 court order include expanding the state’s existing Medical Parole Program, establishing a process for parole for offenders who are 60 or older and have served a minimum of 25 years of their sentence and increasing the eligibility of offenders with a second strike to earn good-time credits to 33.3 percent instead of the current limit of 20 percent.¹⁴ The courts have ordered the state to establish a parole process for non-violent second strikers to become eligible for parole consideration once they have served 50 percent of their sentence.

This directive regarding offenders with a second strike is significant in that it makes a change to the Three Strikes Law enacted by voters regarding time served. It also is important because second strike offenders make up a significant and growing portion of the prison population. In its Fall 2013 Adult Population Projections report, the California Department of Corrections and Rehabilitation reported a spike in new admissions of offenders with a second strike in 2012-13, an increase of 32.6 percent over the previous fiscal year.¹⁵

Additionally, the court order expands good time credits for minimum custody inmates, includes a plan to establish 13 re-entry hubs and expands implementation of an existing alternative custody program for female offenders.¹⁶

Other Prison Population Reduction Efforts

During 2013, some of Governor Brown's proposed solutions to prison overcrowding were implemented. As of December 2013, approximately 1,200 offenders had been transferred to the new California Health Care Facility in Stockton, approximately 1,700 additional offenders were shifted to in-state contract beds and approximately 400 offenders were added to fire camps.¹⁷ The state also anticipates that the DeWitt Nelson Correctional Annex, a former state juvenile facility in Stockton, will begin accepting adult offenders in 2014. Approximately 320 female offenders who qualified for the Alternative Custody Program established as a result of legislation enacted in 2010 have been placed in community-based housing for the last 24 months of their sentence. Another 500 women are potentially eligible for the program.¹⁸ Approximately 8,900 offenders remain housed in out-of-state facilities. In January 2014, CDCR announced plans to build three new housing units at two existing prisons to provide 2,376 additional beds for offenders with disabilities and mental health needs.¹⁹

Over the past several years, the state has allocated \$1.7 billion to expand local correctional facilities. The state has awarded \$1.2 billion to 21 counties for an expected expansion of 9,000 jail beds. The Board of State and Community Corrections plans to award another \$500 million to 15 counties for additional local capacity in 2014. To qualify for this funding, counties are required "to build 'better' beds and treatment and programming space versus increasing capacity."²⁰ In the Governor's Budget 2014-15, Governor Brown has proposed an additional \$500 million for more expansion and improvements to local facilities for program space. Priority for this additional funding would be given to counties that use a risk and needs assessment tool to determine pre-trial release.

Enacted in 2009, SB 678 (Leno) also has led to a reduction in the prison population. This legislation provided an incentive to counties to reduce the number of adult felony probationers committed to state prison. It is estimated that this law prevented approximately 15,000 prison admissions in its first two years of implementation.²¹

Other recent changes also have reduced the prison population. As of August 2013, more than 1,300 offenders sentenced under the three strikes law and serving life terms for non-serious, non-violent offenses were released from prison as a result of Proposition 36, a 2012 ballot measure approved by voters that modified the state's three strikes law. Another 1,000 to 1,500 likely will be released as a result of Proposition 36.²²

In 2013, lawmakers enacted and Governor Brown signed SB 260, which will result in an opportunity, beginning in 2014, for approximately 6,500 offenders convicted and sentenced to lengthy prison terms before they turned 18 to have their sentences reviewed by the Board of Parole hearings using different release criteria than for offenders convicted as adults. This also likely will lead to additional releases from prison as these offenders become eligible over time.

The Board of Parole Hearings, in 2012, granted parole to 670 offenders serving life terms, the highest number in one year ever.²³ Governor Brown allowed 377 of the parole grants to be implemented, a much higher percentage than his predecessors. The increase in parole of those serving term-to-life sentences who have served their time and have been deemed no longer a threat to society is a positive trend. But more can be done. Approximately 20 percent, some 25,000 offenders, are serving term-to-life sentences, for example, 15-years-to-life in prison.²⁴ Of these, approximately 10,000 “lifers” have passed their minimum term.²⁵ Nearly a third of the offenders serving life terms with the possibility of parole, more than 8,000 offenders, are 50 years old or older. Almost half of the offenders serving 25 years to life as a result of a third strike, nearly 4,200 offenders, also are older than 50.²⁶ Governor Brown, in his January 2014 budget proposal, indicated the Board of Parole Hearings plans to reduce the hearing timeline from 180 to 120 days, which will allow the board to consider more cases each year. According to data from the California Department of Corrections and Rehabilitation, less than 5 percent of lifers released from prison are returned to prison for a new crime, compared to 51 percent of the rest of the prison population released from prison.²⁷

Commission Study Process

During the Commission’s bail and pre-trial services review, which culminated in a May 2013 letter to the Governor and Legislature, the Commission learned that bed capacity is frequently driving the amount of time convicted felons serve in local jails. With public safety realignment, more offenders who previously went to prison are serving time in local jails. Sheriffs and jail clerks, particularly in counties with jail population caps, often determine how much time an offender serves, despite what sentencing law dictates or what a judge has ordered. This issue existed before realignment, but has been exacerbated by the shift of offenders from state to local facilities.

In 2013 there were approximately 200,000 prison and jail cells available in California. “Judges can say whatever they want about putting people in those cells,” Matt Cate, former secretary of the California Department of Corrections and Rehabilitation, told the Commission in March 2013.

If those cells are not available, he added, “someone else is going to make some other decision. The Supreme Court has done it regarding prison cells. Sheriffs are doing it. Jail administrators are doing it.”

Concerns over these sentencing decisions prompted the Little Hoover Commission to convene two hearings in 2013 to further explore the need for sentencing reform in light of changes that have occurred as a result of realignment. A list of witnesses from these hearings, held in June 2013 in Sacramento and September 2013 in Los Angeles is included in Appendix A. This review builds on the Commission’s recent assessment of bail schedules and pre-trial services, which recommended the state expand oversight of public safety realignment and require every county to use validated tools to conduct risk and needs assessments of all offenders, and its prior reviews of sentencing policies in 2007 and 1994. All of these studies are available on the Commission’s website at www.lhc.ca.gov.

Moment of Opportunity

Despite significant efforts to reduce the state prison population, the long-term structural imbalance between what California's sentencing laws require and its public safety resources remains. California's prisons as of December 2013 remained at 145 percent of capacity, just one percentage point lower than December 2012. The California Department of Corrections and Rehabilitation, prior to the February 2014 court order, projected that the prison population would slowly continue to climb to approximately 136,600 by June of 2014 and more than 142,000 by 2019 barring any additional changes, moving the state away from the 137.5 percent of capacity required by the courts.²⁸

The state cannot afford to continue to build its way out of the crisis. California Penal Code acknowledges this:

“Criminal justice policies that rely on building and operating more prisons to address community safety concerns are not sustainable, and will not result in improved public safety.”²⁹

At the beginning of the state's prison building boom in the early 1980s, adult and youth corrections accounted for 4 percent of California's General Fund expenditures at \$1 billion per year.³⁰ Today, it represents 9 percent of the total General Fund, approximately \$9.5 billion.³¹ This growth has come at the expense of other state priorities including higher education and social services.

With the exception of the recently completed California Health Care Facility and the planned infill housing previously described, California ended its prison-building boom with the opening of Kern Valley State Prison in 2005 after adding 21 new facilities between 1984 and 2005. The state previously had built 12 prisons over the course of 132 years. During the 20-year building campaign, California policymakers enacted hundreds of laws increasing sentence length, adding sentence enhancements and creating new sentencing laws. The end result was that every new prison the state built was quickly filled to capacity.

Voters played a role as well, enacting ballot initiatives, including the Three Strikes Law in 1994, which doubled the sentence length for second strikers and created a 25-year-to-life sentence for third strikers. Another voter-enacted initiative, the 10-20-Life “Use a Gun and You're Done” Law

in 1997, added significant sentencing enhancements to certain serious felonies. In addition to being sentenced for the felony, an enhancement of 10 years of prison time is added if an offender commits certain crimes while in possession of a gun; 20 years prison time is added if the gun is fired, and 25 years to life is added if someone is killed or seriously injured. As a result of the gun enhancement law, a convicted murderer who used a gun to commit the crime could get as much or more time for the sentence enhancement than the actual murder charge. A second degree murder conviction might result in a 15-years-to-life sentence and the gun enhancement would add a 25-years-to-life sentence for a combined 40-years-to-life sentence.³²

Unless lawmakers and the public they represent are willing to build more prisons and commit a greater percentage of the General Fund to corrections to pay for the ongoing expenses of running additional facilities, state prisons, under the current sentencing system likely will remain overcrowded. Without additional, long-term measures, prison overcrowding will continue to be a constant and costly battle for California.

Second Strike Reform

Under current law, defendants convicted with a second strike have their base sentence doubled. In addition, they must serve 80 percent of their sentence and must serve their term in state prison. Non-strikers qualify for good time credit that essentially can cut a prison term in half. Governor Brown in his January 2014 budget proposed changing that requirement to 66.7 percent of their sentence. The February 2014 court order requires implementation of that proposal and directs the state to develop a parole process for non-violent second strikers who have served 50 percent of their sentence.

Currently, 34,353 offenders in state prison, or 26 percent of the total, are second strikers. Of these, 8,851 were convicted of property offenses and 5,257 were convicted of drug offenses. Under current law, an offender with a prior burglary conviction who then is convicted of a drug offense could wind up serving a longer prison term than a person convicted on a first offense of a serious, violent crime against a person. California prisons hold 7,932 offenders convicted with a third strike who are sentenced to a minimum of 25 years to life in prison. Of these, 3,886 or nearly 50 percent are older than age 50. Some suggested opportunities for additional reform include:

- Remove burglary from the list of serious and violent crimes.
- Realign offenders whose prior strike is a burglary from state to local supervision.

Sources: California Department of Corrections and Rehabilitation. June 30, 2013. "Second and Third Striker Felons in the Adult Institution Population." Also, California Department of Corrections & Rehabilitation. August 2013. "Number of Female and Male Offenders by Age, Ethnicity and Offense Category." Also, see endnote 10. Also, Glenn Backes, Public Policy Research and Consulting. Representing Drug Policy Alliance. April 25, 2013. Letter to June Clark, Office of Governor Jerry Brown re: Prison Population Reduction. On file.

Realignment Falls Short

Realignment is the most significant correctional policy change in the nation, but it did not address the structure of sentences, it simply changed the place where the sentence is served. “It doesn’t change one day of time, just where and how people serve their sentences,” retired Placer County Superior Court Judge Richard Couzens told Commission staff.³³ Robert Weisberg, Stanford law professor and co-director of the Stanford Criminal Justice Center, concurred: “The total sum of incarceration hasn’t changed very much; realignment has helped solve overcrowding in the prisons,”³⁴ but it did not directly address sentence length. Judge Couzens, one of the state’s leading experts on sentencing, said that California still faces sentencing challenges, including widespread disparities by county, despite the use of sentencing grids that limit court discretion. California’s leaders still face risks, and costs, for failing to address these problems, despite the state’s progress, he said.

However significant, realignment on its own is not enough to undo nearly four decades of sentencing law expansion. Until the state resolves the structural mismatch between sentencing laws and correctional resources, the state will remain in perpetual crisis.

Changing the Purpose of Incarceration

California has arrived at what one witness described as a “moment of opportunity” for comprehensive sentencing reform.³⁵ Much has been learned in corrections in the past 40 years. Evidence has undercut the premise that punishment is the only thing that can be done with offenders.³⁶ Retribution, although a common goal of penal systems in the United States, is just one sentencing goal in many foreign countries, particularly European countries that also consider incapacitation, deterrence, restoration and rehabilitation as sentencing goals. Peggy McGarry, director of the Center on Sentencing and Corrections, Vera Institute of Justice, testified to the Commission that California and other states in the U.S. seem to be stuck in a punishment-based system popular in the 1970s. Despite nearly four decades of research on policies that reduce crime, many states are unwilling to relinquish punishment as the top priority, even though this philosophy has resulted in a drain of resources from education and health care to fund incarceration. “If we now know that we can influence and impact behavioral outcomes for most offenders with appropriate assessments and targeted interventions, why would we continue to create or maintain sentencing policies that are based on a ‘punishment only’ model and spend huge amounts of money on sending so many people to prison and keeping them there for long periods of time?” Ms. McGarry testified.

“The conversation must change from ‘how much can we punish’ to ‘what are we doing that promotes public safety and fewer victims.’”

Peggy McGarry, director of the Center on Sentencing and Corrections, Vera Institute of Justice

According to witnesses who testified at the Commission's June 2013 public hearing, California now faces conditions not unlike it did in the 1970s under indeterminate sentencing. The Adult Authority that made decisions regarding parole release was charged with simultaneously being excessively harsh and discriminatory with some offenders and too lenient with others. Lawsuits claimed race and gender discrimination. Victims' rights advocates argued that dangerous offenders were being paroled too early. In response, California passed the Uniform Determinate Sentencing Act, initially providing certainty and equality in sentencing. In addition to providing equity and certainty, the law also changed the purpose of incarceration, which for sixty years had been "to put before the prisoner great incentive to well-doing...the purpose is to strengthen his will to do right and lessen his temptation to do wrong."³⁷ At a time when many believed "nothing works" in reducing crime other than incapacitation, punishment replaced rehabilitation as the function of prison time. As a result, the California Penal Code was amended to read, "the Legislature finds and declares that the purpose of imprisonment for crime is punishment."³⁸

Over the next three decades, the determinate sentencing structure has been radically re-written – law by law – with no evaluation of the laws for their effect on public safety. Today, there are more than 1,000 felony sentencing laws and more than 100 felony sentence enhancements across 21 separate sections of California law.³⁹

In recent years, California effectively has returned to a dysfunctional system of indeterminate sentencing. The federal court, in ordering the reduction in the prison population and the counties, implementing 58

Beyond Punishment: Penal Code Provisions to Improve Public Safety

California's Penal Code Section 1170(a)(1) states that the purpose of imprisonment is punishment. The Legislature expresses repeatedly, however, through other sections of the Penal Code, that improving public safety depends on measures beyond punishment. The next section of the Penal Code, Section 1170(a)(2) exhorts the state to develop policies and programs to "educate and rehabilitate" nonviolent felony offenders. Later, declaring that "there is a correlation between prisoners who are functionally literate and those who successfully reintegrate into society upon release" the Legislature, in Section 2053, mandates that the Department of Corrections and Rehabilitation offer programming to bring prisoners to at least a ninth-grade reading level, and for those reading at a ninth-grade level or higher, assistance in obtaining a high school diploma or general equivalency degree and further mandates access to college classes and career technical education. The Preliminary Provisions of the Penal Code state, in Sections 17.5(a)(3),(4) and (8), that prisons alone are not enough to improve public safety and that California must use its criminal justice resources to support community-based corrections programs and evidenced based-practices. These include community supervision, restorative justice, education, work release, substance abuse, mother-infant care and multi-faceted residential programs, among others. The law is clear: punishing criminals is not sufficient. Improving public safety includes education and rehabilitation.

different versions of realignment, are administering justice in California. Echoing the concerns of the '70s, a victims' rights advocate told the Commission that good-time credits and early release have weakened sentences and no longer is there truth or certainty in sentencing.⁴⁰

Advocates for sentencing reform told the Commission that laws and enhancements have created a system that puts away offenders for increasingly longer periods of time at great cost to the public, without any evidence that lengthy incarceration, for many offenders, brings any additional benefit. The executive director of Californians for Safety and Justice testified to the Commission that data show little is gained from multiple years of incarceration, particularly when there are no programs to address the underlying criminogenic tendencies. It can be counter-productive and can in fact lead to more crime when offenders are eventually released.⁴¹ The Pew Center on the States also has done research on the high cost and low return of longer prison terms.⁴²

Now that the majority of low-level offenders are not going to prison, the offenders who are sentenced to prison have committed more serious and violent crimes and will serve longer sentences. The average sentence and credits for offenders in prison in 2012 was 57.3 months, up from 45.8 months in 2010, prior to realignment.⁴³ The average sentence and credits for offenders in prison in 1992-93 was 23.6 months.⁴⁴ Prior to realignment, offenders sentenced under the Determinate Sentencing Act made up the majority of offenders, roughly 58 percent, compared to 45 percent post-realignment. Offenders with a strike or those serving life with the possibility of parole now make up the majority of the population, 32 percent and 19.5 percent respectively. Death row inmates and those sentenced to life without the possibility of parole represent the smallest portion of the prison population, just 4 percent.⁴⁵

Sentencing Based on Science

California can continue to chip around the edges and let the federal courts govern the state's correctional system, or take the lead. California first must define new goals for criminal justice sentencing and incarceration beyond punishment, including improving public safety by implementing programs and services proven effective in promoting successful reintegration of offenders into communities and reducing recidivism.

The state also should assess whether the current labyrinth of sentencing laws achieves its public safety goals and, if not, develop a sentencing system based on the evidence of what works and move away from the failed strategies of the past that have led to prison overcrowding and the highest recidivism rates in the nation.

Extensive research has been done on “what works.” The Washington State Institute for Public Policy, a non-partisan research organization, for more than two decades has analyzed evidence-based programs that reduce crime and save money. In a November 2013 report updating its earlier work, the institute found alternative sentencing for drug offenders as well as in-prison treatment, educational and vocational programs, community-based employment and job training programs to have high benefit-cost ratios and a high likelihood of successful outcomes.⁴⁶

In California, a study of in-prison drug treatment programs with aftercare for offenders upon release into the community found a significant reduction in recidivism – a one-year return-to-custody rate of 8 percent compared to a 50 percent return rate for a control group and a 42 percent return-to-custody rate after five years compared to 80 percent return-to-custody rate for a control group.⁴⁷

Ideally, California should establish an independent sentencing commission as recommended by this Commission in 1994 and 2007, and by many others. An independent sentencing commission would have the authority to develop sentencing guidelines that would become law unless rejected by a majority vote of the Legislature, thereby removing the politics from the policy that so broadly affects California. It would be a clearinghouse for all sentencing and offender data and would assess all proposed sentencing law changes for their potential effects on criminal justice policies and correctional system resources.

Evidence-Based Options to Reduce Crime

The Washington State Institute for Public Policy, established by the Washington State Legislature in 1983, conducts non-partisan research and has done significant benefit-cost analysis on criminal justice programs and policies. The institute’s research approach includes three steps: an analysis of “what works” and what does not work to improve outcomes, using a statistical technique called meta-analysis; a calculation of whether the program’s benefits exceed its costs; and, the risks of investing in a program value. In a November 2013 report, the institute found several types of programs have both a high benefit to cost ratio and a 99 percent chance or higher for providing a positive net value. These programs include:

- Alternative sentencing for drug offenders
- Educational programs in prison
- Inpatient/intensive drug treatment during incarceration
- Outpatient/non-intensive drug treatment during incarceration
- Cognitive behavioral treatment for high and moderate risk offenders
- Employment training/job assistance in the community

As far as programs that provided a negative net value, the institute found intensive supervision with only surveillance and case management in the community without swift and certain sanctions to cost more than the benefits provided.

Source: Steve Aos and Elizabeth Drake. Washington Institute for Public Policy. November 2013. “Prison, Police and Programs: Evidence-Based Options that Reduce Crime and Save Money.”

Sentencing Reform Efforts

After the Commission's 2007 report was released, the Legislature introduced two sentencing reform bills in 2007 that proposed establishing a sentencing commission. The bills failed due to political disputes unrelated to the legislation. Another attempt was made in 2009 when a sentencing commission was included in part of a corrections budget reduction package, but was pulled prior to a final vote.

Little progress in California sentencing reform at the legislative level has been made since, though the Legislature and Governor Schwarzenegger enacted a change to the law governing simple marijuana possession, imposing a fine instead of requiring a fine and a court appearance.

In 2009, the Legislature on a vote split primarily along party lines, enacted SB 18XXX (Ducheny), which increased the threshold for determining whether theft and various other property crimes are a misdemeanor or a felony from \$400 to \$950. This effectively reduced the severity of various property crimes. A ballot measure, created by San Diego Chief of Police William Lansdowne and San Francisco District Attorney George Gascón, introduced in 2014 would similarly increase the dollar threshold for several other low-level crimes and reduce several low-level drug offenses to misdemeanors.

It is notable that SB 18XXX and AB 109, the realignment legislation, were both enacted as budget trailer bills. Neither was heard by policy committees although both affected public safety policies. AB 109 mushroomed from a one-page placeholder bill introduced on January 10, 2011, into a 663-page revision of nearly 600 sections of statutory code on March 14, 2011. On March 16, 2011, AB 109 was passed by the Senate Budget & Fiscal Review Committee with an 11-5 vote along party lines. On March 17, 2011, AB 109 was enacted 24-16 in the Senate and 51-27 in the Assembly. The bill analyses reflected neither support nor opposition. On April 4, 2011, just three weeks after the bill was amended, Governor Brown signed AB 109 into law.

Since 2007, there essentially has been a moratorium on enacting any new legislation that might lead to longer sentences. In 2007, Senator Gloria Romero, as chair of the Senate Public Safety Committee, implemented the Receivership/Overcrowding Crisis Aggravation (ROCA) policy, which prevented any legislation that might increase prison sentences from passing out of the policy committee. Although Senator Romero termed out of office, each of her successors as chair of the Senate Public Safety Committee has kept the ROCA policy in place.

One significant exception was the enactment of Chelsea's Law (AB 1844 Fletcher), named in honor of a young woman who disappeared while on a run in a community park and was raped and murdered by a convicted sex offender. The law, unanimously approved by legislative policy committees and both houses of the Legislature, was signed by Governor Arnold Schwarzenegger in September 2010. The law, among other things, lengthens prison sentences for various sex offenses.

In 2013, the Legislature enacted SB 649 (Leno), legislation that would have given prosecutors the flexibility to charge possession of cocaine, crack cocaine and heroin as either a misdemeanor or a felony, aligning with existing flexibility for possession of methamphetamine and certain other drugs. The California District Attorneys Association opposed the bill even though it would have created greater discretion in filing charges. Governor Brown vetoed the bill, stating, "We are going to examine in detail California's criminal justice system, including the current sentencing structure. We will do so with the full participation of all necessary parties, including law enforcement, local government, courts and treatment providers. That will be the appropriate time to evaluate our existing drug laws."

Also in 2013, legislation was proposed to create an Advisory Commission on Public Safety to review sentencing laws and make recommendations for reform and to provide more resources for community-based treatment and services. This was a counter to SB 105, Governor Brown's proposal to spend an additional \$1 billion to contract for additional prison bed space. In a compromise, SB 105 was amended to provide additional resources that conditionally would be diverted from the \$1 billion for contract beds to community services if the courts grant the state additional time to achieve the population reduction. The advisory commission was not included in the compromise. In February 2014, the courts granted the state additional time to achieve the population reduction.

San Francisco has taken a lead by establishing a 13-member sentencing commission “to encourage the development of criminal sentencing strategies that reduce recidivism, prioritize public safety and victim protection, emphasize fairness, employ evidence-based practices and efficiently utilize San Francisco’s criminal justice resources.”⁴⁸ The commission serves as an advisory body for the district attorney, the mayor and the Board of Supervisors. The San Francisco Sentencing Commission provides a model from which the state can learn.

Much of the crucial data needed to inform responsible policymaking is not being collected. Though it was one of the nation’s largest and most significant criminal justice policy shifts, the realignment legislation did not require standardized statewide data reporting. Instead, the Board of State and Community Corrections and the Chief Probation Officers of California collect county data submitted on a voluntary basis. The board also is working with the Public Policy Institute of California on a review of

Crime Rates and Realignment – What We Know and What We Don’t Know

Violent and property crime increased slightly in California in 2012, corresponding with a nationwide increase in crime, but without the appropriate data, it is difficult for policymakers to know if realignment or other factors were responsible for the increase. Yet crime rates in many counties are down. Despite the significant number of offenders realigned from state supervision to Los Angeles County supervision, crime in Los Angeles County in 2012, the first full calendar year of realignment implementation, remained at an all-time low, the second lowest in 42 years. Los Angeles also experienced the lowest number of homicides in 2012 since 1970, decreasing by 2.58 percent compared to 2011. In Richmond, a city in Contra Costa County that in 2008 was ranked one of the nation’s 10 most dangerous cities, crime also continued a decade-long decline with total reported crimes more than 40 percent lower in 2013 than in 2003.

The Public Policy Institute of California reported in a December 2013 study on realignment and crime rates that a slight increase in violent crime in California between 2011 and 2012 was consistent with trends from other states and likely was not related to realignment. In contrast, the study found evidence that realignment is related to increased property crime, specifically a significant increase in auto theft. The study concluded that even with the increase in auto theft, alternatives to incarceration, such as increased policing, provided a more cost-effective approach to crime prevention. The Center on Juvenile and Criminal Justice (CJCJ), using different assumptions, did not find a causal link between realignment and motor vehicle theft in its study of violent and property crime for the year 2012. Working off the assumption that, if realignment causes crime, then the places with the highest proportions of realigned individuals would experience the largest increases in crime, CJCJ actually found the difference in motor vehicle thefts trends was small between high and low realignment counties. In addition to its research on crime rates, the Public Policy Institute of California in August 2013 entered into a memorandum of understanding with the Board of State and Community Corrections to collect and analyze realignment data in 10 counties; that effort is expected to be completed by the end of 2014.

Sources: California Department of Justice. “Crime in California: 2012.” <http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd12/cd12.pdf?> Accessed August 26, 2013. Also, 2012 Los Angeles County Annual Report. <http://www.lacountyannualreport.com/2012/printreports.html>. Accessed September 5, 2013. Also, Richmond Police Department. Also, Robert Rogers. January 6, 2013. “Richmond Reports Lowest Homicide Total in 33 Years, Credits Multipronged Efforts.” *Contra Costa Times*. Also, Public Policy Institute of California. December 2013. “Public Safety and Crime Rates in California.” Also, Mike Males and Brian Goldstein. January 2014. “California’s 58 Crime Rates: Realignment and Crime in 2012.” San Francisco, CA. Center on Juvenile Crime and Criminal Justice. http://www.cjcj.org/uploads/cjcj/documents/CJCJ_2014_Realignment_Report.pdf. Accessed February 4, 2014.

10 counties, with a report anticipated near the end of 2014.

In January 2014, the California State Senate enacted SB 466 (DeSaulnier) with a vote of 28-6 that would establish the California Institute for Criminal Justice Policy as an independent data-driven institution that would “promulgate best practices in criminal justice and guide the state in a transition from a problem-plagued justice system to evidence-based practices.”⁴⁹ The institute would conduct cost-benefit analysis on pending legislative measures related to criminal justice policy for the Legislature and develop a statewide plan for public safety and strategies based on data and science that reduce recidivism and hold offenders accountable. The legislation requests that the University of California house the institute. As proposed, the institute would be funded in its first year by private money, and in later years be funded through the annual Budget Act and would sunset on January 1, 2018. As of February 2014, the bill was under Assembly consideration.

Summary

The federal court has granted California policymakers what they asked for – two more years to implement long-term, durable solutions to correct prison overcrowding. California should seize the moment and set new goals for incarceration and instill new measurements for success. Ideally, the state should establish an independent sentencing commission and use science and evidence to guide sentencing decisions. Given the numerous futile attempts to establish a sentencing commission in California over the past three decades, the Commission urges policymakers instead to establish a Criminal Justice Information Center that would collect and analyze data, review California’s sentencing structure and make recommendations for reforms to the Governor and the Legislature. Such a center could create a path to a sentencing commission.

Recommendation 1: The Governor and the Legislature should amend Penal Code Section 1170 to state that the purpose of imprisonment for crime is punishment as well as successful offender reintegration and reduced recidivism.

Recommendation 2: The state should establish a Criminal Justice Information Center to collect data on sentencing policies and best practices and provide recommendations on opportunities to balance the state and local correctional resources with the state’s sentencing structure while maintaining or improving public safety.

- The data and guidance provided by the center could create a path toward establishing an independent sentencing commission.***
- The center should be housed in a university or non-partisan, nonprofit organization.***

Sentencing: Local Effects

In addition to revisiting prior work on sentencing, the Commission as part of this review, also examined how changes resulting from realignment have affected sentencing and supervision at the local level. As stated previously, the public safety realignment legislation did not change the structure of sentences, it simply changed where and how people serve their sentences. With public safety realignment, more offenders who previously went to prison are serving time in local jails. Many counties have jail overcrowding and court-imposed jail population caps. As a result, sheriffs and jail clerks often determine how much time an offender serves, despite what sentencing law dictates or what a judge has ordered.

The realignment legislation included two new sentencing options, split sentencing and flash incarceration. Split sentencing provides an opportunity for judges to sentence an offender to county jail for part of the sentence and to mandatory supervision following the jail term. Flash incarceration gives probation officers the authority to immediately incarcerate an offender who violates the terms of post-release community supervision for up to 10 days. The idea, based on a successful program in use in Hawaii, is to modify behavior through swift and certain sanctions.

Many of the problems identified as overarching sentencing issues in this and prior Commission reviews have been exacerbated by realignment, particularly sentencing disparities among counties, specifically in terms of the use of split sentencing and the availability of community-based alternatives to incarceration.

Sentencing Disparities

In its 2007 study, the Commission found that sentences for similar crimes can vary significantly by county and by courtroom in California. In this review, the Commission found the use of split sentencing varies widely. In Los Angeles County, approximately 6 percent of offenders sentenced after realignment have been given a split sentence. In Contra Costa County, 89 percent of offenders have split sentences.⁵⁰ Los Angeles County judges told Commissioners that they prefer, when appropriate, to sentence an offender to probation and retain the threat of

possible jail time as a tool to encourage an offender to comply with the terms of probation.⁵¹ The lack of appropriate community-based programs also can be a driver in the huge variance in the use of the split sentence. Additionally, the vast majority of sentences are settled through the plea bargaining process. Defendants who already have served much of their sentence before the plea agreement may not want the additional supervision required by a split sentence.

Witnesses at the Commission's public hearings decried not only the

Contra Costa as a Model for California

In a climate in which county jails – many overcrowded before realignment – are filled to capacity and sheriffs under court-ordered population caps must decide which inmates to release, Contra Costa County provides a model of successful correctional resource management.

Contra Costa has a correctional population – including offenders incarcerated in state prisons and local jails and offenders on parole and felony probation – at a rate that is half the statewide average in California. The ninth largest county in the state, Contra Costa County includes Richmond, a city long-troubled by crime, as well as several other cities in the northern part of San Francisco's East Bay. Its crime and arrest rates are similar to statewide averages. A January 2014 review of correctional management practices in Contra Costa identified several key factors:

- Contra Costa County, even before realignment, sent only 13 percent of felony offenders to prison, compared to a statewide average of 20 percent.
- It has the state's highest rate of split sentences, a rate of 89 percent, compared to a statewide average of 28 percent.
- Probation terms in Contra Costa are shorter than in other counties, typically 24-36 months instead of five years.
- Its three-year recidivism rate for felony probationers was 20 percent, compared to a statewide average of 60 percent or higher.

Researchers from the JFA Institute who conducted the study determined that a historically strong collaboration among criminal justice agencies was key to the success. When realignment was first implemented, there was consensus that maximizing split sentencing would better serve the offender population, as it allows additional correctional measures, often more rehabilitative than jail time alone, and permits the continued supervision and support for the offender as he or she reintegrates into the community. The researchers found that in Contra Costa County, the district attorney supports split sentencing because it allows for supervision under probation; the public defender supports it because it reduces the time offenders are incarcerated; the sheriff supports it because it reduces the potential for jail crowding and courts view it as a cost-effective correctional measure proportional to the crime. Additionally, Contra Costa County allocates approximately 60 percent of its realignment funds to programs and services, including probation, the public defender's office, health services and contracted programs.

The JFA Institute concluded that other jurisdictions can potentially manage their criminal justice resources better by coordinating their activities and making sentencing decisions that are proportional to the crimes committed. It also found that probation can produce better results by relying on shorter, more effective terms of supervision and targeted treatment services, many of which are already available from existing agencies and organizations.

Source: James Austin, Robin Allen and Roger Ocker. January 2014. "Contra Costa County: A Model for Managing Local Corrections." JFA Institute. http://libcloud.s3.amazonaws.com/211/7e/c/319/JFA_ContraCosta_report.pdf. Accessed February 6, 2014. Also, James Austin. "Viewpoints: One County's Success Story with Realignment." January 19, 2014. [Sacramento Bee](#).

disparities in using split sentencing, but the challenges posed when an offender serves straight jail time and has no post release supervision. These offenders who formerly would have been sent to prison and released to three years of state parole supervision are now sent back into the community with no supervision and, in many cases, no access to programs and services that would promote successful reintegration. A recent survey of 112 California judges conducted by the Stanford Criminal Justice Center revealed the majority of judges prefer “jail with a tail,” a combination of jail time and rigorous community supervision. The report summarizing the survey recommended that counties enhance and increase the availability of effective community-based treatment resources, as improved programs likely would increase judges’ confidence in embracing split sentencing.⁵²

Governor Brown, in his January 2014 budget, proposed legislation that would require all felony sentences resulting in county jail time to be split sentences “unless the court finds it to be in the interests of justice based on facts in the particular case to impose a straight sentence.”⁵³ Mandatory supervision would provide an opportunity for these offenders to participate in re-entry programs that provide treatment, education and vocational skills that will help prevent a return to jail or prison.

In this review and its prior review of bail and pre-trial services, the Commission found great variances in the availability of community-based programs and services. The basis for realignment was that counties would be positioned to best serve the low-level offenders in the community, both through the criminal justice system and in providing services to help them succeed. A certain amount of latitude would be necessary for counties to be able to tailor spending and programs to their communities’ needs, but the state did not provide any statewide standards for using the nearly \$1 billion it provides annually to the counties and does not evaluate how those funds are spent. Instead, the state requires that each county create a spending plan that is developed by a Community Corrections Partnership that is chaired by the chief probation officer. Other members include the district attorney, public defender, presiding judge of the superior court, a chief of police, sheriff, and a representative from social services. The Community Corrections Partnership submits its plan to the county Board of Supervisors, which can only overturn the plan with a four-fifths vote.⁵⁴ Consequently, an individual’s experience with the criminal justice system and their chances of successfully reintegrating into the community afterward and not recidivating vary dramatically by county.

In addition to the sentencing disparities, realignment has resulted in many offenders serving prison-length sentences in jails not equipped for long-term populations. Before realignment, the maximum stay in a

county jail was one year. Under realignment, convictions that will now be served in county jails can be as high as 20 years for a single charge, before adding time for aggravating factors or enhancements.⁵⁵ According to a California State Sheriffs Association survey, 1,153 offenders had been sentenced to five or more years of jail time as of February 2013.⁵⁶ The most common crime resulting in a local long-term sentence is drug trafficking. Governor Brown, in his 2014 budget, proposed housing offenders serving 10 years or more in state prison, if and when the state achieves the court-ordered population cap. The Legislative Analyst has cautioned that such a change could create a fiscal incentive for counties to seek longer sentences.⁵⁷ Policymakers also should consider whether these lengthy sentences and sentencing enhancements are appropriate for non-serious, non-violent, non-sex crimes.

Reforming Drug Laws

Governor Brown, in his veto message for SB 649 (Leno), a law which would have given prosecutors discretion in whether to charge possession of cocaine, crack or heroin as a misdemeanor or a felony, indicated the administration had plans to examine the current sentencing structure and such a review would be an appropriate time to evaluate existing drug laws. Like the rest of the nation, California enacted numerous laws in the 1980s and 1990s in an attempt to tackle illicit drug use and the many crimes related to addiction and illegal drug sales. Other states and the federal government have begun efforts to dial back some of the harsher sentences associated with drugs.

Efforts are already underway at the federal level to reduce the number of years spent in prison for low-level drug crimes. Federal sentencing law already includes a “safety valve” that allows judges to disregard mandatory minimum terms when a defendant is a low-level, non-violent offender and has cooperated with the investigation. The U.S. Attorney General in 2013 announced that low-level, non-violent, non-gang offenders will no longer be subject to mandatory minimums but will be charged with offenses commensurate with their crimes. The Smarter Sentencing Act, introduced in the U.S. Senate, if passed, will considerably reduce mandatory minimums for drug crimes.

Currently, California’s drug sentencing is on par with federal sentencing, though California judges lack the safety valve that would give them greater discretion in sentencing lower-level offenders. If the Smarter Sentencing Act is passed, California’s drug laws will be much harsher than those at the federal level.

In testimony to the Commission, Lynne Lyman, California state director of the Drug Policy Alliance, provided recommendations on specific areas of laws, that if amended, could substantially address the overcrowding crisis. Her recommendations include:

- Establishing parity for crack cocaine sentencing, which would equalize the penalty for possession of cocaine base (crack) for sale to the penalty of possessing cocaine in powder form for sale.
- Reducing the penalty for possession of controlled substances for personal use to a misdemeanor.
- Reforming significant sentencing enhancements for prior drug sales or possession-for-sale convictions by lowering enhancements from three years to one year and only applying the sentencing enhancements after two or more convictions.
- Rewording the language for enhancements for volume and weight of drugs involved so that the enhancements apply to those involved in the planning, direction, or financing of the underlying offense, rather than to low-level drug trade workers.
- Allowing all non-violent drug possession offenders to qualify for drug treatment diversion; realigning all non-violent drug felony offenders unless they have two prior strikes; exempting all non-violent drug felonies from Three Strikes and reducing prior conviction enhancements for non-violent drug offenses.

Source: Lynne Lyman, California State Director, Drug Policy Alliance. September 26, 2013. Written testimony to the Commission.

Using Data to Guide Local Sanctions

A key premise of the realignment legislation was that local sanctions would include a continuum of options including electronic monitoring, treatment programs for substance use disorders and mental illness as well as jail incarceration. But the state does not require counties to report how they spend the nearly \$1 billion provided annually for supervision as well as programs and services for realigned offenders. As a result, it is hard to compare the availability of programs and services across California, much less whether or not available programs are effective.

Local Community Corrections Partnerships, which decide how the realignment funding is spent in each county, generally emphasize law enforcement in their allocation decisions.⁵⁸ At the Commission's September 2013 hearing in Los Angeles, witnesses representing the provider community expressed concerns that even when funds are designated for treatment and re-entry services, they still are not reaching the service providers.

The California Association of Alcohol and Drug Program Executives sent a letter to the Director of the Substance Abuse Prevention and Control (SAPC) division of the Los Angeles Department of Public Health outlining year-long delays in awarding substance abuse treatment contracts.⁵⁹ Commission staff spoke with the SAPC director in September 2013, nearly two years after public safety realignment implementation began. He explained that the delays were due to a competitive bid process that includes scoring, notifying and creating a list of pre-qualified providers.⁶⁰ Witnesses expressed concerns that it is not clear how the funding for treatment was spent in the interim. Further complicating the issue is the fact that at least part of the Los Angeles County Board of Supervisors acknowledged being unaware of the funding delays. Statewide, Community Corrections Partnerships must submit their AB 109 funding plans to their county board of supervisors for approval, but there is limited oversight afterward of how the funds actually are spent.

Providers also testified regarding the need for reality-based funding. There is general agreement that a lifetime of substance abuse problems and poor decision-making will not be resolved in a 30-day drug rehabilitation program. Providers estimate that a minimum of six months to a year of wraparound services are needed.⁶¹ Ultimately, they point out, the state must decide if it wants to repeatedly incarcerate offenders or help them solve their underlying problems.

In addition to public safety realignment funding, the 2013-14 Budget Act included approximately \$206 million to strengthen local mental health

services. A primary goal of this funding is to increase access to intervention and treatment services to reduce recidivism.⁶² As stated previously, Governor Brown has proposed providing an additional \$40 million for community-based programs and services from the Recidivism Reduction Fund. Implementation of the Affordable Care Act in California also will provide funding for mental health and substance abuse treatment, as California expanded Medi-Cal benefits to childless adults. Prior to release from prison to state or local supervision, offenders should be given resources to apply for Medi-Cal benefits, when appropriate, so that they are able to access services upon release.

The Commission has previously called for expanded oversight of realignment spending. At a minimum, counties should be required to annually provide an accounting of how realignment money was spent and make this information available on a county website and on the Board of State and Community Corrections website. Beginning in 2013-14, the state requires counties that accept a portion of nearly \$8 million that the state has been providing to county Community Corrections Partnerships to report to the Board of State and Community Corrections on the outcomes adopted in each county community corrections plan and progress in meeting those outcomes.⁶³ This information also should be made available on state and local websites.

State associations, including the Chief Probation Officers of California, the California State Association of Counties and the California State Sheriffs Association have made information on best practices available on their websites and at their conferences. The state should continue to encourage counties to expand proven practices that reduce recidivism. The state should hold counties accountable for adhering to best practices and proven programs and require counties to report outcomes for any additional state funding provided to counties from the new Recidivism Reduction Fund.

The Commission learned that many counties are using effective tools to assess flight risk, violence and re-offending. These tools could be used to move pre-trial detainees out of jail while awaiting trial and inform sentencing and post-release community supervision decisions. Despite the valuable potential of these tools, they currently are not used by all counties. Similarly, there is substantial data on reducing recidivism that is only being used partially, if at all. The Commission, in its May 2013 report on bail and pre-trial services, recommended that validated risk and needs assessments should be mandatory in each of California's 58 counties.

Legislation enacted by the Senate in January 2014, SB 210 (Hancock), adds criteria for a court to consider when setting bail and determining

eligibility for pretrial release. The legislation would require a court to consider a defendant's ties to the community, current participation in educational and vocational training and mental health or drug dependency issues as well as consideration of the nature and circumstances of the crime. It also would authorize a local government agency to conduct a pretrial investigation report including results from an evidence-based risk assessment tool.⁶⁴ As of February 2014, the legislation was under consideration by the Assembly.

Governor Brown has proposed that counties using risk and needs assessments be given priority for new funding for local facility expansion. The state should also give priority for Recidivism Reduction Fund money to counties that use risk and needs assessment tools.

Public-Private Partnerships

Throughout this study, Commission staff heard from officials who were worried that trying something new would make them seem soft on crime and hurt their chance of reelection. California does not have to invent new methods of treating offenders and could do more to incentivize counties to invest in programs proven to be effective in other places.

Effective re-entry programs are critical to both reducing the prison population and making realignment a success. Prison census data indicates that 96 percent of offenders incarcerated in state prison will re-enter their community.⁶⁵ The California Department of Corrections and Rehabilitation reports that 63.7 percent of individuals released from state prison recidivate within three years of their release.⁶⁶ As a result of public safety realignment many offenders released from prison and formerly supervised by state parole are now supervised by county probation departments.

Recidivism by offenders released from county jail is thought to be lower; the Los Angeles Police Department records it at 57 percent for Los Angeles County.⁶⁷ Reliable statewide data is unavailable, however, and there is a lack of agreement on a standard definition of recidivism. Public safety depends on strong re-entry services and one of the ways this can efficiently be accomplished is through public-private partnerships where public money is used to fund community-based organizations.

The Commission heard from several providers that not only shared their ideas, but shared with the Commission some of their financial information that highlighted how public-private partnerships could be beneficial to the state, the provider community and offenders. Amity

Foundation provides access to in-prison education and 9,000 in-prison treatment beds in California. It also has two post-release facilities, in Los Angeles and San Diego, which provide transitional housing, education, therapeutic and family reunification services to their clients. The National Institute on Drug Abuse funded two studies on outcomes for offenders who participated in the Amity in-prison program followed by aftercare in the community. Researchers found a substantial reduction in recidivism. Offenders who participated in in-prison drug treatment in therapeutic communities and completed an aftercare program in the community had a one-year return-to-custody rate of 8 percent, compared to a 39 percent recidivism rate for those who just completed in-prison treatment and a control group with a one-year return-to-custody rate of 50 percent. A follow-up study found that offenders participating in in-prison treatment followed by aftercare in the community had a five-year return-to-custody rate of 42 percent as compared to more than 80 percent for those completing only in-prison treatment or the control group. Also key is replicating the effective model. Researchers in a recent paper noted that outcomes may be different in the evaluated programs today as the California Department of Corrections and Rehabilitation, due to budget cuts during the recession, shortened the in-prison treatment program and reduced aftercare availability. ⁶⁸

A Proven Practice for Young Adult Offenders

Research has shown that young adult offenders, between 18 and 25, respond positively to the same treatments that have been effective with teenagers. Ridge View Youth Services Center, in Colorado, is a public-private partnership that provides education, discipline, treatment and other services to young offenders with the goal of successfully reintegrating them into their community. Currently, the majority of young adult offenders in California are housed in adult prisons.

Board of State and Community Corrections member and Anti-Recidivism Coalition Founder Scott Budnick suggested to Commission staff that California establish a pilot public-private partnership to provide the same sort of program as Ridge View for certain young adult offenders with sentences of 10 years or less. These young adult offenders would be removed from the general population and provided education and other programming to assist them in reintegrating into the community.

Commissioners and staff also met with officials from Homeboy Industries, which provides training and jobs plus myriad support services, including case management, education, life skills, trauma-informed clinical services, legal consultations and tattoo removal to formerly gang-involved and recently incarcerated individuals. It also delivers numerous services to at-risk individuals in the community

University of California, Los Angeles, researchers are studying participants in Homeboy Industries' 18-month job training and wraparound services program. They have found a four-year recidivism rate of 33 percent in their sample study.⁶⁹ The annual cost of the program per trainee is \$31,000, including the cost of the trainee's

wages.⁷⁰ By comparison, imprisoning an adult in a state facility costs \$60,032 per year and incarcerating a youth in a state facility costs \$202,133 per year.⁷¹ Three-year recidivism rates for released felons are 63.7 percent for the adult population, 70.3 percent for males between 18 and 24 years of age and 53.8 percent for juveniles.⁷²

Leveraging Partnerships and Volunteers

Public-private partnerships in criminal justice often utilize the expertise of qualified providers who are experienced with post-release offenders, use proven service delivery models and shed the risk of developing new models from the state or the county to the service providers. Competition allows state and local governments to contract with those who provide the best results and provides government an opportunity to leverage partnerships that the service providers have already created to maximize resources. Amity Foundation, for example, has developed partnerships that allow it to provide medical, dental, legal, job placement and housing services at approximately \$8,000 per year, per individual. Homeboy Industries is able to provide more than \$4,000 of volunteer services to each trainee through partnerships it has developed.

Partnerships Beyond Funding

The Commission heard from several providers who pointed out the need for public-private partnerships to encompass more than funding services. Susan Burton, founder of A New Way of Life residential programs for women, discussed with Commission staff the negative impact the early-morning residency checks by teams of Los Angeles Police Department officers had on her clients who were getting ready for work or job-searching. In a more recent conversation, Ms. Burton acknowledged improvements. At the September 2013 hearing, Amity Foundation's Mark Faucette echoed the concerns on residency checks and described police teams in SWAT gear entering the facility.⁷³ Another service provider remarked to Commission staff that the police could simply give them a phone call instead of expending so many resources and scaring neighbors of the facility. LAPD Chief Charlie Beck acknowledged that there are flaws in the relationship between police and post-release offenders, but stated that his officers have no information about the offenders and do not know the situation they are entering when they conduct a residence check or arrest an offender and that he has to protect his officers.⁷⁴

Summary

In this review, the Commission was concerned about sentencing disparity, particularly the significant differences statewide in the use of the split sentence. At its September 2013 hearing, law enforcement leaders from Los Angeles expressed concern that so many offenders who formerly would have three years of parole supervision upon release from prison, were now released from jail with no supervision. Key to successful reintegration is not only local supervision but available programs and services that can help offenders successfully transition back into the community.

Recommendation 3: The Governor and the Legislature should require all offenders sentenced under Penal Code 1170 (h) serving time in county jail to have mandatory supervision upon release from jail.

Recommendation 4: The state should incentivize counties to expand public-private partnerships with qualified organizations to provide services for offenders re-entering the community from jail or prison incarceration on mandatory post-release community supervision or on supervised probation.

Conclusion

California's correctional crisis has been one of the most vexing problems the Little Hoover Commission has ever reviewed. In the past two decades, the Commission has issued five reports and two letters all essentially finding a failed criminal justice system. The system fails to provide certainty in sentencing for victims, it fails to provide opportunities for offenders to turn their lives around and it fails to reduce recidivism as nearly two-thirds of all offenders released from prison return.

The answers to solving California's corrections crisis are well known, but politically difficult. Realignment was a first and important major step. Thousands of low-level offenders who would have gone to prison remain closer to home in hopes that community ties won't be severed and that local governments and their community-based partners will be more innovative and effective than the state in providing programs and services to stop the cycle of crime.

But realignment alone will not stop the trajectory of offenders filling up state prisons. Without additional reforms, the state will never reach the prison population reductions required by the federal courts. The federal courts in February 2014 granted California another reprieve in meeting the reduction target and gave California policymakers what they asked for – a two-year extension to reduce the prison population.

In return, policymakers have agreed to develop and implement durable reforms. The February 2014 court documents indicate California leaders will consider a commission to review the state's sentencing structure. California no longer has time to consider. It is time to act.

As a first step, California should send a strong signal that the purpose of prison is for more than just punishment. The Commission urges policymakers to amend the penal code to expand the purpose of incarceration beyond punishment and also include reduced recidivism and successful community reintegration.

The state then must align its sentencing with these expanded goals and its correctional resources. This can and has been done in other places while simultaneously reducing crime and improving public safety.

This Commission and others have repeatedly called for an independent sentencing commission. The Commission recognizes how politically difficult it is to establish a sentencing commission. At a minimum, the state should establish a Criminal Justice Policy Center, which would collect data on sentencing and best practices and provide recommendations on opportunities to improve sentencing and public safety. The information, data and guidance provided by the center could establish a path toward an independent sentencing commission.

In this review, the Commission also found opportunities to improve realignment, particularly by reducing significant disparities in local sentencing patterns. Some counties have shown that a split sentence, in which an offender serves a portion of the sentence in jail and a portion supervised in the community with access to proven programs and services, can reduce crime and improve correctional resource management. The Commission recommends the state require mandatory supervision for all offenders who prior to realignment would have gone to prison and but now serve time in jail.

Some counties have focused their portion of the \$1 billion that is provided annually for supervising realigned offenders on jail incarceration instead of a strategy of escalating appropriate alternative sanctions, emulating the failed policies that led to the state corrections system being overtaken by the federal courts.

The Commission urges the state to provide incentives to ensure that all counties use some realignment funding as well as any new funding provided through the Recidivism Reduction Fund to expand public-private partnerships to provide proven programs and services for offenders in the community.

It is long overdue for California to embrace the science and evidence that drives criminal justice sentencing in other states and countries before time runs out and the courts begin releasing offenders.

Appendices & Notes

✓ ***Public Hearing Witnesses***

✓ ***Notes***

Appendix A

Public Hearing Witnesses

The lists below reflect the titles and positions of witnesses at the time of the hearings in 2013.

***Public Hearing on Criminal Justice Sentencing
June 25, 2013
Sacramento, California***

Lenore Anderson, Director, Californians for Safety and Justice

Peggy McGarry, Director, Center on Sentencing and Corrections, Vera Institute of Justice

George Gascón, District Attorney, City and County of San Francisco

Robert Weisberg, Professor of Law and Faculty Co-Director, Stanford Criminal Justice Center

Dawn Koepke, Partner, McHugh, Koepke & Associates and Lobbyist, Crime Victims United

***Public Hearing on Criminal Justice Sentencing
September 26, 2013
Los Angeles, California***

Leroy D. Baca, Sheriff, County of Los Angeles

Lynne Lyman, California State Director, Drug Policy Alliance

Charlie Beck, Chief of Police, Los Angeles Police Department

Jerry Powers, Chief Probation Officer, Los Angeles County

Stan Galperson, Director of Residential & Outpatient Treatment, Tarzana Treatment Centers and Member, California Association of Alcohol and Drug Program Executives

Troy Vaughn, Chief Programs Officer, Lamp Community and Community Representative, Los Angeles County Public Safety Realignment Team

Mark Faucette, Vice President, Amity Foundation and Chair, Los Angeles Regional Reentry Partnership

Notes

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8. Senate Bill 105 (Steinberg) 2013-2014 Regular Session.
9. Linda Penner, Chair, Board of State & Community Corrections. December 17, 2013. Personal communication.
10. Stephen Reinhardt, United States Circuit Judge, Ninth Court of Appeals; Lawrence Karlton, Senior United States District Judge, Eastern District of California; and Thelton Henderson, Senior United States District Judge, Northern District of California. *Coleman v. Brown and Plata v. Brown*. February 10, 2014. "Order Granting in Part and Denying in Part Defendants' Request for Extension of December 31, 2013 Deadline." <http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf>. Accessed February 10, 2014.
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12. Stephen Reinhardt, United States Circuit Judge, Ninth Court of Appeals; Lawrence Karlton, Senior United States District Judge, Eastern District of California; and Thelton Henderson, Senior United States District Judge, Northern District of California. *Coleman v. Brown and Plata v. Brown*. February 10, 2014. "Opinion RE: Order Granting in Part and Denying in Part Defendants' Request for Extension of December 31, 2013 Deadline." <http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-opinion-2-20-2014.pdf>. Accessed February 11, 2014.
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33. Richard Couzens, Judge (Ret.), Placer County Superior Court. May 14, 2013. Telephone conversation.
34. Robert Weisberg, Law Professor and Co-Director, Stanford Criminal Justice Center, Stanford University. Palo Alto, CA. May 3, 2013. Telephone conversation.
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Little Hoover Commission Members

CHAIRMAN JONATHAN SHAPIRO (*D-Beverly Hills*) Appointed to the Commission by the Senate Rules Committee in April 2010 and reappointed by the Senate Rules Committee in January 2014. Writer and producer for FX, HBO and Warner Brothers. Of counsel to Kirkland & Ellis. Former chief of staff to Lt. Governor Cruz Bustamante, counsel for the law firm of O'Melveny & Myers, federal prosecutor for the U.S. Department of Justice Criminal Division in Washington, D.C., and the Central District of California. Elected Chairman of the Commission in March 2013.

VICE CHAIRMAN DAVID A. SCHWARZ (*R-Beverly Hills*) Appointed to the Commission by Governor Arnold Schwarzenegger in October 2007 and reappointed by Governor Schwarzenegger in December 2010. Partner in the Los Angeles office of Irell & Manella LLP and a member of the firm's litigation workgroup. Former U.S. delegate to the United Nations Human Rights Commission.

ASSEMBLYMEMBER KATCHO ACHADJIAN (*R-San Luis Obispo*) Appointed to the Commission by Speaker of the Assembly John Pérez in July 2011. Elected in November 2010 to the 33rd Assembly District and re-elected to the 35th District in November 2012. Represents Arroyo Grande, Atascadero, Grover Beach, Guadalupe, Lompoc, Morrow Bay, Paso Robles, Pismo Beach, San Luis Obispo, Santa Maria and surrounding areas.

SENATOR ANTHONY CANNELLA (*R-Ceres*) Appointed to the Commission by the Senate Rules Committee in January 2014. Elected in November 2010 to the 12th Senate District. Represents Stanislaus, Merced, Madera and San Benito counties and a portion of Monterey County.

JACK FLANIGAN (*R-Granite Bay*) Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2012. A member of the Flanigan Law Firm. Co-founded California Strategies, a public affairs consulting firm, in 1997.

LOREN KAYE (*R-Sacramento*) Appointed to the Commission by Governor Arnold Schwarzenegger in March 2006 and reappointed by Governor Schwarzenegger in December 2010. President of the California Foundation for Commerce and Education. Former partner at KP Public Affairs. Served in senior policy positions for Governors Pete Wilson and George Deukmejian, including cabinet secretary to the governor and undersecretary for the California Trade and Commerce Agency.

PEDRO NAVA (*D-Santa Barbara*) Appointed to the Commission by Speaker of the Assembly John Pérez in April 2013. Advisor to telecommunications industry on environmental and regulatory issues and to nonprofit organizations. Appointed in 2011 to the California Department of Fish & Game Blue Ribbon Commission to assist in the development of the Wildlife Strategic Vision. Former state Assemblymember. Former civil litigator, deputy district attorney and member of the state Coastal Commission.

ASSEMBLYMEMBER ANTHONY RENDON (*D-Lynwood*) Appointed to the Commission by Speaker of the Assembly John Pérez in February 2013. Elected in November 2012 to represent the 63rd Assembly District. Represents Bell, Cudahy, Hawaiian Gardens, Lakewood, Lynwood, Maywood, Paramount and South Gate and the North Long Beach community.

SENATOR RICHARD ROTH (*D-Riverside*) Appointed to the Commission by the Senate Rules Committee in February 2013. Elected in November 2012 to the 31st Senate District, representing Corona, Coronita, Eastvale, El Cerrito, Highgrove, Home Gardens, Jurupa Valley, March Air Reserve Base, Mead Valley, Moreno Valley, Norco, Perris and Riverside.

SUMI SOUSA (*D-San Francisco*) Appointed to the Commission by Speaker of the Assembly John Pérez in April 2013. Officer of policy development for San Francisco Health Plan. Former advisor to Speaker Pérez. Former executive director of the California Health Facilities Financing Authority, special assistant to San Francisco Mayor Willie Brown, Jr., and member of the California Children and Families Commission, the California Health Facilities Financing Authority and the Asian Pacific Youth Leadership Project.

Full biographies available on the Commission's website at www.lhc.ca.gov.

“Democracy itself is a process of change, and satisfaction and complacency are enemies of good government.”

*Governor Edmund G. “Pat” Brown,
addressing the inaugural meeting of the Little Hoover Commission,
April 24, 1962, Sacramento, California*



ATTACHMENT B
SUPPLEMENTAL LEGISLATIVE HISTORY OF PENAL
CODE SECTION 12022.53, AS AMENDED BY SENATE
BILL 620 (AUTHOR'S FILE)



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Legislative History of

CALIFORNIA
PENAL CODE
§ 12022.5 & 12022.53

As Amended By
Statutes of 2017, Chapter 682, § 1-2
Senate Bill 620 – Bradford

Supplement

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Authentication of the Records and Table of Contents

Legislative History Research Report Regarding:
CALIFORNIA PENAL CODE § 12022.5 & 12022.53
As Amended By Statutes of 2017, Chapter 682, § 1-2, SB 620 – Bradford
Supplement

I, Lisa Hampton, declare that this report includes:

- *Historical documents relating to the above legislation.* These documents were obtained by the staff of LRI History LLC, or under their direction, and are true and correct copies of the originals obtained from the designated official, public sources in California unless another source is indicated, with the following exceptions: In some cases, pages may have been reduced in size to fit an 8 ½” x 11” sized paper. Or, for readability purposes, pages may have been enlarged or cleansed of black marks or spots. Lastly, paging and relevant identification have been inserted.

Since 1983 LRI has specialized in the historical research surrounding the adoption, amendment and/or repeal of California statutes, regulations and constitutional provisions pursuant to California Code of Civil Procedure § 1859 which states in pertinent part: "In the construction of a statute the intention of the Legislature ... is to be pursued, if possible" Our research and expert witness services have assisted the courts in understanding and applying the underlying purpose of enactments in countless cases, such as *Redlands Community Hospital v. New England Mutual Life Insurance Co*, 23 Cal. App.4th 899 at 906 (1994). LRI also provides similar research for other states and at the federal level. (Formerly Legislative Research Institute, Legislative Research, Incorporated, and Legislative Research & Intent LLC).

- *A table of contents itemizing the documents.* This table of contents cites the sources of the documents.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct and that I could and would so testify in a court of law if called to be a witness.

Executed March 2, 2020.

Lisa Hampton, President

Table of Contents

PRIMARY SOURCE RECORDS (UNPUBLISHED HARDCOPY): At least one official California source is cited for the primary source records provided in this report. Multiple copies may have been obtained from various sources (primarily State Archives, the state library system and/or legislative offices), but the clearest/most legible version was selected for this report.

UNITEMIZED CORRESPONDENCE/MATERIALS BY SOURCE

<u>Author's File</u>	1
Bill analysis.....	2
Correspondence.....	10
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Miscellaneous	163
(Source: State Capitol)	



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Author's File Materials

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SENATE COMMITTEE ON PUBLIC SAFETY

Nancy Skinner, Chairman

BACKGROUND INFORMATION REQUEST

Please complete and return this form to the Senate Public Safety Committee. Please e-mail any other relevant material to one of our committee assistants Sarah Loftin or Zandra Chavez.

PLEASE NOTE THE FOLLOWING:

- ***Call the Committee as soon as possible to set your bill.***
- ***The Committee WILL NOT automatically set any bill.***
- ***Letters may not be reflected in the Committee analysis of your bill, if submitted to the Committee less than 7 days from the date your bill is set to be heard (the Tuesday preceding your hearing date).***
- ***Your bill may not be set until this form is completed and returned to the Committee.***
- ***This form is two pages. Please complete every question. Send a copy of this completed form and any attachments to the Committee’s Minority Policy Consultant, Eric Csizmar (eric.csizmar@sen.ca.gov (651-1772)).***

Measure: SB-620

Author: Bradford

Subject: Firearms: crimes: enhancements.

Staff Contact Name, Phone Number and E-mail: Sue Kateley, 916-651-4035, sue.kateley@sen.ca.gov

~~~~~

1. Which agency, organization, or individual requested the introduction of this bill?

Author

2. Which agencies, organizations, or individuals (outside of the sponsor) have expressed support?  
Please attach copies of letters.

None on file

3. Which agencies, organizations, or individuals have expressed opposition? Please attach copies of letters.

None on file

4. If a similar bill has been introduced in this or any previous session, what was the number and year of its introduction?

N/A

5. What problem or deficiency under current law does the bill seek and remedy? Please be as specific as possible, and include any legal or empirical information upon which the bill is based. **NOTE: Some or all of this statement may be quoted verbatim in the Committee's analysis.**

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

Existing law prohibits the court from striking an allegation or finding that would make a crime punishable pursuant to these provisions.

Underlying these sentence enhancements is an already long sentence as a result of the commission of a felony.

Instead, these sentence enhancements **cause** several problems:

- Greatly increases the population of incarcerated persons
- Disproportionately increases racial disparities in imprisonments

Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

6. Are you planning any amendments to be offered before the Committee hearing? If so, please describe the amendments. **NOTE: THE HEARING OF A BILL MAY BE DELAYED IF 1 SIGNED AND 10 UNSIGNED COPIES OF THE AMENDMENTS IN LEGISLATIVE COUNSEL FORM ARE NOT PROVIDED TO THE COMMITTEE **IN A TIMELY MANNER.****

No amendments



ASSEMBLY COMMITTEE ON PUBLIC SAFETY  
 Reginald Byron Jones-Sawyer, Sr., Chairman  
**BACKGROUND INFORMATION REQUEST**

*Please complete and return 2 copies of this form and 2 copies of all supporting materials (including, press releases, support/opposition letters, proposed amendments, etc) ASAP of receipt of this form.*

*A bill cannot be heard if a completed worksheet is not returned.*

In addition, please e-mail this background information request form electronically, **in Word**, to:  
 Arnell Rusanganwa ([arnell.rusanganwa@asm.ca.gov](mailto:arnell.rusanganwa@asm.ca.gov)), Committee Secretary, Gary Olson  
 ([gary.olson@asm.ca.gov](mailto:gary.olson@asm.ca.gov)), Republican Consultant, and Anisa Jassawalla  
 ([anisa.jassawalla@asm.ca.gov](mailto:anisa.jassawalla@asm.ca.gov)), Speakers Office of Research **All material sent electronically should be flagged individually (i.e., support/opposition letters, proposed amendments, news articles)**

**Measure: SB 620**

**Author: Bradford**

**Staff: Sue Kateley**

**Staff Contact Number: 651-4035**

**Please use Times New Roman Font and 12 point size for all responses. Thank you.**

**BILL ORIGIN:**

1) Source: What person, organization, or governmental entity requested introduction? Please include the name, address, and phone number of the contact person.

Author

2) Similar Legislation: Has a similar bill been previously introduced? Please identify the bill number, author, appropriate legislative session, and disposition of the bill.

No

**BACKGROUND:**

1) What is the problem or deficiency in existing law which this bill will remedy?

California law requires courts to extend the term of imprisonment when a person uses or discharges a firearm in the commission of a felony. Unlike many other enhancements, these enhancements are mandatory in all cases.

The term extensions are additional and consecutive.

- The term of imprisonment for using a firearm in the commission of a felony is imprisonment in a state prison for 3, 4, or 10 years.
- The term of imprisonment for discharging a firearm in the commission is imprisonment in a state prison for 5, 6, or 10 years.
- The term of imprisonment for a person who personally uses a firearm to commit certain specified felonies is imprisonment in a state prison for 10 years, or for 20 years if he or she discharged the firearm, or for 25 years to life if he or she discharges the firearm and proximately causes great bodily harm.

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Instead, these sentence enhancements **cause** several problems:

- Greatly increases the population of incarcerated persons
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Over 30,000 persons currently incarcerated as a result of these extensions.

Several studies have concluded that increasing an already long sentence has no material deterrent effect. Rather, certainty of sentences acts as the more effective deterrent, calling into question California reliance on extremely long prison terms.

SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. This is consistent with other enhancement sentence laws and retains existing sanctions for serious crimes.

- 2) If there has been an interim committee report, study, news article, statistic or other evidence on the bill, please submit copies and/or links of these materials to the Committee.

N/A

- 3) Are there any similar federal legislation or related bills or laws in other states? Please attach or provide any information and links, as appropriate.



N/A

- 4) Please include an author's statement as you wish it to appear on the committee analysis:

SB 620 allows a court to use judicial discretion, when applying a firearm sentence enhancement, at the time a person is convicted for committing a felony. This is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

Right now these sentences are imposed as a mandate, regardless of the circumstances of a crime. If for some valid reason a court wanted to impose a lesser sentence they cannot.

And these mandates are adding to an already long sentence. The individual is already facing a long sentence as a result of a felony conviction. The mandates make a long sentence longer.

SB 620 provides the court with discretion to strike a firearm enhancement in any case in which that would be in the interests of justice to do so. A defendant who merits additional punishment for the use of a firearm in the commission of a felony would receive it. SB 620 allows a court to decide whether or not to extend the sentence if a specific case indicates that it would be appropriate to do so.

Longer sentences do not deter crime or protect public safety according to research on these laws.

Instead, research has found that these enhancements cause problems. They disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons.

SB 620 does NOT eliminate these enhancements. Instead, SB 620 allows a judge to exercise discretion on whether or not to make a long sentence longer if it is in the interest of justice.

#### **SUPPORT AND OPPOSITION**

All letters of support or opposition must be forwarded to the committee as soon as possible. Please note that these letters will NOT be returned.

#### **AMENDMENTS:**

Do you plan ANY amendments to this bill prior to hearing? If so, please submit a copy of the language submitted to Legislative Counsel or provide a brief summary of planned amendments to the committee as soon as possible.

N/A

**COMMITTEE POLICY ON AUTHOR'S AMENDMENTS**

**Author's amendments must be submitted to the Committee (in Legislative Counsel Form) by Wednesday, 5:00 p.m., prior to the scheduled committee hearing date.** AMENDMENTS (ORIGINAL, SIGNED BY MEMBER, PLUS **EIGHT** COPIES IN LEGISLATIVE COUNSEL FORM) MUST BE **HAND DELIVERED** TO THE COMMITTEE AT 1020 "N" STREET, ROOM 111. **DO NOT** SEND AMENDMENTS THROUGH INTER-AGENCY MAIL.

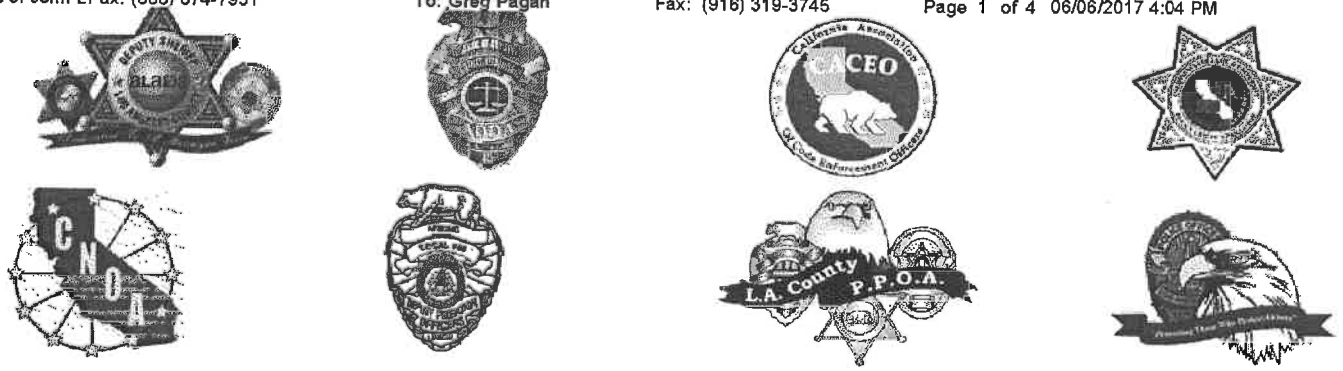
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Phone: 916-319-3744

Fax: 916-319-3745

e-mail to: [arnell.rusanganwa@asm.ca.gov](mailto:arnell.rusanganwa@asm.ca.gov)

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June 6, 2017

Honorable Steven Bradford  
 Member of the Senate  
 State Capitol  
 Sacramento, CA 95814

Dear Senator Bradford:

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 Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League regret that we must oppose Senate Bill 620 as amended on March 28, 2017.

Current law has correctly required an enhancement for the use of a firearm in connection with an array of already serious crimes. The addition of a firearm to the criminal equation of those specific crimes significantly enhances the risk to the public and to our peace officers in each of those criminal instances. Senate Bill 620 will permit the court, "in the interest of justice" to vitiate those firearm enhancements. In effect, SB 620, as currently constituted permits the court to attach the "interest of justice" label onto any case in which they intend to disregard the firearm enhancements.

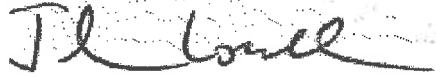
We believe that giving the court the unfettered ability to flout current law is an error. The court should be required, if it is going to disregard an enhancement, to state on the record the specific reasons for disregarding the enhancement that are applicable to the specific case before them.

Included in that enumeration should be a specific factual discussion of the case related factors utilized by the court in determining to strike the enhancement for that named defendant.

Current law is good public policy and any decision by a court to strike the enhancements of current law should be the exception, not the rule. We regret that we must oppose SB 620 in its current form.

Page 1 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "J. Lovell". The signature is written in a cursive style with a horizontal line underneath.

John Lovell

Legislative Counsel

California Association of Code Enforcement Officers

California College and University Police Chiefs Association

California Narcotic Officers Association

Los Angeles County Professional Peace Officers Association

CC: Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety

Gary Olson, Republican counsel, Assembly Committee on Public Safety

Sue Kateley, Chief of Staff



June 6, 2017

Honorable Steven Bradford  
Member of the Senate  
State Capitol  
Sacramento, CA 95814

Dear Senator Bradford:

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 Probation Officers Union AFSCME Local 685, the Los Angeles County Professional Peace Officers Association and the Los Angeles Police Protective League regret that we must oppose Senate Bill 620 as amended on March 28, 2017.

Current law has correctly required an enhancement for the use of a firearm in connection with an array of already serious crimes. The addition of a firearm to the criminal equation of those specific crimes significantly enhances the risk to the public and to our peace officers in each of those criminal instances. Senate Bill 620 will permit the court, "in the interest of justice" to vitiate those firearm enhancements. In effect, SB 620, as currently constituted permits the court to attach the "interest of justice" label onto any case in which they intend to disregard the firearm enhancements.

We believe that giving the court the unfettered ability to flout current law is an error. The court should be required, if it is going to disregard an enhancement, to state on the record the specific reasons for disregarding the enhancement that are applicable to the specific case before them.

Included in that enumeration should be a specific factual discussion of the case related factors utilized by the court in determining to strike the enhancement for that named defendant.

Current law is good public policy and any decision by a court to strike the enhancements of current law should be the exception, not the rule. We regret that we must oppose SB 620 in its current form.

Sincerely,



Tim Yaryan

Legislative Counsel

Association for Los Angeles Deputy Sheriffs

Association of Deputy District Attorneys

Los Angeles County Probation Officers Union AFSCME Local 685

Los Angeles Police Protective League

CC: Gregory Pagan, Chief Counsel, Assembly Committee on Public Safety

Gary Olson, Republican counsel, Assembly Committee on Public Safety

Sue Kateley, Chief of Staff



April 19, 2017

Senator Steven Bradford  
State Capitol  
Sacramento, CA 95814

**RE: SB 620 | OPPOSE**

Dear Senator Bradford:

Gun Owners of California is writing to respectfully oppose your SB 620, which grants the courts discretion in existing sentencing provisions for the felony use of a firearm.

Our organization has long worked toward common sense solutions on the issue of crime, and the most significant factor in the reduction of criminal acts is when swift justice is coupled with stiff and appropriate sentencing. While we are fervent in our support for the law abiding to possess firearms, we are equally as dedicated to making certain those who use a gun in the commission of a crime are held accountable. Our support of the "use a gun – go to prison" policy has never wavered, and thus, any move to grant the courts discretion is not in the interest of "justice" but rather a dangerous proposition.

We would appreciate the opportunity to work with you on how we can reduce crime in California – gun-related and otherwise. The safety of our citizens is central and it has been the consistent goal of Gun Owners to advocate for common sense solutions without sacrificing our Constitutional rights and the ability of the law abiding to protect their home and families.

Respectfully,

Sam Paredes, Executive Director

cc: Members of the Senate Public Safety Committee  
Republican Committee Consultant(s)



GUN OWNERS OF CALIFORNIA

1831 Iron Point Road, Folsom CA 95630 -- (916) 984-1400 (916) 984-1402 fax

[www.GunOwnersCA.com](http://www.GunOwnersCA.com)

*A Political Committee Dedicated to Crime Control – Not Gun Control*





June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Fair Chance Project strongly supports your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

As an organization working towards just sentencing laws and fair parole practices, we are adamantly against all mandatory sentencing as it leaves out the human factor.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Fair Chance Project, is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Geri Silva".

Geri Silva, Director



# California POLICE CHIEFS Association Inc.

P.O. Box 255745 Sacramento, California 95865-5745 Telephone (916) 481-8000 FAX (916) 481-8008  
E-mail: [lmcgill@californiapolicechiefs.org](mailto:lmcgill@californiapolicechiefs.org) • Website: [californiapolicechiefs.org](http://californiapolicechiefs.org)

May 30, 2017

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Ex-Officio

Honorable Steven Bradford  
California State Senate  
California State Capitol  
Sacramento, CA 95814

**Senate Bill 620 (Oppose)**

Dear Senator Bradford:

The California Police Chiefs Association regrets to inform you of its opposition to SB 620, which provides that a court may strike a firearm enhancement otherwise required to be imposed by Penal Code §12022.5 or 12022.53; use of a firearm during the commission of robbery, carjacking, murder, kidnapping, sexual assault or mayhem. Under this enhancement, if a defendant personally uses a firearm in the commission of the aforementioned crimes, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

According to the California Department of Justice, in 2015, homicides committed with a firearm rose nearly 10 percent. For some of these individuals, the enhancements are the only thing keeping them from being eligible for early parole. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community. For these reasons, we must respectfully oppose SB 620. For additional questions, please contact Jonathan Feldman at [jfeldman@californiapolicechief.org](mailto:jfeldman@californiapolicechief.org).

Thank you,

Edward Medrano  
President

Jonathan Feldman  
Legislative Advocate

Cc: Assembly Committee on Public Safety  
422



701 Lenzen Ave. San José, CA. 95126 • info@siliconvalleydebug.org • 408.971.4965

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Silicon Valley De-Bug is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Based in San Jose, CA, Silicon Valley De-Bug works with families with loved ones who are facing charges in the criminal justice, juvenile justice, and immigration systems to impact the outcomes of their cases through their active participation. We have seen the impact of long sentences on individuals and families, especially the ones imposed by mandatory enhancements that tie judges' hands and remove their ability to consider a sentence that is tailored to an individual's cases and culpabilities, as well as consider the collateral impacts of their incarceration.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Silicon Valley De-Bug is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Raj Jayadev".

Raj Jayadev  
Executive Director  
Silicon Valley De-Bug

A handwritten signature in black ink, appearing to read "Charisse Domingo".

Charisse Domingo  
Associate Director  
Silicon Valley De-Bug



June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Free Indeed Reentry Project, Inc. is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements. Free Indeed Reentry Project, Inc. works with other non-profit organizations, faith-based organizations, governmental agencies, civil rights organizations, etc. in an effort to reduce recidivism using demonstrated practices of implementing a system of services, education, information and resources, and to build safer communities and strengthen families through successful reentry and reintegration of previously incarcerated persons back into society.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Free Indeed Reentry Project, Inc. is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Juanita Watson  
President/CEO/Founder  
Free Indeed Reentry Project, Inc.

FREE INDEED REENTRY PROJECT, INC.  
P.O. Box 2213  
Canyon Country, CA 91386-2213  
Direct: 323.397.4025  
[Freenclear09@yahoo.com](mailto:Freenclear09@yahoo.com)

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*Organization Founded by the Sheriffs in 1894*

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April 18, 2017

The Honorable Steven Bradford  
 California State Senate  
 State Capitol Building  
 Sacramento, CA 95814

**Subject: SB 620 – Oppose**

Dear Senator Bradford:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we are opposed to your measure, Senate Bill 620, which allows a court to strike a sentence enhancement that can be imposed as a result of a person's use of a firearm in the commission of specified crimes.

Existing law provides various sentence enhancements that serve to lengthen terms of incarceration based on specified factors. Two such enhancements provide for an additional term of imprisonment ranging from three years to 25 years to life based on the underlying criminal offense and the nature of the involvement of the firearm. Existing law effectively provides that a court cannot strike these enhancements if they would otherwise apply.

The use of a firearm in the commission of a felony is exceedingly dangerous behavior that is worthy of significant and appropriate punishment. Allowing a court to strike these two enhancements undercuts the role they play in deterring criminal behavior and incapacitating convicts who violate the law.

For these reasons, CSSA must respectfully oppose SB 620.

Sincerely,

Cory M. Salzillo  
 Legislative Director

Cc: Members and Staff of the Senate Public Safety Committee  
 Eric Csizmar, Republican Consultant

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Brannan) Support**

Dear Senator Bradford:

The Ella Baker Center for Human Rights is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Based in Oakland, California, the Ella Baker Center is a non-profit organization that works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory and judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Ella Baker Center for Human Rights is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Emily Harris  
State Field Director

cc: Members and Committee Staff, Assembly Committee on Public Safety



June 6, 2017

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The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Homeboy Industries is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Homeboy Industries provides hope, training, and support to formerly gang-involved and previously incarcerated men and women allowing them to redirect their lives and become contributing members of our community.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation’s highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

*Hope has an address*

427  
130 West Bruno Street, Los Angeles, California 90012 • 323.526.1254 • [homeboyindustries.org](http://homeboyindustries.org)



For these reasons, Homeboy Industries is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

*Donna Harati*  
Donna Harati  
Staff Attorney  
Homeboy Industries

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April 17, 2017

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The Honorable Steven Bradford California State Senate State Capitol Sacramento, CA 95814

RE: SB 620 – Oppose

Dear Senator Bradford:

On behalf of the California District Attorneys Association (CDA A), I regret to inform you that we are opposed to your measure, SB 620. This bill would allow a court to disregard additional terms of imprisonment for use of a firearm or assault weapon in the commission of a felony, including those under California’s “10-20-life” law.

Generally, under current law, individuals who personally use a firearm or assault weapon in the commission of a felony are subject to an additional and consecutive prison term of 3, 4, or 10 years for a firearm, or 5, 6 or 10 years for an assault weapon. The court already has the discretion to impose the low, middle, or high term of that additional sentence, based on the circumstances of the case.

Additionally, if a defendant personally uses a firearm in the commission of crimes like murder, kidnapping, robbery, or rape, he or she is subject to an additional term of 10 years in state prison. If he or she intentionally discharges the firearm, that additional term is 20 years, and if a person causes great bodily injury or death, the additional term is 25 years to life.

For some individuals, these additional sentences are the only thing keeping them from being eligible for early parole under Proposition 57. For example, currently, an individual convicted of assault with a firearm on a peace officer is subject to an additional term under Penal Code section 12022.53. Any violation of PC 12022.53 is deemed a violent felony under PC 667.5(c), which makes that individual ineligible for early parole consideration under Proposition 57. However, without the additional term under PC 12022.53, that same offender would be eligible for early parole under Proposition 57 because assault with a firearm on a peace officer is not a violent felony under Penal Code section 667.5(c).

SB 620 would allow a judge to disregard these additional sentences, denying justice to victims and dramatically shortening the length of time before these individuals are released back in the community.



I greatly appreciate your consideration of our concerns. If you would like to discuss these issues further, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sean Hoffman".

Sean Hoffman  
Director of Legislation

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Fathers & Families of San Joaquin is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Fathers & Families of San Joaquin (FFSJ) is a community-based organization that works to address the varying needs of men, women, youth, their families and communities. Our mission is to support the cultural, spiritual, social and economic renewal of the most vulnerable families in Stockton and the greater San Joaquin Valley. FFSJ addresses critical problems such as institutional inequity, fatherless homes, widespread poverty, employment disparities, inadequate access to health services, punitive school discipline, youth arrests, community re-entry, and violence. We work to build communities that are safe, strong and resourceful; treat individuals and families equitably and honestly; and create opportunities for individuals and families to achieve health, wellness and their human potential through education, job opportunities and equitable systems.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do

not serve unnecessarily long sentences.

For these reasons, Fathers & Families of San Joaquin is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'CaseyAnn Carbonell', written in a cursive style.

CaseyAnn Carbonell  
Management Assistant

# homies unidos

June 6, 2017

Alex Sanchez  
Executive Director

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

**Board of Directors**

Patrice Wagonhurst  
Board Chair

Jorge Gonzalez  
Treasurer

Monica Novoa  
Secretary

Steven Osuna  
Board member

Dear Senator Bradford:

My name is Alex Sanchez, Executive Director of Homies Unidos, We are pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Homies Unidos is a Non-Profit Organization working to diminish violence and provide positive alternatives for youth and adults in our community who are looking to better their lives. We work on issue of juvenile justice and criminal justice.

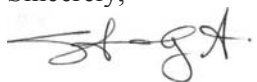
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For these reasons, Homies Unidos is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alex Sanchez  
Executive Director

Homies Unidos  
1625 W. Olympic Blvd  
Suite 706  
Los Angeles CA 90015

[www.homiesunidos.org](http://www.homiesunidos.org)

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

MILPA is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Motivating Individual Leadership for Public Advancement (MILPA) is a trans-disciplinary, purpose-oriented collective committed to transforming organizations, institutions and systems by advocating for racial equity and healing for all. We achieve this by promoting relational versus transactional approaches within our overall work.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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For these reasons, MILPA is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

David Johnson  
Program and Health Equity Assistant

**MILPA**

MILPACOLLECTIVE.ORG ✦ FACEBOOK.COM/MILPAEASTSALINAS  
339 MELODY LANE ✦ SALINAS, CA 93901

CULTIVATING CHANGE MAKERS FOR THE NEXT SEVEN GENERATIONS



May 25, 2017

The Honorable Steven Bradford  
California State Senator  
State Capitol, Room 2062  
Sacramento, CA 95814

**RE: Support for Senate  
Bill 620 (Bradford)**

Dear Senator Bradford:

The Center on Juvenile and Criminal Justice strongly supports Senate Bill 620 (Bradford), which will allow judges to strike a sentence enhancement for using or discharging a firearm, when appropriate, strengthening judicial discretion and curbing the legacy of extreme sentencing that has fueled mass incarceration.

The Center on Juvenile and Criminal Justice (CJCJ) is a private non-profit organization that promotes humane criminal justice policies to reduce incarceration and foster long-term public safety in California. CJCJ pursues this mission through the development of model programs, technical assistance, and policy analysis. As such, CJCJ supports legislation that eliminates sentencing enhancements and lessens the harmful impact of mass incarceration.

California has some of the most punitive and extreme sentence enhancements for gun use in the nation. Currently, people convicted of serious felonies receive an additional sentence if their offense involved a gun. These enhancements are imposed according to the following enhancement scheme: 10 additional years if they showed a gun during the crime, 20 years if they fired a gun, and 25 years to life if firing the gun resulted in serious injury or death.

Extreme 10-20-Life gun enhancements augment sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unwarranted, gun enhancements are mandatory. Judges are forbidden from tailoring a sentence to an individual's case, circumstances, and culpability. The result is a rigid and arbitrary system that punishes with prison terms that far exceed the seriousness of the offense and undermine the goals of rehabilitation and community safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements indicates that the risk of an enhancement is not an effective deterrent and fails to improve public safety. Instead, enhancements have been a primary driver of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 retains all existing sanctions for gun-involved felonies, but allows a judge, rather than a prosecutor, to decide whether an individual should serve additional prison time for the use of a gun. Through SB 620, judges are permitted to consider the nature and severity of the crime, as well as other mitigating and aggravating factors in determining whether to impose a gun enhancement. This discretion ensures that judges impose sentences that fit the severity of the offense, which helps to ensure that individuals do not serve unnecessarily long sentences.

SB 620 represents an important step forward in addressing California's overreliance on incarceration. Restoring the decision-making authority of trained judges will ensure that gun enhancements are used sparingly in California, limiting the devastating human impact of lengthy or life sentences. For these reasons, CJCJ strongly supports SB 620 and thanks you for your important leadership on this bill. Please feel free to reach out to me at [maureen@cjcj.org](mailto:maureen@cjcj.org) with any questions.

Sincerely,



Maureen Washburn, Policy Analyst  
Center on Juvenile and Criminal Justice



7050 S La Cienega Blvd  
Apt 3  
Inglewood, CA 90302

6/8/2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

I am pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, I strongly support of SB 620.

Sincerely,

Katherine V Burns, Esq.

cc: Members and Committee Staff, Assembly Committee on Public Safety



## Friends Committee on Legislation of California

1225 8th Street, Suite 220  
Sacramento, CA 95814-4809

April 17, 2017

Senator Nancy Skinner  
Chair, Senate Public Safety Committee  
State Capitol – Room 2031  
Sacramento, CA 95814

Re: Senate Bill 620 (Bradford) – SUPPORT

Dear Senator Skinner,

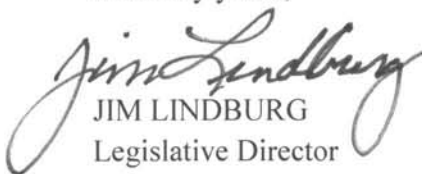
The Friends Committee on Legislation of California (FCLCA), a Quaker-based lobby that advocates for state laws that are compassionate and respectful of the inherent worth of every being, supports SB 620. This bill will allow a court to strike an enhancement related to the use and/or discharge of a firearm in the commission of a felony when doing so would be in the interest of justice.

FCLCA works for a society in which all individuals value and respect each other. In such a society there is no use for guns. We also support sensible firearms regulations and oppose the proliferation of firearms. We also are opposed to mandatory minimum sentences and automatic sentencing enhancements. These enhancements are imposed without consideration for any mitigating facts that may warrant consideration. They lengthen prison stays and increase prison overcrowding while their impact on public safety is negligible. Research indicates that the likelihood of being apprehended is a far greater deterrent to crime than a longer prison sentence.

Under SB 620, firearm enhancements will remain in effect, and those convicted of felonies will still serve their base sentence. The enhancement could be stricken only when a judge finds a compelling reason at the time of sentencing, when all of the facts are known, that doing so would serve the interest of justice. The law should afford judges some discretion to tailor sentences based on the circumstances surrounding each individual case.

For these reasons, FCLCA strongly supports SB 620.

Sincerely yours,

  
JIM LINDBURG  
Legislative Director

C. Senator Steven Bradford and Members of the Senate Public Safety Committee



June 8, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford)-Support

Dear Senator Bradford:

Legal Services for Prisoners with Children is please to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Founded in 1978, Legal Services for Prisoners with Children (LSPC) enjoys a long history advocating for the civil and human rights of people in prison, their loved ones and the broader community. LSPC has years of experience working with families separated by incarceration, and with individuals who have suffered the injustices and indignities of the criminal legal system in California.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory-judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although, the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use has failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well all the culpability of the individual, during sentencing. Consequently, SB620 provides

1540 Market St., Suite 490,  
San Francisco, CA 94102.

Phone: (415) 441-3333  
Fax: (415) 441-3333

prisonerswithchildren.org

judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Legal Services for Prisoners with Children is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Sandra Johnson  
Policy Fellow

Cc: Members and Committee Staff, Assembly Committee of Public Safety





JUNE 5, 2017

THE HONORABLE STEVEN BRADFORD  
CALIFORNIA STATE CAPITOL, ROOM 2054  
SACRAMENTO, CALIFORNIA 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Root & Rebound is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements. Root & Rebound is a reentry legal education and resource center whose mission is to increase access to justice and opportunity for people in reentry from prison and jail, and to educate and empower those who support them, fundamentally advancing and strengthening the reentry infrastructure across the state of California.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



For these reasons, Root & Rebound is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Katcher", written over a horizontal line.

Katherine Katcher  
Executive Director, Root & Rebound  
1730 Franklin St., Suite 300  
Oakland, CA 94612

cc: Members and Committee Staff, Assembly Committee on Public Safety

A PROJECT  
OF COMMUNITY PARTNERS



STEERING COMMITTEE

May 31, 2017

Troy Vaughn  
Christ-Centered  
Ministries  
Chair and Founder,  
Executive Director

The Honorable Nancy Skinner  
California State Senator  
Chairperson, Senate Public Safety Committee  
State Capitol, Room 2031  
Sacramento, CA 95814

Fax: (916) 445-4688

Mark Faucette  
Amity Foundation  
Chair

**RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support**

Veronica Lewis  
HOPICS  
Vice-Chair

Dear Chairperson Skinner,

Bilika Ochoa  
Anti-Recidivism  
Coalition

The Los Angeles Regional Reentry Partnership (LARRP) supports the passage of SB 620 (Bradford), a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Michael Graff-Weisner  
Chrysalis

LARRP is a network of public, community and faith-based agencies and advocates working together to ensure that our reentry system meets the needs of our agencies, communities, and the people we serve, both in terms of capacity and public policy by providing a strong community voice in public policy and funding decisions; by serving as a convener of reentry service providers, advocates, and other stakeholders; and by building capacity across the county to meet the needs of the reentry community.

Janie Hodge  
Paving the Way  
Foundation

Lynne Lyman  
Drug Policy Alliance

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. It must be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety.

Richard Caines  
SRO Housing

Maria Alexander  
Center for Living and  
Learning

By granting judges discretion as to whether to apply a sentence enhancement when a person is convicted of a felony in which he used or discharged a firearm, judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, but will also help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

Jose Rodriguez  
Office of LA City  
Councilmember  
Gilbert Cedillo

For the reasons stated above, the Los Angeles Reentry Partnership supports SB 620 (Bradford). Should you have any questions regarding this letter, please contact me at (310) 528-4538 or [troyvaughn@lareentry.org](mailto:troyvaughn@lareentry.org).

Sincerely,

A handwritten signature in black ink, appearing to be 'Troy Vaughn', written over a light gray horizontal line.

Troy Vaughn  
Executive Director  
Los Angeles Regional Reentry Partnership (LARRP)



611 East Kelso Street, #1  
Inglewood, CA 90301  
June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

As a college professor and local small business owner, I am pleased to enthusiastically support your Senate Bill 620. This small but crucial step could make an enormous difference to so many in Inglewood and the surrounding areas.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, I enthusiastically support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Mildred Inez Lewis  
424.750.0930  
Lewis3748@sbcglobal.net



## A New Way of Life Re-Entry Project

June 2, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

A New Way of Life Reentry Project (ANWOL) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

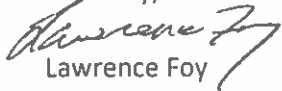
<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

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For these reasons, ANWOL is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Foy", written in a cursive style.

Lawrence Foy

cc: Members and Committee Staff, Assembly Committee on Public Safety



Board of Directors

Carol Biondi  
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April 17, 2017

The Honorable Nancy Skinner  
California State Senator  
Chairperson, Senate Public Safety Committee  
State Capitol, Room 2031  
Sacramento, CA 95814

Fax: (916) 445-4688

**RE: SB 620 (Bradford) Judicial discretion to strike gun enhancements – Strong Support**

Dear Chairperson Skinner,

The Anti-Recidivism Coalition (ARC) is excited to support the passage of SB 620, a bill that will allow a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

ARC is a support network for, and comprised of, formerly incarcerated individuals devoted to changing their lives by becoming leaders in their communities. ARC accomplishes its goals by providing job training, and connecting its members to employment and educational opportunities in order to help them acquire the social capital and skills necessary to support themselves and their families. Though serving communities throughout California as advocates, community leaders and productive adults, many ARC members are still contending with the ill effects of serving very long prison sentences due to gun, and other, sentence enhancements.

The devastating problem of mass incarceration is driven, in part, by long sentence enhancements, particularly gun enhancements. Sentence enhancements have contributed significantly to California's bloated prison system, which has, in turn, contributed to the levels of violence and hopelessness experienced by incarcerated Californians. Many ARC members went into prison as young people and came out as much older men and women because they served time well beyond the sentence for the underlying offense which these individuals experienced. It must also be noted that gun enhancements have negligible effects on driving down rates of violence, if any, and improving public safety.

By granting judges discretion as to whether to apply a sentence enhancement when a person is convicted of a felony in which he used or discharged a firearm, judges will not only help to ensure that incarcerated Californians do not serve unnecessarily long sentences, but will also help to prospectively ease the overcrowding, violence and hopelessness that have plagued California's prison system for too long.

For these reasons, among others, ARC supports SB 620, and respectfully requests that you support the bill as well.

Sincerely,

A handwritten signature in black ink, appearing to read "Bikila Ochoa". The signature is fluid and cursive, with the first name being the most prominent.

Bikila Ochoa  
Policy Director  
The Anti-Recidivism Coalition



## Friends Committee on Legislation of California

1225 8th Street, Suite 220  
Sacramento, CA 95814-4809

September 18, 2017

Senator Steven Bradford  
State Capitol – Room 2062  
Sacramento, CA 95814

Re: Senate Bill 620 – SPONSORSHIP

Dear Senator Bradford,

The Friends Committee on Legislation of California (FCLCA), a Quaker-based lobby that advocates for state laws that are compassionate and respectful of the inherent worth of every being, is pleased to co-sponsor supports SB 620.


FCLCA opposes mandatory minimum sentences and automatic sentencing enhancements. These enhancements are imposed without consideration of any mitigating factors that may warrant consideration. They lengthen prison stays and increase prison overcrowding while their impact on public safety is negligible. Research indicates that the likelihood of being apprehended is a far greater deterrent to crime than a longer prison sentence. Automatic enhancements also magnify racial disparities in our criminal justice system.

Under SB 620, firearm enhancements will remain in effect, and those convicted of felonies will still serve their base sentence. The enhancement would be stricken only when a judge finds a compelling reason at the time of sentencing, when all of the facts are known, that doing so would serve the interest of justice. The law should afford judges some discretion to tailor sentences based on the circumstances surrounding each individual case.

FCLCA also works to reduce gun violence. Strong communities, where everyone has access to a good education, good health and mental health care and vocational training along with a robust economy are essential elements of reducing violence. We also support sensible regulations, including background checks and legislation to reduce the proliferation of firearms. California has one of the lowest rates of gun homicides in the nation, a fact which strengthens our conviction that automatic firearm enhancements serve no meaningful public safety purpose.

For these reasons, FCLCA is delighted to become a co-sponsor of SB 620.

Sincerely yours,

  
JIM LINDBURG  
Legislative Director



May 31, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

On behalf of the 1,300,000 members of Courage Campaign, California's largest online, progressive organizing network, I write in strong support of your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

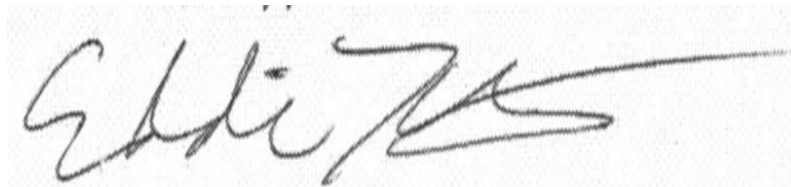
<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Courage Campaign is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

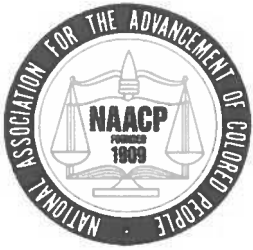
Best Regards,

A handwritten signature in black ink, appearing to read "Eddie Kurtz", with a long horizontal flourish extending to the right.

Eddie Kurtz  
Executive Director, Courage Campaign

cc: Members and Committee Staff, Assembly Committee on Public Safety





# CALIFORNIA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

ESQUIRE PLAZA, 1215 K STREET, SUITE 1609 • SACRAMENTO, CA 95814 • (916) 498-1898 • FAX (916) 498-1895

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**July 13, 2017**

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

The California State Conference of the National Association for the Advancement of Colored People (NAACP) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The California NAACP works hard to make sure African-Americans and people of color have justice and an equal playing field in all aspects of society.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover

clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of

meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the California State Conference of the NAACP is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alice A. Huffman, President  
California State Conference NAACP

cc: Members and Committee Staff, Assembly Committee on Public Safety

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



CENTER FOR ADVOCACY &amp; POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

May 26, 2017

The Honorable Steven Bradford  
 California State Capitol, Room 2054  
 Sacramento, California 95814

**Re: SB 620 – as amended 3/28/17  
 Sponsor**

Dear Senator Bradford:

The ACLU of California is pleased to sponsor your Senate Bill 620, which will allow a judge, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

California has some of the most severe sentence enhancements for gun use in the nation. Under PC §12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, even if the gun was unloaded or inoperable,<sup>1</sup> 20 years if they fired a gun, even if it misfired,<sup>2</sup> and 25-years-to-Life if firing the gun resulted in serious injury or death, even if no one was hit by a bullet,<sup>3</sup> and even if the individual did not personally handle or fire the weapon.<sup>4</sup> There is no requirement for intent to inflict harm, as there is for other enhancements that can apply to the same offenses (*see* PC §12022.55; inflicting great bodily injury by shooting out of a moving vehicle). These extreme enhancements are added to sentences that are already quite long, including life terms.

While most sentence enhancements — including enhancements for gang-related activities (PC §186.22(g)), trafficking large quantities of drugs (HSC §11370.4(e)), kidnapping (PC §667.8), aggravated white-collar crime (PC §186.11), and Three Strikes<sup>5</sup> — can be declined if the judge believes they are unjust in a specific case,<sup>6</sup> gun enhancements are mandatory. Judges are forbidden thus from tailoring these sentences to an individual’s case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intent of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, research on sentence enhancements for gun use has failed to

<sup>1</sup> *People v. Grandy* (App. 2 Dist. 2006) 50 Cal.Rptr.3d 189, 144 Cal.App.4th 33

<sup>2</sup> *Ibid.*

<sup>3</sup> *People v. Palmer* (App. 2 Dist. 2005) 35 Cal.Rptr.3d 373

<sup>4</sup> *People v. Garcia* (2002) 124 Cal.Rptr.2d 464, 28 Cal.4th 1166, 52 P.3d 648.

<sup>5</sup> *People v. Romero*, 13 Cal.4th 497, 529 (1996)

<sup>6</sup> *People v. Thomas* (1992) 4C4th 206, 211; *People v. Jones* (2007) 157 CA4th 1373 (absent clear legislative directive to contrary, court may dismiss enhancement in interest of justice under PC §1385).

ACLU OF NORTHERN CALIFORNIA  
 Abdi Soltani, Executive Director  
 39 Drumm Street  
 San Francisco, CA 94111  
 (415) 621-2493

ACLU OF SOUTHERN CALIFORNIA  
 Hector Villagra, Executive Director  
 1313 West Eighth Street  
 Los Angeles, CA 90017  
 (213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES  
 Norma Chavez-Peterson, Executive Director  
 P.O. Box 87131  
 San Diego, CA 92138  
 (619) 232-2121


show conclusive evidence that they have reduced gun crimes.<sup>7</sup> Indeed, studies show that increasing the severity of punishment does not increase the deterrent effect; certainty of punishment — that someone will be punished for the crime — has a far greater impact.<sup>8</sup>

Studies also show that enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>9</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>10</sup> and housing the nation's highest percentage and number of prisoners serving a life or de facto life sentence.<sup>11</sup>

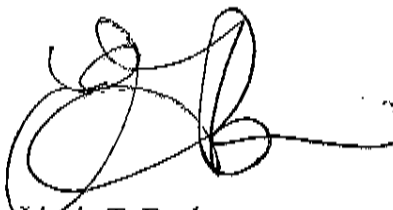
SB 620 does not eliminate any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the individual's culpability, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the ACLU of California is pleased to sponsor SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Kevin G. Baker  
Legislative Director



Lizzie T. Buchen  
Legislative Advocate

cc: Members and Committee Staff, Assembly Committee on Public Safety

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<sup>7</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>8</sup> The Sentencing Project (2010). *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment*.

<sup>9</sup> See NRC, 2014.

<sup>10</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>11</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

*late*

April 18, 2017

Senator Nancy Skinner  
Chair, Senate Public Safety Committee  
State Capitol, Room 2031  
Sacramento, CA 95814  
By fax: 916-445-4688

**Re: SB 620 (Bradford) - SUPPORT**

Dear Senator Skinner:

The California Public Defenders Association (CPDA), a statewide organization of public defenders, private defense counsel, and investigators, is pleased to inform you of our support for SB 620 (Bradford).

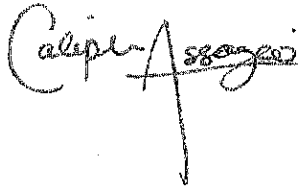
SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

On behalf of CPDA, I respectfully urge your "YES" vote on SB 620 when it comes before you in the Senate Public Safety Committee. Please do not hesitate to contact me at [caliph@publicinterestadvocacy.com](mailto:caliph@publicinterestadvocacy.com) or (916) 761-4860 with any questions or concerns.

Sincerely,



Caliph Assagai,  
Legislative Advocate

# SAN FRANCISCO PUBLIC DEFENDER

JEFF ADACHI – PUBLIC DEFENDER  
MATT O'NEALE – CHIEF ATTORNEY



June 28, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

## Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

As the elected Public Defender of the City and County of San Francisco, I strongly support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted of committing a felony, consistent with other enhancements.

The San Francisco Public Defender's Office represents approximately 20,000 people each year who have been accused of crimes and cannot afford to hire private attorneys. The majority of our clients are people of color, and all are low income.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

**Adult Division - HO**  
555 Seventh Street  
San Francisco, CA 94103  
P: 415.553.1671  
F: 415.553.9810  
[www.sfpUBLICDEFENDER.org](http://www.sfpUBLICDEFENDER.org)

**Children's Division - YC**  
375 Woodside Avenue, Rm. 118  
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F: 415.566.3030

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258A Laguna Honda Blvd.  
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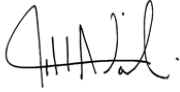
**Community Justice Center**  
P: 415.202.2832  
F: 415.563.8506

**Bayview Magic**  
P: 415.558.2428  
[www.bayviewmagic.org](http://www.bayviewmagic.org)

**Momagic**  
P: 415.567.0400  
[www.momagic.org](http://www.momagic.org)

For the reasons stated above, I strongly support SB 620 and will advocate for its passage. Please do not hesitate to contact me if you would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Adachi". The signature is stylized with a large initial "J" and "A".

Jeff Adachi  
San Francisco Public Defender

cc: Assembly Committee on Public Safety



May 5, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

#cut50 is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

#cut50 is a national bipartisan initiative of The Dream Corps to safely and smartly reduce our incarcerated population by 50 percent over the next 10 years. We envision a criminal justice system that recognizes the humanity of the 2.2 million people currently behind bars in America and moves toward compassion and treatment rather than punishment and incarceration.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, 20 years if they fired a gun, and 25-to-Life if firing the gun resulted in serious injury or death. These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out

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<sup>1</sup> See National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.



some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, #cut50 is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Alexandra Mallick  
California Policy Director  
#cut50

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<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



June 5, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) Support**

Dear Senator Bradford:

Initiate Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Initiate Justice is a policy-driven organization created by and for people directly impacted by incarceration. We work to engage incarcerated people and their loved ones on policy changes that may have an impact on their life.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory and judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

---

<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

INITIATE JUSTICE  
PO BOX 4962  
OAKLAND, CA 94605



SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, Initiate Justice is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Taina Vargas-Edmond  
Founder  Executive Director

cc: Members and Committee Staff, Assembly Committee on Public Safety

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INITIATE JUSTICE  
PO BOX 4962  
OAKLAND, CA 94605

*late*



Fighting for justice since 1973

# California Attorneys for Criminal Justice

1555 River Park Dr., Suite 105 • Sacramento, CA 95815  
Phone: (916) 643-1800 • Fax: (916) 643-1836  
[www.cacj.org](http://www.cacj.org)

April 18, 2017

Honorable Nancy Skinner  
Chair, Senate Public Safety Committee  
State Capitol, Room 2031  
Sacramento, CA 95814

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- Jesse Stout, Santa Ana
- Julie Traut, San Francisco
- Orlando Magall, Santa Rosa
- Allison Zavala, Woodland

**RE: Senate Bill 620 (Bradford) – Support  
As Amended – March 28, 2017  
Senate Public Safety Hearing – April 25, 2017**

Dear Senator Skinner:

The California Attorneys for Criminal Justice (CACJ), a statewide association of criminal defense attorneys in private practice or working in a public defender offices, writes in support of SB 620. SB 620 would allow judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm during the commission of an offense and subsequent conviction.

Granting the courts discretion when deciding on whether or not to impose an additional sentence is consistent with other enhancement sentence laws. This is due to the importance of the courts taking into consideration other factors such as character of the defendant, external circumstances involved, likeliness of the offender to reoffend, etc., when determining a sentence. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of the crime is not a smart approach to effective punishment.

At a time when California is working to be smart on crime and reduce the impacted prison population, measures like AB 620 ensure the lengthiest punishments are for those who pose the greatest risk to society. Studies of sentence enhancements all show that adding a longer sentence does nothing to protect public safety or reduce recidivism.

For these reasons, CACJ supports SB 620. Thank you for your time and consideration. If you have any questions, please feel free to contact me at Hernandez Strategy Group, 916-447-9719.

Sincerely,

Ignacio Hernandez  
CACJ Legislative Advocate

CC: Members and Staff, Senate Public Safety Committee  
Senator Bradford

# FLOOR ALERT

## SUPPORT SB 620 (Bradford)

### Allow Judicial Discretion for Sentence Enhancements



SB 620 (Bradford) would allow a court to strike a sentence enhancement for using a firearm if doing so would serve the interest of justice, consistent with other enhancements.

A judge's role in our justice system is to make sure sentences are fair and just. For most sentence enhancements, judges can decide not to impose the enhancement if they think it is unfair, unjustified, and inappropriate for the circumstances of a case.

But judges are forbidden from exercising any discretion for firearms enhancements. Although judges hear all of the evidence firsthand, they are prohibited from considering the facts of the case or whether justice would be served in imposing a penalty.

California's gun enhancement statutes are among the most severe sentencing schemes in the nation. SB 620 doesn't change that. It simply allows judges to determine whether these extreme enhancements are fair and just in an individual case.

## VOTE AYE ON SB 620

For more information, please contact Lizzie Buchen at the ACLU of California: 916-824-3260, [lbuchen@acluca.org](mailto:lbuchen@acluca.org).



Ron Finley Project  
PO BOX 3664  
Beverly Hills CA, 90212  
760.475.1681  
ashleigh@ronfinley.com  
[www.ronfinley.com](http://www.ronfinley.com)

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

The Ron Finley Project is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Ron Finley Project is a non profit located in the heart of South Los Angeles that aims to erradicate food injustice and inequality by creating empowered, self reliant communities through urban gardening, artistic expression and employment opportunities. It is for these reasons that we are particularly passionate about social justice issues.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing.

Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, The Ron Finley Project is in strong support of SB 620. Please do not hesitate to contact us should you have any questions. I can be reached directly at (760) 475 -1681 or [ashleigh@ronfinley.com](mailto:ashleigh@ronfinley.com)

Sincerely,

A handwritten signature in black ink, appearing to read "Ashleigh Carter". The signature is fluid and cursive, with a large loop at the end.

Ashleigh Carter

Executive Administrator  
The Ron Finley Project

cc: Members and Committee Staff, Assembly Committee on Public Safety

# ALLIANCE FOR **Boys and Men of Color**

Invest in the Health and Success  
of California's Future

April 18, 2017

Honorable Nancy Skinner  
Chair, Public Safety Committee  
California State Senate  
State Capitol, Room 2031  
Sacramento, CA 95814  
Fax: (916) 445-4688

## **RE: Support for SB 620 (Bradford) – Judicial Discretion in Sentencing**

Dear Chairperson Skinner:

The Alliance for Boys and Men of Color supports Senate Bill 620 (Bradford), which will provide courts with discretion in the application of sentence enhancements, helping to ensure that criminal sentences are fair and appropriate. Mandatory sentence enhancements do not make our communities safer; instead, they unnecessarily harm individuals, families, and communities.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, improve academic success, support neighborhood safety, reduce justice system involvement, and support employment opportunities for this vulnerable population.

Persons convicted of felonies are already sentenced to lengthy prison terms. Yet, existing state law requires sentence enhancements of up to ten years whenever a firearm is used during the commission of a felony. Studies show, however, that adding a longer sentence to an already lengthy one does not deter crime. Rather, it greatly increases prison populations and disproportionately increases racial disparities in imprisonment.

SB 620 would give courts discretion to strike a sentence enhancement if doing so is in the interest of justice. We believe that giving judges this flexibility will create a fairer and more equitable sentencing system.

For these reasons, the Alliance for Boys and Men of Color supports SB 620 and requests your "Aye" vote. Should you have any questions, please contact Rosa Aqeel at [raqeel@policylink.org](mailto:raqeel@policylink.org).



Sincerely,

A handwritten signature in black ink, appearing to read "Marc Philpart". The signature is fluid and cursive, with the first name "Marc" written in a larger, more prominent script than the last name "Philpart".

**Marc Philpart**

Principal Coordinator

Alliance for Boys and Men of Color

CC: Honorable Steven Bradford  
Honorable Hannah-Beth Jackson  
Honorable Holly Mitchell  
Honorable Jeff Stone  
Honorable Scott Wiener



**American Friends  
Service Committee**

**65 NINTH ST. SAN FRANCISCO, CA 94103 (415) 565- 0201**

June 6, 2017

Assembly Committee on Public Safety  
California State Capitol  
1020 N Street, Room 111  
Sacramento, CA 95814

**Re: SB 620 (Bradford) – SUPPORT**

Dear Assembly Member Reginald Jones-Sawyer:

The American Friends Service Committee (AFSC) is in strong support of SB 620, which will serve to protect and improve the health and safety of California communities. This bill would allow a court to strike a firearms enhancement otherwise required to be imposed by the current provisions of law. Traditionally, The American Friends Service Committee has stood in opposition to violence and guns. We realize applying a sentence enhancement for using or discharging a firearm will not deter the use of lethal weapons in our communities, but rather, fill up our prisons even more.

AFSC has been working on prison issues since the 1950s in California, and in that time, we have seen the exponential increases in sentences. The increases are due, to a significant extent, to the structure of sentencing enhancements which are often applied consecutively. This has made sentences very disproportionate, and has particularly impacted people of color.

Studies of these enhancements show that increasing an already long sentence does not deter crime. Per Bradford, SB 620 does not get into that debate because it does not eliminate the enhancements. Nor does it suggest a judge should disregard enhancements. Judges should consider the circumstances of the crime and the history of the perpetrator and deal with the individual appropriately. This moves the decision about sentencing from one that is rigid and without meaningful consideration to one that is specific to the circumstances of the case. If you have any further questions in this matter, please do not hesitate to contact me.

Sincerely,

Fatimeh Khan

American Friends Service Committee

cc: Assembly Committee on Public Safety [fax: (916) 319-3745]



May 18, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Legal Services for Prisoners with Children is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Founded in 1978, LSPC enjoys a long history advocating for the civil and human rights of people in prison, their loved ones and the broader community. Our vision of public safety is more than a lock and key. We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that **all** people have access to adequate housing, quality health care and education, healthy food, meaningful work and the ability to fully participate in the democratic process, regardless of their involvement with the criminal justice system.

California has some of the most severe sentence enhancements for gun use in the nation. Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they showed a gun during the crime, 20 years if they fired a gun, and 25-to-Life if firing the gun resulted in serious injury or death. These extreme enhancements are added to sentences that are already quite long, including life terms. Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of 10-20-Life and other firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in

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<sup>1</sup> See National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

1540 Market St., Suite 490  
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Phone: (415) 434-4444  
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PrisonersWithChildren.org  
Enferia PrisonersWithChildren.org

the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as other mitigating and aggravating factors, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, LSPC is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Dorsey Nunn  
Executive Director



Endria Richardson  
Policy Director

---

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



April 14, 2017

Honorable Nancy Skinner, Chair  
Senate Committee on Public Safety  
State Capitol Building, Room 2031  
Sacramento, CA 95814

**RE: SENATE BILL 620 – SUPPORT LETTER**

Dear Senator Skinner:

Californians for Safety and Justice is pleased to support Senate Bill 620, which would allow a court to use judicial discretion when applying sentence enhancements when a person uses a firearm in the commission of a felony.

Californians for Safety and Justice is a nonprofit organization that promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities. Sentences should fit the crime, effectively manage risk, and put safety first. The best sentences emphasize accountability and work to stop the cycle of crime, which reduces repeat victimization, recidivism, and taxpayer expense.

Sentence enhancements significantly increase the amount of time offenders are incarcerated and are a cause of overcrowded prisons in California. Additionally, enhancing already lengthy sentences does not deter crime, hampers successful reentry, and contributes to recidivism. Ultimately, mandatory firearm sentence enhancements come at a high cost and do little to protect the public.

Importantly, SB 620 does not dispose of existing sanctions for serious felony offenses. Rather, SB 620 allows a court to use judicial discretion and take into account the nature and severity of the crime and other mitigating and aggravating factors during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense.

On behalf of Californians for Safety and Justice and the Californians who stand to benefit from SB 620, thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "Liah Burnley".

Liah Burnley  
Policy Advocate  
Californians for Safety and Justice

CC     Senator Joel Anderson, Vice Chair  
       Senator Steven Bradford  
       Senator Hannah-Beth Jackson  
       Senator Holly Mitchell  
       Senator Jeff Stone  
       Senator Scott Wiener  
       Jessica Devencenzi, Counsel

350 Fifth Avenue, 34<sup>th</sup> Floor  
New York, NY 10118-3299  
Tel: 212-290-4700  
Fax: 212-736-1300; 917-591-3452

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Clara Long, *Researcher*  
Maria McFarland, *Co-Director*  
Grace Meng, *Senior Researcher*  
Alison Parker, *Co-Director*  
Laura Pitter, *Senior National Security Counsel*  
John Raphling, *Senior Researcher*  
Brian Root, *Quantitative Analyst*  
W. Paul Smith, *Coordinator*  
Sarah St. Vincent, *Researcher*

#### HUMAN RIGHTS WATCH

Kenneth Roth, *Executive Director*  
Michele Alexander, *Deputy Executive Director, Development and Global Initiatives*  
Iain Levine, *Deputy Executive Director, Program*  
Chuck Lustig, *Deputy Executive Director, Operations*  
Bruno Stagno Ugarte, *Deputy Executive Director, Advocacy*

Emma Daly, *Communications Director*  
Peggy Hicks, *Global Advocacy Director*  
Babatunde Olugboji, *Deputy Program Director*  
Dinah Pokempner, *General Counsel*  
Tom Porteous, *Deputy Program Director*  
James Ross, *Legal & Policy Director*  
Joe Saunders, *Deputy Program Director*  
Frances Sinha, *Human Resources Director*

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Catherine Zennström

June 7, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

Re: SB 620 (Bradford) – Support

Dear Senator Bradford:

Human Rights Watch is writing to support California Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm.

Human Rights Watch is a non-profit, independent organization that investigates human rights violations in more than 90 countries around the world, including in the United States. Using our proven methodology of “investigate, expose, change,” we advocate for the enforcement of human rights with governments and international organizations and mobilize public pressure for change.

Unlike many sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements under California law are mandatory — judges are forbidden from tailoring a sentence to an individual’s case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

International human rights law requires that punishment should be proportionate to the offense and the individual’s blameworthiness and no greater than necessary. Consistent with this basic principle, we regularly recommend that legislators ensure that the severity of the punishment does not exceed the gravity of the crime; and reform or eliminate mandatory minimum sentencing laws that prevent judges from being able to tailor sentences to the individual crime and the particular defendant. Our investigation of federal drug prosecutions found that mandatory federal firearm enhancements often led to astonishing sentences that one federal public defender described as “irrational, inhumane, and absurd.” California law,



HRW.org

given the mandatory nature of gun enhancements, can have the same disproportionate impact.

SB 620 would address these concerns by allowing a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, are tailored to an individual offender, and are no longer than necessary to serve the purposes of punishment.

For these reasons, Human Rights Watch is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Alison Parker".

Alison Parker  
Co-Director, US Program

cc: The Honorable Reginald Byron Jones-Sawyer, Sr., The Honorable Tom Lackey, The Honorable Heath Flora, The Honorable Lorena S. Gonzalez Fletcher, The Honorable Bill Quirk, The Honorable Blanca E. Rubio, The Honorable Miguel Santiago, Youth Justice Coalition





## Contra Costa County

### Defenders Association

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**Brandon Banks**  
President

**June 1, 2017**

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

The Contra Costa County Defenders Association is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Contra Costa County Defender Association is comprised of deputy public defenders who represent indigent children and adults charged with criminal offenses in Contra Costa County. We also represent indigent members of our community post disposition as they try to reconstruct their lives and overcome the stigma of a criminal conviction. We witness firsthand the long-term effects that onerous prison sentences impose on vulnerable populations of our county and our state.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Contra Costa County Defenders Association is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Brandon Banks

President

cc: Members and Committee Staff, Assembly Committee on Public Safety

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<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

Women Who Never Give-Up  
770 Marne Hwy Suite 2D  
Moorestown, New Jersey 08057  
Tel: 609-346-2521  
Email: Gale@wwng.org



June 7, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Women Who Never Give-Up (WWNG) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

WWNG is a 501(c)(3) nonprofit organization that confronts a wide range of criminal justice and prison-related issues. Adopting both an individual and a systemic approach to public advocacy, WWNG fights for incarcerated persons and their families, and also works with correctional facilities, state agencies, and lawmakers seeking to improve prison conditions, reduce terms of imprisonment, and decrease racial and economic disparity in the justice system. One of our core principles is opposition to mandatory sentencing.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all. Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration. California now has the regrettable distinction of meting out some of the longest sentences in the nation, and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, WWNG is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

s/ Gale Muhammad,  
WWNG, Inc., President & Founder



## Californians United for a Responsible Budget

### Oakland Office:

1322 Webster St # 210 Oakland, CA 94612

510-435-1176 (c)

510-839-7615 (f)

### Los Angeles Office:

1137 E. Redondo Blvd. Inglewood, CA 9

213-864-8931(c)

www.curbprisonspending.org

The Honorable Nancy Skinner, Chair  
Senate Committee on Public Safety  
State Capitol, Room 2031  
Sacramento, CA 95814

Re: SB 620 (Bradford  
Judicial Discretion) - **SUPPORT**

Dear Chair Skinner,

Californians United for a Responsible Budget is writing to convey our strong support for SB 620.

Californians United for a Responsible Budget (CURB) is a statewide coalition of more than 70 grassroots organizations working to stop prison and jail expansion, reduce incarceration, and invest in the social safety net. As a coalition committed to an immediate and expansive reduction in the number of people imprisoned in California, CURB supports SB 620 for the impact it could have on creating more just and humane sentencing policies in California.

SB 620 will provide courts and judges with the ability to impose harsh sentences when the situation calls for it. Indiscriminate sentence enhancements regardless of the circumstances related to the commission of a crime does not make our communities safer.

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

Consistent with other enhancement sentence laws, SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony. SB 620 does not alter and retains existing sanctions for serious crimes.

Thank you for your consideration,

Gabriela Pelsinger

Californians United for a Responsible Budget

cc: Members, Senate Committee on Public Safety: Senators Bradford, Jackson, Mitchell,  
Stone, and Wiener



# BOARD OF SUPERVISORS COUNTY OF LOS ANGELES

821 KENNETH HAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012  
Tel: 213-974-3333 Fax: 213-625-7360 Sheila@bos.lacounty.gov

**SHEILA KUEHL**

SUPERVISOR, THIRD DISTRICT

July 18, 2017

Senator Steve Bradford  
Senate District 35  
State Capitol, Room 2062  
Sacramento CA 95814

RE: SENATE BILL 620 (Bradford) SUPPORT

To Senator Bradford:

I am writing in support of Senate Bill 620 which aims to amend gun use enhancements pursuant to Penal Code (PC) Sections 12022.5 and 12022.53. It is my understanding that your bill (SB 620), as written, allows for Judicial discretion to strike these enhancements at the time of sentencing; it does not eliminate these enhancements nor does it seek to undermine existing sanctions for serious crimes. What it does do is take a modest step towards a fairer criminal justice system. By allowing a Court, in the interest of justice, the discretion to strike these enhancements, this Bill will be consistent with other sentence enhancement laws.

Research has consistently shown that increasing an already long criminal sentence has neither a deterrent effect on crime nor a deterrent effect on the use of guns. Additionally, criminal justice reform seeks to address racial disparities where appropriate and possible and studies show that prosecutors have been more likely to charge people of color with mandatory sentence enhancements. In light of the fact that the California prison system remains under Federal oversight for overcrowding, that it houses more prisoners for life sentences than anywhere else in the nation and that one of every four prisoners in the State is serving time under gun enhancements, it is my belief that it is time to end these draconian mandatory sentences and reinstate discretion to the Judiciary who can examine each situation on a case to case basis.

California voters have already demonstrated their faith in judges: Proposition 57 overwhelmingly passed in November of last year. That bill, among other effects, allows judges, not prosecutors, to determine whether young people should be tried and punished as adults. Senate Bill 620 would echo this publicly expressed faith in the judicial branch.

This legal reform is sensible and timely. I applaud your efforts and offer my support for this bill.

Sincerely,

A handwritten signature in black ink that reads "Sheila Kuehl".

Sheila Kuehl  
Supervisor, Third District

SK:sg

June 6, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

The Alliance for Boys and Men of Color is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The Alliance for Boys and Men of Color is a coalition of youth, community, public system leaders, and policy researchers and advocates that are working to ensure our most vulnerable youth and young men of color get the tools and supports needed to develop into healthy, successful adults who can contribute to California's social and economic vitality. Working at the state and local level, the Alliance is actively pursuing reforms that will increase access to health services, support neighborhood safety, and reduce justice system involvement for this vulnerable population.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

ALLIANCE FOR  
**Boys and Men of Color**

Invest in the Health and Success  
of California's Future

individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Alliance for Boys and Men of Color is in strong support of SB 620. Should you have any questions, please reach out to Rosa Aqeel at [raqeel@policylink.org](mailto:raqeel@policylink.org).

Sincerely,



**Marc Philpart**

Principal Coordinator

Alliance for Boys and Men of Color

cc: Members and Committee Staff, Assembly Committee on Public Safety





March 27, 2017

Honorable Reginald Jones-Sawyer  
Chair, California State Assembly Public Safety Committee  
State Capitol, P.O. Box 942849, Sacramento, CA 94249-0059  
Public Safety Committee: Legislative Office Building  
1020 N Street, Room 111, Sacramento, CA 94249-0020

**Re: Sponsorship of Senate Bill 620 – Bradford – Gun Enhancements – Judicial Discretion**

Dear Assemblymember Jones-Sawyer:

The Youth Justice Coalition is honored to be a sponsor of SB 620, and we are urging your full support. Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The YJC is working to build a movement led by system impacted youth, formerly incarcerated people and our families to build more humane, productive and cost effective public safety solutions. More than 33,000 people incarcerated in California state prisons – 25 percent of the state's prison system – are serving time that includes gun enhancements. Last month, the Sentencing Project released a report revealing that California is tied with Utah as having the highest percentage of its state prison system – 31% of 129,805 prisoners – serving life sentences – many of which were contributed to by gun enhancements. That includes youth as young as 14 who – because of gang allegations – are subject to strict gun enhancements contributing to life sentences even when they were not accused of possessing the gun, or being the shooter.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the Youth Justice Coalition urges your support of SB 620.

Sincerely,



Kim McGill  
Organizer  
Cell: 323-327-1259  
E-mail: [kim@youth4justice.org](mailto:kim@youth4justice.org)



THE W. HAYWOOD BURNS INSTITUTE  
*For Justice Fairness and Equity*

**May 31, 2017**

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

The W. Haywood Burns Institute (BI) is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

The W. Haywood Burns Institute (BI) is a national non-profit organization based in Oakland, California. We seek to protect and improve the lives of people of color by promoting restorative and equitable practices that recognize the value of all human beings. Specifically, we work with local justice system decision-makers and community members to reduce racial and ethnic disparities using a data driven, collaborative approach. BI has achieved measurable reductions in racial and ethnic disparities working with dozens of jurisdictions across the nation, including 17 counties in California.

Nationally, firearm sentencing enhancements have been shown to disparately impact people of color, with White people accounting for 41 percent of households with firearms, yet only 27 percent of people incarcerated for firearms offences. Meanwhile, Black people account for 19 percent of gun ownership and 49 percent of people incarcerated for firearms offenses.<sup>1</sup>

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>2</sup> Instead, studies show

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<sup>1</sup> See Justice Policy Institute (August 2016). "Defining Violence: Reducing Incarceration by Rethinking America's Approach to Violence. Justice Policy Institute." Available Online:  
[http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_definingviolence\\_final\\_report\\_9.7.2016.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_definingviolence_final_report_9.7.2016.pdf)

<sup>2</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.



THE W. HAYWOOD BURNS INSTITUTE

*For Justice Fairness and Equity*

enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>3</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>4</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>5</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

For these reasons, the W. Haywood Burns Institute is in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,

Laura John Ridolfi  
Director of Policy  
The W. Haywood Burns Institute

cc: Members and Committee Staff, Assembly Committee on Public Safety

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<sup>3</sup> Ibid.

<sup>4</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>5</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



April 19, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 – as amended 3/28/17  
Support**

Dear Senator Bradford:

The American Civil Liberties Union of California is pleased to support your SB 620, which will allow for judicial discretion when applying sentence enhancements for using a gun during the commission of a felony. These enhancements come at a significant cost to society, but do little to protect the public.

Under Cal. Pen. Code § 12022.53, also known as “10-20-Life,” people convicted of serious felonies serve an extra 10 years if they brandished a gun during the crime, 20 years if they fired it, and 25-to-Life if firing the gun resulted in serious injury or death. These severely long enhancements are added to sentences that are already quite long, including life terms.

Although the original intention of 10-20-Life was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup>

However, while enhancements like 10-20-Life do not improve public safety, they have been primary drivers of mass incarceration,<sup>2</sup> and have resulted in California’s dubious distinction of meting out some of the longest sentences in the nation.<sup>3</sup> They also come with significant human costs, separating families and communities for decades longer than the base sentences require.

<sup>1</sup> See, e.g., Loftin, C., and McDowall, D. (1981). “One with a gun gets you two”: Mandatory sentencing and firearms violence in Detroit. *The ANNALS of the American Academy of Political and Social Science*, 455(1), 150-167; Loftin, C., and McDowall, D. (1984). The deterrent effects of the Florida felony firearm law. *Journal of Criminal Law and Criminology*, 75(1), 250-259. Loftin, C., Heumann, M., and McDowall, D. (1983). Mandatory sentencing and firearms violence: Evaluating an alternative to gun control. *Law and Society Review*, 17(2), 287-318. Ludwig, J. and Raphael, S. (2003). Prison sentence enhancements: The case of project exile. In J. Ludwig and P.J. Cook (Eds.), *Evaluating Gun Policy: Effects on Crime and Violence*. Washington, DC: Brookings Institution Press.

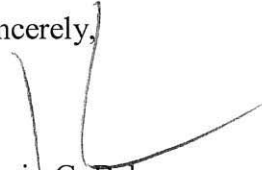
<sup>2</sup> National Research Council. (2014). “The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,” J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>3</sup> Pew Center on the States. (2012). “Time Served: The High Cost, Low Return of Longer Prison Terms.” Pew Charitable Trusts

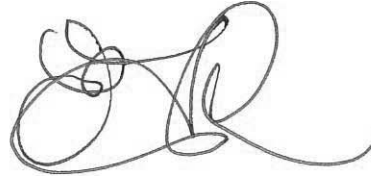
Consistent with other sentence enhancements,<sup>4</sup> SB 620 would allow a court use judicial discretion when applying a sentence enhancement when a person uses or discharges a firearm when a person is convicted for committing a felony.

For these reasons, the ACLU of California is in support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,



Kevin G. Baker  
Legislative Director



Lizzie T. Buchen  
Legislative Advocate

cc: Members and Committee Staff, Senate Committee on Public Safety

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<sup>4</sup> Cal. Pen. Code § 1385.



# Communities united for Restorative Youth Justice

Building community from the ground up!

www.curyj.org

June 7, 2017

The Honorable Steven Bradford  
California State Capitol, Room 2054  
Sacramento, California 95814

**Re: SB 620 (Bradford) – Support**

Dear Senator Bradford:

Communities United for Restorative Youth Justice is pleased to support your Senate Bill 620, which will allow a court, in the interest of justice, to strike a sentence enhancement for using or discharging a firearm when a person is convicted for committing a felony, consistent with other enhancements.

Unlike most sentence enhancements, which can be dismissed if the judge believes they are unjust in a specific case, gun enhancements are mandatory — judges are forbidden from tailoring a sentence to an individual's case and culpability. These mandatory terms have thus resulted in a rigid and arbitrary system that has meted out punishments that are disproportionate to the offense and do not serve the interest of justice or public safety.

Although the original intention of firearm enhancements was to deter people from committing crimes with guns, the growing body of research on sentence enhancements for gun use have failed to uncover clear evidence of a deterrent effect, or any public safety benefit at all.<sup>1</sup> Instead, studies show enhancements like these have been the primary drivers of prison overcrowding and our shamefully high rates of incarceration.<sup>2</sup> California now has the regrettable distinction of meting out some of the longest sentences in the nation,<sup>3</sup> and housing the nation's highest percentage of prisoners serving a life or de facto life sentence.<sup>4</sup>

SB 620 does not dispose of any existing sanctions for gun-involved felonies. Rather, SB 620 allows a judge to take into account the nature and severity of the crime, as well as the culpability of the individual, during sentencing. Consequently, SB 620 provides judges the ability to impose sentences that fit the severity of the offense, helping to ensure that incarcerated Californians do not serve unnecessarily long sentences.

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<sup>1</sup> See National Research Council. (2014). "The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration," J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

<sup>2</sup> Ibid.

<sup>3</sup> Pew Center on the States. (2012). *Time Served: The High Cost, Low Return of Longer Prison Terms*. Pew Charitable Trusts.

<sup>4</sup> The Sentencing Project (2017). *Still Life: America's Increasing Use of Life and Long-Term Sentences*.



# Communities united for Restorative Youth Justice

Building community from the ground up!

[www.curyj.org](http://www.curyj.org)

For these reasons, Communities United for Restorative Youth Justice in strong support of SB 620. Please do not hesitate to contact us should you have any questions.

Sincerely,  
Mar Velez

Policy and Organizing Campaign Manager  
Communities United for Restorative Youth Justice (CURYJ)  
Office: 2289 International Blvd. Oakland, CA 94606  
Mailing: 490 Lake Park Ave #16086 Oakland, CA 94610  
Website: [www.curyj.org](http://www.curyj.org) . Tel: 510-842-9365 Ext. 705

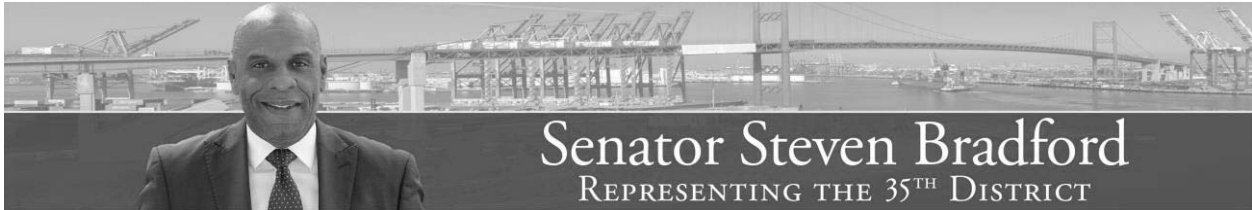
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**FOR IMMEDIATE RELEASE:** October 11, 2017

CONTACT: [Rashad.Johnson@sen.ca.gov](mailto:Rashad.Johnson@sen.ca.gov)

## **Governor Signs SB 620 Allowing Judges to Strike Unwarranted Sentence Enhancements**

SACRAMENTO – This afternoon, Governor Brown signed Senate Bill 620 into law, updating mandated sentencing enhancements for felony cases in which a firearm was used. This bill, sponsored by the American Civil Liberties Union (ACLU) of California, changes current law which prohibits judges from striking or dismissing a firearm sentence enhancement and allows judges to determine on a case-by-case basis as to whether or not a 10-year, 20-year or life-term extension is justified.

“Far too many people of color are disproportionately impacted by our state’s overly punitive sentencing laws, which tie the hands of our judges,” said Senator Steven Bradford (D-Gardena). “We must provide judges with the same level of discretion at sentencing as we afford prosecutors when filing charges.”

California judges can use their discretion to dismiss almost every other sentencing enhancement at the time of sentencing or resentencing, but current state law prohibits judges from doing so with mandatory firearm enhancements, which come in the form of an additional sentence of 10 years, 20 years, or life. SB 620 does not eliminate firearm sentence enhancements, but instead it simply affords judges the opportunity to look at the facts of each case on an individual basis to ensure that the punishment fits the nature and severity of the crime, as well as an individual’s involvement in that crime.

“SB 620 is a critical step toward a more fair and equitable justice system in California,” said Lizzie Buchen, Legislative Advocate with the ACLU of California, which sponsored the measure. “For far too long, extreme sentencing enhancements have fueled mass incarceration, failed to deter crimes, and disproportionately ensnared people of color.”

“With the signing of this bill, I hope to continue my work with the Governor, my colleagues in the Legislature and remarkable organizations such as the ACLU, who are championing these necessary sentencing reforms,” continued Senator Bradford. “These reforms will have tremendous impacts on individuals and families throughout the state. We will save lives, instead of throwing them away.”

###

*Senator Bradford represents the Los Angeles County communities of Carson, Compton, Gardena, Harbor City, Hawthorne, Inglewood, Lawndale, Lennox, San Pedro, Watts, Willowbrook, and Wilmington.*

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# Legislative Prerogative vs. Judicial Discretion: California's Three Strikes Law Takes a Hit

Lisa E. Cowart

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# LEGISLATIVE PREROGATIVE VS. JUDICIAL DISCRETION: CALIFORNIA'S THREE STRIKES LAW TAKES A HIT

*Lisa E. Cowart*

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## INTRODUCTION

The United States is besieged by an incarceration crisis which far surpasses that of any other nation.<sup>1</sup> In response to public pressures stemming from the fear of violence, politicians continue to successfully implement increasingly stringent sentencing procedures to facili-

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1. Paul Lashmar, *Lock 'Em Up, Throw Away the Key*, NEW STATESMAN & SOC'Y, Apr. 1, 1994, at 20. In 1990 alone, the United States jailed 455 out of every 100,000 people. *Id.* In comparison, South Africa, second to the United States in incarceration rates, jailed only 311 out of every 100,000, while Canada jailed 111, the United Kingdom jailed 97, the Republic of Ireland and Sweden jailed 44. *Id.* It is estimated that in 1993, the United States figure of 455 jumped to 520. *Id.*

tate the political posture of getting tough on crime.<sup>2</sup> Politicians, including presidential candidates, often prey on constituents' fears in advancing their own electoral purposes.<sup>3</sup> Several states, as well as the federal government, have created sentencing commissions for re-vamping sentencing procedures to produce conformity for like crimes.<sup>4</sup> These new sentencing procedures have included what are now known as "three strikes" laws, which act to sentence second and third-time felons for a period of twenty-five years to life on a "no questions asked" basis.<sup>5</sup> While these laws have arguably been effective means of ridding the streets of seemingly habitual criminals, three strikes laws have also contributed to a skyrocketing prison population.<sup>6</sup>

Three strikes laws, while varying from state to state, invariably prevent the judiciary from exercising its traditional discretionary sentencing powers.<sup>7</sup> As may have been expected, California has led the

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2. Robert S. Blanco, *Mixing Politics and Crime*, FED. PROBATION, Dec. 1995, at 91, 92; see Charles W. Colson, *Let's Get Soft on Criminals! Put the Nonviolent to Work*, WASH. POST, July 17, 1994, at C5, available in LEXIS, News Library, Wpost File; Thomas B. Edsall, *Failure to Punish Misdemeanors Fuels Violence, St. Louis Officials Say*, WASH. POST, Apr. 10, 1994, at A8, available in LEXIS, News Library, Wpost File; *Taking a Rational Approach to Crime*, ATLANTA J. & CONST., Jan. 20, 1994, at A14, available in LEXIS, News Library, Atljnl File; Susan Yoachum, *Public, Politicians Agree: Get Tough on Felons*, SAN FRANCISCO CHRON., Apr. 18, 1994, at A1, available in LEXIS, News Library, Sfchrn File; David Zucchini, *Is Violence at an All-Time High? Look Again*, ORANGE COUNTY REG., Nov. 18, 1994, at G1, available in LEXIS, News Library, Ocreg File.

3. See *supra* note 2; see also *Crime-Fighter Claim Bears Scrutiny*, OMAHA WORLD-HERALD, Sept. 19, 1996, at 28, available in LEXIS, News Library, Omwhld File; Finlay Lewis, *Dukakis Displays More Compassion for Criminal than Victim, Bush Says*, SAN DIEGO UNION & TRIB., Oct. 8, 1988, at A10, available in LEXIS, News Library, Sdut File; Sam Vincent Meddis, *All 3 Candidates Talking Tough*, USA TODAY, Oct. 26, 1992, at 10A; David Shribman, *Campaign '88: Dukakis is Coming Under Stepped Up Attacks by Bush on Campaign on Issue of Prison Furloughs*, WALL ST. J., July 1, 1988, available in LEXIS, News Library, Wsj File.

4. ANDREW VON HIRSCH ET AL., *THE SENTENCING COMMISSION AND ITS GUIDELINES 10-12 (1987)*; *THE U.S. SENTENCING GUIDELINES: IMPLICATIONS FOR CRIMINAL JUSTICE xi-xiii* (Dean J. Champion ed., 1989).

5. Peter H. King, *That Grinding Sound*, L.A. TIMES, Mar. 13, 1994, at A1, available in LEXIS, News Library, Lat File.

6. See James Austin, *"Three Strikes and You're Out": The Likely Consequences on the Courts, Prisons, and Crime in California and Washington State*, 14 ST. LOUIS U. PUB. L. REV. 239, 245 (1994); Ilene M. Shinbein, *"Three Strikes and You're Out": A Good Political Slogan to Reduce Crime, but a Failure in its Application*, 22 NEW ENG. J. CRIM. & CIV. CONFINEMENT 175, 199 (1996).

7. See, e.g., *United States v. Mistretta*, 488 U.S. 361 (1989) (upholding the constitutionality of the Sentencing Commission). Although *Mistretta* held there was no violation of the separation of powers in vesting legislative power to the Sentencing Commission, subsequent to that case "the judiciary has resented the encroachment on their powers of discretion and interpretation of the law." Karen Lutjen, *Culpability and Sentencing Under Mandatory Minimums and the Federal Sentencing Guidelines: The Punishment No Longer Fits the Criminal*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 389, 421 (1996).

crusade in developing the most controversial and restrictive three strikes sentencing law of any three strikes state.<sup>8</sup> Until recently, California's three strikes law effectively removed sentencing discretion from the judiciary in sentencing second and third-time habitual felony offenders, placing that discretion within the prosecutorial realm and forcing a standoff between the judiciary and the legislature over sentencing discretion.<sup>9</sup> In the landmark case of *People v. Superior Court (Romero)*,<sup>10</sup> the California Supreme Court unanimously held that section 1385(a) of the California Penal Code permits a court to strike a prior felony conviction in three strikes cases on its own motion, rather than upon prosecutorial recommendation.<sup>11</sup>

The goal of this Comment is three-fold. First, this Comment provides a comprehensive understanding of the purpose and application of three strikes laws. Second, this Comment highlights the various policy concerns that are inescapably intertwined with three strikes laws. Finally, the author advocates moving away from the retributivist position on sentencing that has replaced the previous rehabilitative model, and instead refocusing energies on a combined approach of education, prevention, rehabilitation, and retribution. Part I discusses the procedural machinations of the three strikes law itself, and further, provides an introductory look into its application. For illustrative purposes, the overview is followed by a brief discussion of the application of similar three strikes laws in other leading three strikes states. Having established the substance of California's three strikes law and its function and application, the next section discusses the rationale and support behind the passage of such laws, including both public and political views. The sources of opposition to such legislation are then examined. This opposition is broken down into six separate arguments.

---

8. California tends to lead the way in developing new legislation. For example, three strikes laws gained little attention until California's law was passed in 1994. Gregory W. O'Reilly, *Truth-in-Sentencing: Illinois Adds yet Another Layer of "Reform" to its Complicated Code of Corrections*, 27 LOY. U. CHI. L.J. 985, 996 (1996); see generally Lori L. Hanesworth, *Are They Graffiti Artists or Vandals? Should They Be Able or Caned?: A Look at the Latest Attempts to Eradicate Graffiti*, 6 DEPAUL-LCA J. ART & ENT. L. 225, 231 (1996) (noting that California leads the way in the development of controversial caning legislation as punishment for graffiti vandals); Keirsten L. Walsh, *Safe and Sound at Last? Federalized Anti-Stalking Legislation in the United States and Canada*, 14 DICK. J. INT'L L. 373, 382-83 (1996) (highlighting California's leading role in the development of anti-stalking legislation in 1990, to which every state in this country, as well as Canada, has followed suit).

9. See, e.g., CAL. PENAL CODE § 667(f)(2) (West 1988 & Supp. 1998).

10. 917 P.2d 628 (Cal. 1996).

11. *Id.* at 629.

After fully discussing California's three strikes law, the background focuses on myriad sentencing laws in place throughout the country that are directly aimed at punishing violent or habitual criminals to identify the many sentencing options available to courts in punishing habitual offenders. The Part then goes on to examine the chief problems associated with California's three strikes law, considering at length both the practical and theoretical problems arising as a result of California's booming prison population. As a direct corollary to the prison population problem, the many alternatives to incarceration as punishment for nonviolent habitual criminals are discussed as methods which could invariably alleviate the crises that have enveloped California's legal system.

Finally, the case of *People v. Superior Court (Romero)* and its potential application of California's three strikes law is discussed. Noted are the procedural history of the case, the legislation to the California Supreme Court's holding, and the perceived impact on California's legal process. Part II examines in great detail each of the background points in one of two ways: (1) how the individual point is affected by the use of California's three strikes law; or (2) how the individual point would alleviate the problems and concerns caused by three strikes laws. After an extensive examination of all of the previously mentioned factors, Part III contains conclusions about three strikes laws.

This Comment focuses on California's three strikes law, the incarceration debacle, and other political and psychological sentencing issues for two reasons. First, California tends to lead the nation in new and innovative legislation and, as a result, could be highly influential in the passage of more radical three strikes laws in other states. Second, California's three strikes law is the most restrictive and controversial of the three strikes laws currently in place.

## I. BACKGROUND

### A. Overview of California's Three Strikes Legislation

Previously known as the Jones-Costa Three Strikes Bill, Section 667 of the California Penal Code was enacted as emergency legislation in 1994.<sup>12</sup> The bill, initiated in response to the senseless murder of eight-

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12. CAL. PENAL CODE § 667. The California Penal Code currently contains two similar provisions regulating sentencing impositions for persons convicted of a felony, who have previously committed one or more "violent" or "serious" felonies. *Id.* §§ 667, 1170.12. Because both statutes are nearly identical, for purposes of this Comment, all references made to California's three strikes legislation are to CALIFORNIA PENAL CODE section 667.



een-year old Kimber Reynolds,<sup>13</sup> received little support in its early stages.<sup>14</sup> However, the subsequent murder of twelve-year old Polly Klaas was highly instrumental,<sup>15</sup> and essentially became the turning point in obtaining the necessary signatures to add the bill to the California ballot.<sup>16</sup> Use of the catchy baseball slogan, “Three strikes, you’re out!” has also played an influential role in the increased public support of three strikes sentencing legislation.<sup>17</sup> The myriad of policy concerns behind three strikes legislation is not as simple as the baseball slogan may suggest, however.<sup>18</sup> Section 667 of the California Penal Code was unquestionably aimed at enhancing mandatory sentences for convicted criminals with a history of serious or violent felony convictions.<sup>19</sup> Furthermore, it was designed to provide a “no

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13. Eighteen-year-old Kimber Reynolds was shot in the head during an attempted robbery of her purse as she exited a local restaurant on June 30, 1992; she died two days later. Louis Galvan, *A Tender Tribute to Daughter*, FRESNO BEE, July 2, 1992, at A1, available in LEXIS, News Library, Fresno File. Police believed Joseph Michael Davis, a career criminal with a history of drug abuse, was linked to her death. Amy Alexander, *Tower Neighborhood Mourns: Slaying Suspect Had Violent History*, FRESNO BEE, July 4, 1992, at A1, available in LEXIS, News Library, Fresno File. Davis was subsequently shot and killed by police officers outside an apartment complex. *Id.* A second suspect, Douglas David Walker was later linked to Reynolds’ murder as an accomplice. Royal Calkins, *Victim’s Family Urges Longer Prison Sentence*, FRESNO BEE, Dec. 3, 1992, at B1, available in LEXIS, News Library, Fresno File. Walker pled guilty to lesser charges and was sentenced to nine years in prison on recommendation. *Id.*

14. George Skelton, *A Father’s Crusade Born from Pain*, L.A. TIMES, Dec. 9, 1993, at A3, available in LEXIS, News Library, Lat File. Mike Reynolds, Kimber’s father, was the driving force behind California’s three strikes bill, targeted at career criminals. *Id.* Reynolds initially had difficulty in obtaining enough signatures to add the bill to the California ballot. Jane Gross, *Many Shout, ‘Three Strikes and You’re Out’: Repeat-Offender Action Draws Rush of Support*, SAN DIEGO UNION & TRIB., Dec. 26, 1993, at A3, available in LEXIS, News Library, Sdut File. However, the necessary support was quickly forthcoming following the death of Polly Klaas. See *infra* notes 15-16 and accompanying text.

15. Twelve-year-old Polly Klaas was abducted from her home at knife-point during a slumber party on October 1, 1993. *Police Find Body of Missing California Girl*, STATE J.-REG., Dec. 5, 1993, at 42, available in LEXIS, News Library, Stjreg File. Her body was found two months later in a wooded area approximately 30 miles from her home. *Id.*

16. Pamela J. Podger, *Anger over Klaas Killing Generates Support for ‘Three Strikes’ Initiative*, FRESNO BEE, Dec. 7, 1993, at A1, available in LEXIS, News Library, Fresno File.

17. The phrase “three strikes, you’re out” has been credited with attracting support to the three strikes movement. Daniel M. Warner, *Direct Democracy: The Right of the People to Make Fools of Themselves*, 19 SEATTLE U. L. REV. 47, 100 n.172 (1995); see Peter J. Benekos & Alida V. Merlo, *Three Strikes, You’re Out!: The Political Sentencing Game*, FED. PROBATION, Mar. 1995, at 3; Michael G. Turner et al., “Three Strikes and You’re Out” Legislation: A National Assessment, FED. PROBATION, Sept. 1995, at 16.

18. Marc Mauer, *Politics, Crime Control . . . and Baseball?*, 9 CRIM. JUST. 30, 64 (1994); see ‘Three Strikes’ Rule Works in Baseball, Not Criminal Justice, AUSTIN-AM. STATESMAN, Sept. 6, 1994, at A8, available in LEXIS, News Library, Austin File.

19. CAL. PENAL CODE § 667(b) (West 1988 & Supp. 1998). (“It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses.”)

questions asked” policy in sentencing a career criminal to life imprisonment for his or her third felony conviction.<sup>20</sup> Although the intent of the law may have been clear, the application of the law has been highly criticized.<sup>21</sup>

### 1. California Penal Code Section 667

Section 667 is actually a two-tiered plan aimed at penalizing the habitual criminal, focusing on both two and three-time convicted felons.<sup>22</sup> Section 667 only applies when the prior convictions are classified as one of the “serious” or “violent” felonies identified in the statute.<sup>23</sup> Both tiers of Section 667 require that the prosecuting attor-

20. Peter H. King, *That Grinding Sound*, L.A. TIMES, Mar. 13, 1994, at A3, available in LEXIS, News Library, Lat File.

21. See Dan Bernstein, *Democrats Jumping Off “3 Strikes” Train*, SACRAMENTO BEE, July 18, 1996, at A1, available in LEXIS, News Library, Sacbee File (reporting on the development of the three strikes law in California’s legislature); William Claiborne, *Study Finds Disparity in ‘Three Strikes’ Law: Blacks in California Disproportionately Sentenced*, WASH. POST, Mar. 5, 1996, at A3, available in LEXIS, News Library, Wpost File (reporting that African-Americans are being sentenced at a rate of thirteen to one over Caucasians under three strikes laws); Carl Ingram, *Serious Crime Falls in State’s Major Cities*, L.A. TIMES, Mar. 13, 1996, at A3, available in LEXIS, News Library, Lat File (citing a department of corrections study that indicates that 85% of criminals sentenced under three strikes laws were sentenced on second and third offenses that were nonviolent, and a Center on Juvenile and Criminal Justice report which found that 43% of three strikes inmates are African-American); Greg Krikorian, *One Man’s Battle With ‘3 Strikes’*, L.A. TIMES, Mar. 22, 1996, at B1, available in LEXIS, News Library, Lat File (discussing allegations that three strikes laws disproportionately sentence a higher rate of African-Americans); Steve Lawrence, *Two Senators Spar on ‘3 Strikes’*, FRESNO BEE, July 19, 1996, at A3, available in LEXIS, News Library, Fresno File (discussing politicians’ debate whether three strikes laws result in extremely harsh sentences for minor offenses).

22. CAL. PENAL CODE §667.

23. *Id.* § 667.5(c). This section describes with particularity those felonies considered “violent”:

- (1) Murder or voluntary manslaughter.
- (2) Mayhem.
- (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
- (4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- (6) Lewd acts on a child under the age of 14 years as defined in Section 288.
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.
- (9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55

of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

(13) A violation of Section 12308.

(14) Kidnapping, in violation of subdivision (b) of Section 207.

(15) Kidnapping, as punished in subdivision (b) of Section 208.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a dangerous or deadly weapon as provided in subdivision (b) of Section 12022 in the commission of the carjacking.

(18) Any robbery of the first degree punishable pursuant to subparagraph (a) of paragraph (1) of subdivision (a) of Section 213.

(19) A violation of Section 264.1.

*Id.* Section 1192.7(c) describes with particularity those felonies considered "serious":

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person; (6) lewd or lascivious act on a child under the age of 14 years; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any other felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing great bodily injury or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) burglary of an inhabited dwelling house, or trailer coach as defined by the Vehicle Code, or inhabited portion of any other building; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which the defendant personally used a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) any violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; (26) grand theft involving a firearm; (27) carjacking; any attempt to commit a crime listed in this subdivision other than an assault; and (20) any conspiracy to commit an offense described in paragraph (24) as it applies to Section 11370.4 of the Health and Safety Code where the defendant conspirator was substantially involved in the planning, direction, or financing of the underlying offense.

*Id.* § 1192.7(c).

ney plead and prove each prior felony conviction.<sup>24</sup> However, more important to the purposes of this Comment, pursuant to Section 1385 of the California Penal Code,<sup>25</sup> the prosecuting attorney may move to dismiss or strike a prior felony conviction allegation *in the furtherance of justice*.<sup>26</sup> A prosecuting attorney may also strike a prior felony conviction on the basis of insufficient evidence.<sup>27</sup> Upon such request of the prosecution, and upon satisfactory showing, the court may dismiss any prior felony convictions.<sup>28</sup> However, the striking of a prior felony conviction cannot be the basis for any plea bargain between the prosecutor and the accused felon.<sup>29</sup>

The first tier of Section 667 directly affects those convicted felons who have one prior felony conviction on their record, regardless of the jurisdiction in which the previous felony was committed.<sup>30</sup> For these second-time felony offenders, Section 667 mandates that a five-year enhancement penalty be added to each sentence imposed for the instant crime, whereby the sentence and the enhancement then run consecutively.<sup>31</sup> If the current conviction encompasses more than one crime, consecutive sentences and enhancements shall be imposed for each conviction.<sup>32</sup> For example, if an offender is convicted of both armed robbery and murder as part of the same offense, he or she would be sentenced consecutively for those crimes, and a ten-year enhancement penalty would be added to the sentence.

The second tier of Section 667 applies to convicted felons with two or more serious or violent prior felony convictions.<sup>33</sup> However, this second provision differs distinctly from the first in the severity of the sentence imposed for a third felony conviction. For the three-time convicted felon, the sentence imposed results in an indeterminate life

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24. *Id.* § 667(f)(1).

25. *Id.* § 1385.

26. *Id.* § 667(f)(2); *see id.* § 1385. Section 1385 states:

(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and *in furtherance of justice*, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

(b) *This section does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence under Section 667.*

*Id.* (emphasis added).

27. *Id.* § 1385.

28. *Id.*

29. *Id.* § 667(g).

30. *Id.* § 667(a)(1).

31. *Id.*

32. *Id.* § 667(c)(7).

33. *Id.* § 667.5.

sentence.<sup>34</sup> The minimum term of the indeterminate sentence is the *greater* of three possibilities: 1) three times the sentence for the current felony conviction; 2) state imprisonment for twenty-five years; or 3) the sentence as determined by the court for the instant conviction, plus any applicable enhancements pursuant to Section 1170 of the California Penal Code.<sup>35</sup> At a *minimum*, the third-time convicted felon can be assured of being sentenced to a term of twenty-five years to life. However, because the statute calls for the *greater* penalty, the third-time sentence often results in life imprisonment.

## 2. *Application of Section 667*

Lawmakers and citizens alike are becoming increasingly aware that three strikes legislation is achieving its task of putting away career criminals—those with prior serious or violent felony convictions.<sup>36</sup> At the same time, it has become readily apparent that the majority of repeat offenders being punished under the three strikes law are *nonviolent* criminals.<sup>37</sup> A 1996 California Department of Corrections re-

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34. *Id.* § 667(e)(2)(a).

35. *Id.* § 667(e)(2)(i)-(iii). The legislative intent of this determinate sentencing law is to provide sentencing uniformity for like crimes, through fixing sentencing terms proportionate to the seriousness of the offense, and thus overcoming sentencing disparity. *Id.* § 1170(a)(1).

36. See Janine DeFao, *'Three Strikes' Credited as Crime Hits 25-Year Low*, SACRAMENTO BEE, July 2, 1996, at B1, available in LEXIS, News Library, Sacbee File (reporting that California crime rates are the lowest in 25 years; Attorney General Dan Lungren attributes the drop in large part to three strikes laws); Brad Gates, *Law Enforcement Appreciates the Backup Crimework of Wilson and Legislature to Increase Funding for Public Safety Deserves a Public "Thank You,"* L.A. TIMES, Aug. 18, 1996, at B7, available in LEXIS, News Library, Lat File (reporting that the Orange County, California crime rate has dropped six point nine percent since "three strikes" was passed in 1994; however, because a reduction in crime does not validate a solution, Governor Pete Wilson subsequently enacted laws which provide an extra \$150 million for additional police officers and programs for juvenile crime prevention); J. Harry Jones, *Funds Asked for Jail Construction*, SAN DIEGO UNION & TRIB, Oct. 16, 1996, at A4, available in LEXIS, News Library, Sdut File (stating that California crime rates continue to drop while jail populations continue to rise; both factors attributed largely to "three strikes"). *But see* Karen Brandon, *California High Court Decimates 'Three Strikes' Law*, CHI. TRIB., June 21, 1996, at 3 (indicating that crime rates are also dropping in states that do not have three strikes laws).

37. See Ingram, *supra* note 21, at 3 (citing a department of corrections study that indicates that 85% of criminals sentenced under three strikes law were nonviolent); Patience Milrod, *Impact of Three Strikes Draws Praise, Criticism*, FRESNO BEE, Jan. 21, 1996, at B7, available in LEXIS, News Library, Fresno File (reporting that the overwhelming majority of three strikes sentences are the result of nonviolent or non-serious crimes). Some harsh, and popularly known examples of three strikes convictions for nonviolent or serious crimes are: a Sacramento man received a life sentence for stealing two packs of cigarettes; a San Bernardino man convicted of stealing one slice of pizza received a life sentence; and a Santa Ana man burglarized a restaurant, stealing only four cookies, and consequently received a sentence of 25 years. Nick DiSpoldo, *Three-Strikes Laws: Cruel & Unusual?*, COMMONWEALTH, June 14, 1996, at 10-11; see Michael Brennan, *My Turn—A Case for Discretion*, NEWSWEEK, Nov. 13, 1995, at 18. *But see* "Three Strikes" in Action, SACRAMENTO BEE, Apr. 3, 1996, at B6, available in LEXIS, News Library, Sacbee File

port indicates that, of all criminals sentenced under three strikes laws, fifteen percent are serving time for violent crimes, six percent are serving time for serious crimes, and roughly eighty percent are serving time for nonviolent crimes.<sup>38</sup> Furthermore, it was foreseeable that the number of plea bargains entered into every year would be drastically reduced as a result of the imposition of three strikes legislation—and that probability has become reality.<sup>39</sup> The impact of three strikes laws on the legal system created an influx of jury trial requests, as opposed to the more efficient and less costly plea bargains.<sup>40</sup>

### B. Overview of Other Three Strikes States

While California's three strikes law is the basis of this Comment, twenty-two states currently have some form of three strikes legislation in place.<sup>41</sup> Washington and Wisconsin are two other leading three strikes states, although California's rate of incarceration under its three strikes law far exceeds those of these states.<sup>42</sup> The state supreme courts in both Washington and Wisconsin have recently up-

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(reporting that evidence is strong that the vast majority of those sentenced to life under "three strikes" are dangerous career criminals, and possibly only 15% of criminals sentenced to life under "three strikes" do not have a violent history).

38. See Ingram, *supra* note 21, at A3 (discussing a California Department of Corrections report).

39. See Cyndee Fontana, "Three Strikes" Law is Bearing Down on Fresno Courts, FRESNO BEE, Jan. 21, 1996, at A1, available in LEXIS, News Library, Fresno File.

40. *Id.* An estimated \$169 million in extra costs has been spent in Los Angeles on criminal court trials demanded by criminal defendants in lieu of less costly plea bargaining procedures. *Three Strikes Injustice*, ARIZ. DAILY STAR, Mar. 13, 1996, at 10A, available in 1996 WL 4982450. It is estimated that the figure could jump to \$300 million in 1997. Claiborne, *supra* note 21, at A3.

41. Angie Cannon, *3-Strikes Laws Swing and Miss, Survey Indicates*, DENV. POST, Sept. 10, 1996, at A1, available in LEXIS, News Library, Dpost File. In 1993, Washington was the only state to enact three strikes legislation. *Id.* In 1994, twelve states enacted three strikes legislation: California, Colorado, Connecticut, Georgia, Indiana, Louisiana, Maryland, New Mexico, North Carolina, Tennessee, Virginia, and Wisconsin. *Id.* In 1995, nine states enacted three strikes legislation: Arkansas, Florida, Montana, Nevada, New Jersey, Pennsylvania, South Carolina, Utah, and Vermont. *Id.*

42. *Id.* As of 1996, California led three strikes states in number of convictions: 1,300 third strike convictions, and approximately 14,000 second strike convictions. *Id.* Second to California is Washington, with 63 convictions. *Id.* Wisconsin, known as a leading three strikes state, has only one conviction. *Id.* While Wisconsin boasts merely one conviction, it is known as a leading three strikes state because the Wisconsin Supreme Court has recently allowed the state's three strikes legislation, WIS. STAT. § 939.62 (1995), to stand without review. See *State v. Lindsey*, 554 N.W.2d 215 (Wis. Ct. App. 1996), *cert. denied*, 555 N.W.2d 816 (Wis. 1996) (holding that Wisconsin's three strikes law was *not* violative of the constitutional prohibition against cruel and unusual punishment, the doctrine of separation of powers, or equal protection, and therefore it passed constitutional muster).

held three strikes legislation as passing constitutional muster.<sup>43</sup> Additionally, in those states that have not enacted three strikes legislation, there may exist a variety of forms of de facto three strikes legislation, such as habitual offender legislation.<sup>44</sup>

### C. *The Movement Toward Three Strikes Legislation*

California's three strikes legislation was initiated in response to two senseless murders committed by recidivists in 1992 and 1993.<sup>45</sup> However, the movement itself had been long in the making.<sup>46</sup> Throughout the country, many people lived in fear of rising crime rates, senseless gang-related crimes, children carrying guns, crimes committed by recidivists, and children being targeted by drug dealers.<sup>47</sup> The public blamed sentencing procedures and judicial discretion for allowing violent criminals to walk free.<sup>48</sup> As a result, judicial discretion has become the target of legislative prerogative. In response to increasing public pressures, state legislatures have focused increased attention on limiting the role of judicial discretion in the sentencing of repeat offenders.<sup>49</sup> The combination of public sentiment for "get tough poli-

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43. *State v. Thorne*, 921 P.2d 514, 537 (Wash. 1996); *Lindsey*, 554 N.W.2d at 225 (Wis. Ct. App. 1996). The Supreme Court of Washington upheld that state's three strikes statute, WASH. REV. CODE § 9.92.090 (1994), as constitutional, finding in part that it did not violate the doctrine of separation of powers, was not unconstitutionally vague, was not violative of equal protection, was not cruel and unusual punishment, and did not violate the defendant's right to due process. *Thorne*, 921 P.2d at 537; see *supra* notes 41-42 and accompanying text; see also *State v. Rivers*, 921 P.2d 495 (Wash. 1996) (holding sentence of life imprisonment without possibility of parole is not cruel and unusual punishment for a second degree robbery charge of a persistent offender); *State v. Manussier*, 921 P.2d 473 (Wash. 1996) (upholding a sentence of life imprisonment for robbery under the three strikes law).

44. See *infra* notes 118-26 and accompanying text. Furthermore, sentencing guidelines have also been enacted which include penalty enhancements for repeat offenders. See *infra* note 135-44.

45. See *supra* notes 13-16 and accompanying text.

46. See generally Sharon F. Griffin, *War on Crime: One Community Wins*, SAN DIEGO UNION & TRIB., Dec. 18, 1991, at A1, available in LEXIS, News Library, Sdut File (reporting that the public is tired of crime, fear, drugs, and gangs); Ron Harris, *Violent Death is All Too Real for this Generation's Children*, KAN. CITY STAR, May 26, 1991, at A1, available in LEXIS, News Library, Kcstar File (reporting on children, guns, and violence); Howard Kleinberg, *Getting Tough on Crime Can Have Bad Results*, PORTLAND OREGONIAN, Dec. 29, 1993, at D7, available in 1993 WL 11721325 (reporting on public fear of street crimes); Chuck Lindell et al., *The Spark of Fear*, AUSTIN-AM. STATESMAN, Dec. 15, 1991, at A1, available in LEXIS, News Library, Austin File (reporting that multiple, unrelated, serious crimes cause an increase in the public's fear of crime).

47. Lindell et al., *supra* note 46, at A1.

48. See Michael Perlstein, *Justice System Outgunned in War on Crime*, NEW ORLEANS TIMES-PICAYUNE, May 26, 1996, at A14, available in 1996 WL 6422712.

49. See generally Turner et al., *supra* note 17 (discussing legislative attempts to decrease the role of judicial discretion in sentencing).

cies” with the opportunity for political gain brought California and other lawmakers closer to the passage of three strikes legislation.<sup>50</sup>

Adding fuel to the fire, the 1992 Presidential campaigns emphasized that crime was one of the most pressing concerns on the minds of constituents—platforms on crime led the way in presidential strategy.<sup>51</sup> In the 1994 State of the Union Address, President Clinton embraced the federal three strikes proposal.<sup>52</sup> Furthermore, in his 1994 radio address, the President stated outright that “[o]ur citizens want criminals to be punished,” and that laws such as three strikes are a tough way of meeting that goal directly.<sup>53</sup> Subsequently, President Clinton signed the Violent Crime Control and Law Enforcement Act of 1994, the federal version of three strikes legislation,<sup>54</sup> which imposed life imprisonment for a third violent felony conviction.<sup>55</sup> Many states, including California, quickly followed suit in enacting three strikes legislation.<sup>56</sup> President Clinton has subsequently changed his position on the application of three strikes laws, requesting modifications to narrow the scope of the Act’s applicability.<sup>57</sup> Although three strikes laws have received strong support, they have also encountered strong opposition.

#### D. *Opposition to Three Strikes Legislation*

Opponents of three strikes legislation advance three main arguments. First, opponents contend that three strikes legislation man-

50. See *supra* notes 2-3 and accompanying text.

51. See Meddis, *supra* note 3, at A10 (stating that crime issues have always been an important political angle of presidential elections).

52. Bill Clinton, The State of the Union Address (Jan. 25, 1994), reprinted in *Let Us Resolve to Continue the Journey of Renewal*, WASH. POST, Jan. 26, 1994, at A12, available in 1994 WL 226800.

53. *The President’s Radio Address*, WEEKLY COMP. PRES. DOC. 1493 (July 16, 1994).

54. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended at 18 U.S.C. § 922).

55. 18 U.S.C. § 3559(c) (1994). Section 3559(c) provides:

Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant’s conviction of the preceding serious violent felony or serious drug offense.

*Id.*

56. Cannon, *supra* note 41, at A1.

57. David Lauter, *Clinton Qualifies His Support of 3 Strikes Measure*, L.A. TIMES, Feb. 16, 1994, at A1, available in LEXIS, News Library, Lat File.



dates disproportionate sentences.<sup>58</sup> Second, they attack the propriety of prohibiting judicial discretion in sentencing by requiring mandatory sentencing for a broad range of crimes.<sup>59</sup> Third, opponents argue that three strikes legislation directly violates the separation of powers doctrine.<sup>60</sup>

### 1. *Disproportionate Sentencing*

A majority of nonviolent criminal offenders have been sentenced under three strikes laws to mandatory minimum prison sentences of twenty-five years to life.<sup>61</sup> These nonviolent criminal offenders include both drug users and petty criminals.<sup>62</sup> Opponents propound, therefore, that three strikes laws render disproportionate, overly-harsh penalties for nonviolent crimes.<sup>63</sup> Courts have found otherwise, consistently holding that sentences rendered in accord with three strikes laws are proportional and pass constitutional muster.<sup>64</sup> Opponents also argue that three strikes laws sentence a disproportionate number of minorities, specifically African-Americans.<sup>65</sup> Studies on

58. See Claiborne, *supra* note 21, at A3; Ingram, *supra* note 21, at A3. Opponents argue that minorities, primarily African-Americans, are sentenced at a disproportionate rate to that of Caucasians. *Id.*

59. See Robert Heglin, *A Flurry of Recidivist Legislation Means: "Three Strikes and You're Out,"* 20 J. LEGIS. 213, 226 (1994); Steve Lawrence, *Senate Panel Rejects Limits on Judges' Discretion in Three Strikes Cases*, ASSOCIATED PRESS POL. SERVICE, July 6, 1996, available in 1996 WL 5394765.

60. Turner et al., *supra* note 17, at 34. However, in the recent California Supreme Court case of *People v. Superior Court (Romero)*, the court held that section 667 of the CALIFORNIA PENAL CODE, which prohibited judicial discretion in the sentencing phase of criminals convicted under said section, was unconstitutional insofar as it violated the constitutional doctrine of separation of powers. 917 P.2d 628, 649 (Cal. 1996).

61. See Ingram, *supra* note 21, at A3; Krikorian, *supra* note 21, at B1; Lawrence, *supra* note 21, at A3; see also *supra* notes 37, 38 and accompanying text. In general, statistics indicate that the overwhelming majority of criminals sentenced under three strikes laws have been convicted for nonviolent crimes. See *supra* notes 37, 38.

62. See Marc Mauer, *Three Strikes Policy is Just a Quick Fix Solution*, CORRECTIONS TODAY, July 1, 1996, at 23.

63. Heglin, *supra* note 59, at 255-56; Victor S. Sze, *A Tale of Three Strikes: Slogan Triumphs over Substance as Our Bumper Sticker Mentality Comes Home to Roost*, 28 LOY. L.A. L. REV. 1047, 1067, 1096 (1995).

64. See, e.g., *Rummel v. Estelle*, 445 U.S. 263, 265 (1980) (holding that imposition of a life sentence was not cruel and unusual punishment under the Eighth Amendment); *People v. Superior Court (Romero)*, 37 Cal. Rptr. 2d 364, 378 n.15 (Ct. App. 1995) (holding that life imprisonment for third-time habitual felons was not disproportional).

65. Claiborne, *supra* note 21, at A3 (identifying a thirteen to one ratio of African-Americans to Caucasians sentenced under three strikes laws); Ingram, *supra* note 21, at A3 (citing a California Department of Corrections study indicating that 85% of three strikes sentences are imposed for nonviolent crimes, and that 43% of that number represents the number of African-American inmates sentenced).

this issue have elicited statistics validating the argument,<sup>66</sup> but thus far the claim of disproportionate sentencing has been unsuccessful in reversing any convictions imposed under three strikes laws.<sup>67</sup>

## 2. *Deprivation of Judicial Discretion in Sentencing Procedures*

Judicial discretion has been a cornerstone of our democratic form of government since the United States Constitution was first adopted, identifying the legislative, executive and judicial branches.<sup>68</sup> In recent years, however, legislatures have sought to deprive the judiciary of its traditional discretionary powers. The deprivation of judicial discretion can be seen, at a minimum, in the formation of sentencing commissions and mandatory sentencing guidelines,<sup>69</sup> and now in the form of three strikes legislation as well. Opponents of three strikes legislation argue that removal of such discretionary powers is an improper abuse of legislative authority.<sup>70</sup> This argument focuses solely on the propriety of removing judicial authority to tailor sentences to individual crimes. Opponents of three strikes laws believe that judicial discretion is a necessary aspect of sentencing, and ultimately serves a variety of necessary functions.<sup>71</sup>

## 3. *Separation of Powers*

As with the principle of judicial discretion, the doctrine of separation of powers has also held significant traditional importance as one of the foundations of American government.<sup>72</sup> Although innovative approaches to defining the separation of powers continue to evolve,<sup>73</sup> historically, the Constitution has been read as dividing the first three Articles into three defined branches—the legislative, executive, and judicial—granting specific governmental powers to each branch.<sup>74</sup> Under the doctrine of separation of powers, each branch is prohibited

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66. Claiborne, *supra* note 21, at A3; Ingram, *supra* note 21, at A3.

67. See, e.g., *People v. O'Roark*, 52 Cal. Rptr. 2d 870 (Ct. App. 1996); *People v. Ruiz*, 52 Cal. Rptr. 2d 561 (Ct. App. 1996); *Romero*, 37 Cal. Rptr. 2d at 364.

68. U.S. CONST. arts. I-II.

69. See *supra* note 4; *infra* note 108.

70. Heglin, *supra* note 59, at 226.

71. *Id.* Judicial discretion is necessary to ensure proportionality of crimes to sentences and to maintain a continuous flow of defendants through the criminal justice system, in order to prevent backlog. See generally Honorable J. Anthony Kline, *Comment: The Politicalization of Crime*, 46 HASTINGS L.J. 1087 (1995) (advocating the necessity of judicial discretion).

72. See GORDON S. WOODS, *THE CREATION OF THE AMERICAN REPUBLIC, 1776-1787*, at 152 (1969).

73. See Keith Werhan, *Normalizing the Separation of Powers*, 70 TUL. L. REV. 2681 (1996) (proposing a methodology to settle separation of power disputes).

74. *INS v. Chadha*, 462 U.S. 919, 951 (1983).

from encroaching on the domain of another, or exercising the powers of another.<sup>75</sup> Several theories arise in support of the separation of powers.<sup>76</sup> For the purposes of this Comment, the most applicable theory reasons that legislators and executives are subject to political pressures due to their status as elected officials, but because federal judges are appointed, the judiciary can act as a check to prevent the legislative and executive branches from performing acts contrary to the will of the people.<sup>77</sup> Historically, the legislature has had the power to make the laws, while discretion in sentencing has been a judicial function.<sup>78</sup> However, the California legislature breached this long-standing tradition by tailoring a law that prohibited judicial discretion in sentencing, and placed all discretionary power in charging and/or striking prior felony convictions in the hands of the prosecutors, or more generally, the elected officials of the state.<sup>79</sup>

Until recently, the California court system consistently denied challenges to three strikes laws on the grounds of the doctrine of separation of powers.<sup>80</sup> However, in the 1995 case, *People v. Romero*,<sup>81</sup> California Superior Court Judge William D. Mudd, over the prosecution's objection, struck the prior felony convictions of defendant Romero, charged with possession of a controlled substance.<sup>82</sup> This ruling was in direct contravention of the intent of Section 667.<sup>83</sup> The California Supreme Court subsequently affirmed Judge Mudd's decision in *People v. Superior Court (Romero)*.<sup>84</sup> As a result, California courts now retain the discretion to strike felony convictions of defendants eligible for sentencing under three strikes laws. This removes the sole discretion in sentencing from the legislature and returns it to the judicial realm, where it has historically been placed.

In addition to opponents' main arguments, three ancillary arguments also arise. First, opponents contend that the costs associated with jury trials and prison space for convicted felons sentenced as

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75. U.S. CONST. arts. I-III.

76. See generally ERWIN CHEREMINSKY, FEDERAL JURISDICTION 31-38 (1994) (describing the role of federal courts in the balance of powers among the federal branches).

77. *Id.* at 31-32.

78. *Id.* at 32.

79. *Id.*

80. See, e.g., *People v. O'Roark*, 52 Cal. Rptr. 2d 870 (Ct. App. 1996); *People v. Ruiz*, 52 Cal. Rptr. 2d 561 (Ct. App. 1996); *People v. Superior Court (Romero)*, 37 Cal. Rptr. 2d 364 (Ct. App. 1995).

81. *People v. Romero*, No. SCD103345 (Super. Ct. Cal. 1994).

82. *Romero*, 37 Cal. Rptr. 2d at 364.

83. *Id.*

84. *People v. Superior Court (Romero)*, 917 P.2d 628 (Cal. 1996).

three strikes criminals are too excessive.<sup>85</sup> Second, opponents propose that because three strikes candidates face such extreme penalties for their crimes, those accused felons may react more violently when faced with capture.<sup>86</sup> Finally, because of the extreme penalties involved in second and third strike cases, three strikes felons are no longer pleading out their cases. Instead, they are invoking their constitutional rights to jury trials.<sup>87</sup>

#### 4. Excessive Costs

While three strikes laws may be successful in ridding the streets of some habitual criminals, the same cannot be said for the anticipated cost-effectiveness of the law. Second and third-time felons facing sentencing under three strikes laws are requesting jury trials more frequently.<sup>88</sup> The extremely harsh sentences mandated by three strikes laws essentially force more accused criminals to take their chances at trial, as opposed to pursuing the normative practice of plea bargaining.<sup>89</sup> The alternative of plea bargaining has no measurable value to second and third-time felons because judges no longer retain discretion to minimize or reduce the mandatory sentences. In essence, the second or third-time felon has nothing to lose by demanding a jury trial.<sup>90</sup> The criminal justice system is, therefore, required to bear the burden of both the court time<sup>91</sup> and the monetary costs necessary to

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85. "Three Strikes" Law Clogs Courts, NAT'L L.J., Apr. 3, 1995, at A8 (discussing a RAND Corporation study). It had been estimated that the city of Los Angeles would spend \$78 million on pending three strikes jury trials. *Id.* Six judges were transferred from the civil division to ease the caseload burden. *Id.* It was estimated that it could cost the state of California \$6.5 billion per year to enforce the three strikes law. *Id.* The California Department of Corrections estimated 20 additional prisons will be required by the year 2000, at an average rising cost of \$5.7 billion per year. PETER W. GREENWOOD ET AL., THREE STRIKES AND YOU'RE OUT: ESTIMATED BENEFITS AND COSTS OF CALIFORNIA'S NEW MANDATORY SENTENCING LAW 18 (1994); see *New Prisons Still on Wilson's 1995 Spending Plan Agenda*, CAL. PUB. FIN., Oct. 31, 1994, at 1, available in 1994 WL 3871481. *But see* Joseph Sandoval, *Three Strikes is Good Criminal Justice Policy*, CORRECTIONS TODAY, July 1, 1996, at 22 (reporting that the taxpayer's contribution toward state costs of incarceration are low, costing approximately \$23 per month for family incomes of \$41,000 per year).

86. See *infra* notes 105-09 and accompanying text.

87. Fontana, *supra* note 39, at A1.

88. *Three-Strikes Laws Can Foul Up the Whole System*, USA TODAY, Dec. 20, 1995, at 10A (highlighting that criminals are more reluctant to accept plea bargains in light of the harsh penalties involved).

89. *Id.*

90. *Id.*

91. See Butterfield, *infra* note 99, at A1.

provide criminal defendants their right to trial.<sup>92</sup> That increased burden is ultimately passed on to the public.<sup>93</sup>

As was the intent of the three strikes legislation,<sup>94</sup> an extraordinary number of second and third-time felons have been convicted under these laws.<sup>95</sup> The prison system has been barraged with felons who are being sentenced to longer prison terms than those imposed prior to the enactment of three strikes legislation.<sup>96</sup> As a result, increased funds are also necessary to maintain the prison housing of those inmates, as opposed to less costly methods of punishment.<sup>97</sup> Like the costs of criminal trials, costs of inmate housing are also passed on to the public.<sup>98</sup>

### 5. *Prosecutorial Backlog*

The criminal justice system also bears the burden of the time costs associated with the increased number of jury trial requests.<sup>99</sup> Time costs can be defined as time used by the prosecutors, defense attorneys, and the court itself in processing cases. The rapidly increasing backlog in the California criminal courts has been attributed to the increased number of jury trials resulting from three strikes legislation.<sup>100</sup> The courts have been flooded with jury trial requests, overwhelming both the district attorneys' offices and the court.<sup>101</sup> The result has been a delay in the speed with which cases are passed through the criminal justice system.<sup>102</sup> The plea bargain, historically a device for passing criminal cases quickly through the system, with

92. See *infra* note 97 and accompanying text.

93. See Charles Oliver, *Tough on Crime-or Taxpayers? California's Three Strikes Law Has a Downside*, INVESTORS BUS. DAILY, Apr. 26, 1995, at A1, available in LEXIS, News Library, Invdly File.

94. The historical intent of CALIFORNIA PENAL CODE section 1170.12, was "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses." Cal. Proposition 184, § 2-4 (1994) (codified at CAL. PENAL CODE § 1170.12 (West 1988 & Supp. 1998)).

95. Cannon, *supra* note 41, at A1 (identifying that California has sentenced approximately 1,300 third strike felons and approximately 14,000 second strike felons under its three strikes law).

96. See *supra* notes 94-95; *infra* note 97.

97. Claiborne, *supra* note 21, at A3 (estimating that an additional \$300 million could be spent in Los Angeles in 1997 for three strikes trials); *Three Strikes Injustice*, *supra* note 40, at 10A (identifying that \$169 million in extra costs was spent in the city of Los Angeles as a result of the three strikes law).

98. See *supra* note 97 and accompanying text.

99. Fox Butterfield, *California's Courts Clogging Under its "Three Strikes" Law*, N.Y. TIMES, Mar. 23, 1995, at A1.

100. *Id.*

101. *Id.*

102. *Id.*

minimal costs, has been rendered practically useless in three strikes cases.<sup>103</sup> In California, the increased number of jury trials has also taken its tolls on the jury system, placing an unanticipated burden on the jury pools available to the court system.<sup>104</sup>

#### 6. *Potential for Increased Levels of Violence*

Opponents of three strikes legislation argue that, rather than decreasing levels of violence throughout the state, the legislation sparks the contrary reaction.<sup>105</sup> Felons sentenced under three strikes laws are guaranteed an extremely harsh penalty for their second or third felony convictions. Thus, second or third felony offenders facing sentencing, or even capture, under three strikes laws may react more violently or extremely than they would otherwise.<sup>106</sup> The theory is that such felons will do whatever it takes to resist arrest by police officers, or will threaten, injure, or kill witnesses who may testify against them.<sup>107</sup> For example, in one instance, a man awaiting trial under a three strikes law allegedly conspired with five people to blow up a courthouse and other buildings in the hopes that his criminal records would be destroyed, thereby circumventing his sentencing.<sup>108</sup> In another case, a man committed suicide to avoid being sentenced to life imprisonment under a three strikes law.<sup>109</sup> Thus, the intent to deter criminals from committing crimes may in fact be backfiring. It has been suggested that sentencing alternatives for punishing violent habitual criminals are available which may more effectively fulfill a deterrent effect than three strikes laws.

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103. *Id.*

104. Arleen Jacobius, *California Three-Strikes Law Gobbling up Jurors*, A.B.A. J., Dec. 1995, at 29. If the jury pool is not expanded, some jurors may be required to serve as many as three times a year. *Id.*

105. Heglin, *supra* note 59, at 226-27; see Meredith McCain, "Three Strikes and You're Out": *The Solution to the Repeat Offender Problem?*, 20 SETON HALL LEGIS. J. 97, 124 (1996) (stating that offenders who have more to lose if arrested may act more aggressively toward police officers and witnesses).

106. *See supra* note 105.

107. *Id.*

108. Ron Harris, *6 Arraigned in Series of Bombings in Vallejo*, SAN DIEGO UNION & TRIB., Feb. 5, 1997, at A3, available in LEXIS, News Library, Sdut File. Kevin Lee Robinson was charged with narcotics possession, a felony. *Id.* Because Robinson also had prior felony convictions for serious or violent crimes, he was eligible for sentencing under California's three strikes law. *Id.* He conspired with and paid five other people to bomb the courthouse and other buildings, in the hopes of disrupting the court system, thereby destroying his court records and precluding a three strikes trial and sentencing. *Id.*

109. Meghan Hoyer, *Fear of Prison Leads Man to Suicide*, ORANGE COUNTY REG., Oct. 16, 1996, at B4, available in LEXIS, News Library, Ocreg File. Clinton James Warner was found with a gunshot wound to his head. *Id.* A note in his backpack identified that he committed suicide because he feared being sentenced to life imprisonment under the three strikes law. *Id.*

### *E. Alternative Policies Used to Punish Violent Habitual Criminals*

Across the United States, there are a variety of sentencing guidelines currently in place that are aimed directly at punishing the violent or lifetime criminal.<sup>110</sup> Any of these guidelines may be as or more effective than three strikes laws, without the debilitating complications associated with such laws. The following sections address mandatory sentencing, habitual criminal acts, consecutive sentencing, sentence enhancements, extended sentencing provisions, truth-in-sentencing acts, and the use of aggravation and mitigation at sentencing. These sentencing methods support the contention that three strikes laws are an unnecessary layer of sentencing.

#### *1. Mandatory Sentencing*

At a bare minimum, all fifty states, including the District of Columbia, have enacted mandatory minimum sentencing guidelines, although the mandatory minimums themselves vary widely across the country.<sup>111</sup> Mandatory minimum sentences, as the title suggests, *must* be imposed upon conviction.<sup>112</sup> Under such mandatory minimum laws, the judiciary may not use traditional discretionary powers to alleviate sentences, suspend sentences, or even impose probation.<sup>113</sup> Rather, the minimum penalty acts as a floor at which sentencing must begin. Unlike the case with three strikes laws, the judiciary may use its discretion to sentence convicted offenders, but only within the range as proscribed by mandatory minimum and maximum sentences pursuant to state statute.<sup>114</sup>

One difference among the states, however, is the level at which mandatory minimum sentencing begins. For example, in California, the mandatory minimum sentence for first degree murder is twenty-five years imprisonment.<sup>115</sup> While in Illinois, the mandatory minimum sentence is twenty years.<sup>116</sup> Another difference among the states is the list of crimes to which mandatory minimum sentences are applied.

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110. See generally O'Reilly, *supra* note 8.

111. BUREAU OF JUSTICE ASSISTANCE, U.S. DEPARTMENT OF JUSTICE, NATIONAL ASSESSMENT OF STRUCTURED SENTENCING 21-22 (1996) [hereinafter BUREAU OF JUSTICE] (identifying sentencing practices in the United States as of February 1994, as reported by each state).

112. See TAMASAK WICHARAYA, SIMPLE THEORY, HARD REALITY—THE IMPACT OF SENTENCING REFORMS ON COURTS, PRISONS AND CRIME 51-52 (1995).

113. *Id.* at 52.

114. See *id.*

115. CAL. PENAL CODE § 190 (West 1988 & Supp. 1998) (stating that the minimum sentence for first degree murder is 25 years imprisonment, and the maximum sentence is the death penalty).

116. 730 ILL. COMP. STAT. 5/5-8-1 (West 1996) (stating that the minimum sentence for first degree murder is 20 years imprisonment and that the maximum sentence is the death penalty).

In California, drunk driving does not carry a mandatory minimum penalty, while the converse is true in Illinois.<sup>117</sup> In addition to mandatory minimum sentencing policies, many states employ more crime-specific sentencing policies.

## 2. *Habitual Criminal Laws*

Many states have implemented what are known as habitual criminal laws as a way of dealing more harshly with repeat or career criminals.<sup>118</sup> These habitual criminal laws are known as the original three strikes laws.<sup>119</sup> They act as a de facto form of three strikes laws.<sup>120</sup> For example, while Illinois does not have a three strikes law in place, it does have legislation known as the Habitual Criminal Act, which is tailored to punish the habitual criminal more severely.<sup>121</sup> Under this Act, a repeat offender convicted for his third Class X felony must be sentenced to life imprisonment.<sup>122</sup> Class X felonies are essentially restricted to serious violent offenses, such as rape, deviate sexual assault, armed robbery, arson, or aggravated kidnaping for ransom.<sup>123</sup> Distinctly different from the California three strikes law, Illinois requires that all three felony convictions be either murder or Class X felonies, and the three felonies must have all occurred within

117. BUREAU OF JUSTICE, *supra* note 111, at 24-25.

118. See *infra* notes 119-26 and accompanying text.

119. The first habitual criminal law was passed by Ohio in 1885. LAWRENCE M. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 161 (1993); see 1885 Ohio Laws 236-237.

120. Warner, *supra* note 17, at 78 n.172 (noting that three strikes laws are unnecessary because most states have habitual criminal statutes on the books).

121. 720 ILL. COMP. STAT. 5/33B-1 (West 1993 & Supp. 1997). The Habitual Criminal Act states:

- (a) Every person who has been twice convicted in any state or federal court of an offense that contains the same elements as an offense now classified in Illinois as a Class X felony, criminal sexual assault, aggravated kidnaping or first degree murder, and is thereafter convicted of a Class X felony, criminal sexual assault or first degree murder, committed after the 2 prior convictions, shall be adjudged an habitual criminal.
- (b) The 2 prior convictions need not have been for the same offense.
- (c) Any convictions which result from or are connected with the same transaction, or result from offenses committed at the same time, shall be counted for the purposes of this Section as one conviction.

*Id.*

122. Marvin E. Aspen, *New Class X Sentencing Law: An Analysis*, 66 ILL. B.J. 344, 347 (1978); 730 ILL. COMP. STAT. 5/5-5-3(c)(7) (West 1996) (“When a defendant is adjudged a habitual criminal . . . the court shall sentence the defendant to a term of natural life imprisonment.”).

123. Aspen, *supra* note 122, at 347. Class X felonies carry the statutory penalty of six to thirty years imprisonment. *Id.*; see, e.g., 720 ILL. COMP. STAT. 5/9-3.3 (drug induced homicide); *id.* 5/18-2 (armed robbery); *id.* 5/33A-3 (armed violence); *id.* 5/10-2 (aggravating kidnaping); *id.* 5/12-14 (aggravated criminal sexual assault); *id.* 5/30-1 (treason); *id.* 5/12-4.1 (heinous battery); *id.* 5/20-1.1 (aggravated arson).



a twenty year period.<sup>124</sup> The range of penalties for sentencing under habitual criminal laws can vary widely.<sup>125</sup> For example, several other non-three strikes states, such as Michigan and Kansas, have habitual criminal legislation in which the punishment imposed is far less severe than that of Illinois.<sup>126</sup>

### 3. *Consecutive Sentencing*

Many states, such as Illinois,<sup>127</sup> Indiana,<sup>128</sup> and Michigan,<sup>129</sup> regularly employ consecutive sentencing, which generally enables the judiciary to sentence an offender to serve two consecutive sentences for two convictions that are not part of a single course of conduct.<sup>130</sup> The Illinois legislature has expanded consecutive sentencing even further.<sup>131</sup> When a criminal has been convicted of a Class X or Class 1 felony, it is of no consequence whether the two convictions were part of a single course of conduct.<sup>132</sup> If the court finds at least one of the current offenses to be either a Class 1 or Class X felony, and the victim sustained severe injury, then the court has the discretion to impose consecutive sentences for two convictions arising from a *single* course of conduct.<sup>133</sup> Thus, in Illinois, criminals committing more serious felonies in which physical harm is a factor are punished more harshly under consecutive sentencing.<sup>134</sup> However, regardless of

124. O'Reilly, *supra* note 8.

125. *See supra* notes 119-26.

126. *Compare* KAN. STAT. ANN. § 21-4504(a)(1) (1995) (imposing a sentence of "not less than the least, nor more than twice the greatest minimum sentence" after one or more prior felony convictions), *and* MICH. COMP. LAWS §§ 769.10-769.13 (1996) (providing that a felony offender's sentence can be enhanced if he has previously been convicted of one or more felonies), *with* 730 ILL. COMP. STAT. 5/5-5-3(c)(7) (mandating life imprisonment for a defendant judged a habitual criminal).

127. 730 ILL. COMP. STAT. 5/5-8-4.

128. IND. CODE § 35-47-10-9 (1996).

129. MICH. COMP. LAWS § 786.7(b).

130. A good representation of consecutive sentencing exists in California. California law provides that current, multiple convictions, that do not arise from a single course of conduct, *must* result in consecutive sentencing; and any current sentences must be served consecutively with any sentences currently in progress. CAL. PENAL CODE § 667(c)(6)-(8) (West 1988 & Supp. 1998).

131. 730 ILL. COMP. STAT. 5/5-8-4(a). This section states in pertinent part:

The court shall not impose consecutive sentences for offenses which were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective, *unless*, one of the offenses for which defendant was convicted was a Class X or Class 1 felony *and* the defendant inflicted severe bodily injury.

*Id.* (emphasis added).

132. *Id.*

133. *See id.*

134. Aspen, *supra* note 122, at 345.

whether the sentence imposed results from a single course of conduct, the end result is a longer period of incarceration for those criminals sentenced under consecutive sentencing statutes.

#### 4. *Sentence Enhancements and Extended Sentencing Provisions*

Mandatory minimum guidelines can be boosted by the presence of certain circumstances during the commission of a crime.<sup>135</sup> For example, in Pennsylvania, if a convicted offender possessed a firearm during the commission of his or her crime, the minimum floor at which sentencing begins is raised by five years.<sup>136</sup> Therefore, if a crime is punishable by a minimum of five years incarceration, the convicted criminal would be imprisoned for no less than ten years. Some states also use the factor of bodily injury as an enhancement.<sup>137</sup> Sentence enhancements are distinct from the use of aggravating factors at the sentencing phase, because the enhancement penalty is imposed by statute, and not by the judge.<sup>138</sup>

Sentence enhancements are also different from extended sentencing provisions. Extended sentencing provisions are generally imposed on habitual criminals; they receive extended sentences based on previously committed serious or violent felonies.<sup>139</sup> These enhancement factors are based solely on the criminal's prior criminal history, and are completely separate from the crime at issue.<sup>140</sup> In essence, those criminals sentenced under extended sentencing statutes are being punished for their prior criminal histories, as well as their current convictions.<sup>141</sup>

#### 5. *Truth-in-Sentencing Acts*

Truth-in-sentencing acts adopted by some states either abolish or greatly restrict what have previously been known as "good time

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135. See, e.g., *McMillan v. Pennsylvania*, 477 U.S. 79 (1986) (holding that Pennsylvania's statutory enactment of minimum "floors" at which sentencing shall begin for enumerated crimes involving visible possession of a firearm is not a constitutional violation of due process).

136. See *id.*

137. See *Turner*, *supra* note 17, at 61. According to the National Bureau of Justice Assistance, Florida and Wisconsin consider degree of injury to be a penalty enhancement at the sentencing stage. *Id.*

138. See, e.g., FLA. STAT. ch. 775.084 (1996); 725 ILL. COMP. STAT. 5/11-3 (West 1993 & Supp. 1997); WIS. STAT. § 939.624 (1996).

139. See, e.g., ARK. CODE ANN. § 5-4-501 (Michie 1995); FLA. STAT. ch. 775.08; N.J. STAT. ANN. § 2C:43-6 (West 1996).

140. See *O'Reilly*, *supra* note 8, at 995 (stating that a judge may impose a harsher sentence upon a habitual defendant based on the defendant's conduct or prior criminality).

141. *Id.*

credit" policies.<sup>142</sup> Under good time credit policies, an inmate would generally earn one day of early release for every day of good time credit earned.<sup>143</sup> Several states have abolished or restricted good time credit and adopted truth-in-sentencing laws.<sup>144</sup> For example, Arizona's stated purpose of the general provisions of its criminal code is to "promote truth and accountability in sentencing."<sup>145</sup>

While Arizona's early release programs have been completely abolished, other states' early release programs, such as those found in Illinois,<sup>146</sup> have been severely restricted. In Illinois, there are four categories of offenses determining early release for good time credit.<sup>147</sup> Each of the four categories carries a specific percentage of time an inmate must serve of his or her sentence.<sup>148</sup> For example, under the first category, which contains solely the offense of first degree murder, the convicted criminal must serve 100% of the prison sentence imposed.<sup>149</sup> Previously, if sentenced to a twenty-five year prison term, the convict theoretically could have been released in half that time for good time credit earned.<sup>150</sup> Under the new truth-in-sentencing law in Illinois, imposition of a twenty-five year prison term means the inmate will serve 100% of that sentence, with no possibility of early parole for good time.<sup>151</sup> Truth-in-sentencing laws have been enacted at the federal level as well.<sup>152</sup> Furthermore, the federal government has gone so far as to offer federal funding for the building of prisons in those states that enact such laws in order to encourage the passage of truth-in-sentencing laws.<sup>153</sup>

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142. See FRIEDMAN, *supra* note 119, at 161.

143. *Id.* at 159-62. Policies for good time credits, however, may vary by state. *Id.*

144. At a minimum, Arkansas, Arizona, California, Connecticut, Florida, Indiana, Mississippi, Missouri, Montana, Tennessee, and Virginia have adopted "truth-in-sentencing" laws which mandate that inmates serve at least 85% of their sentences. Donna Hunzeker, *The 85% Solution*, 21 STATE LEGISLATURES, Sept. 1, 1995, at 11.

145. ARIZ. REV. STAT. § 13-101(7) (1995).

146. 730 ILL. COMP. STAT. 5/3-6-3 (West 1996). For example, good-time credit is no longer available to a prisoner serving a term of imprisonment for first degree murder. See *id.*

147. *Id.* 5/3-6-3(a); see O'Reilly, *supra* note 8, at 1014-15 (delineating four categories of offenses which determine the length of prison time an inmate must serve: murder, certain violent crimes, those requiring judicial discretion, and those that remain eligible for good time credit).

148. O'Reilly, *supra* note 8, at 1014-15. The crime of murder receives a 100% sentence; the category of certain violent crimes requires that 85% of the sentence be served; the judicial discretion category requires that 50% of the sentence be served. *Id.*

149. *Id.*

150. ILL. REV. STAT. ch. 38, para. 1003-6-3 (1992).

151. 730 ILL. COMP. STAT. 5/3-6-3(a).

152. Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. § 922 (1994).

153. *Id.*

## 6. *Aggravation and Mitigation Hearings*

One of the most simplistic enhancements of sentencing terms operates in the form of aggravation and mitigation hearings. After an accused has been convicted of a crime, a sentencing judge may consider both aggravating and mitigating factors at a defendant's sentencing hearing. Any relevant information, including "victim impact" statements, can be introduced at these hearings, except for the victim's opinions of the defendant and his or her crime, or the victim's character.<sup>154</sup> Therefore, while the crime may attach mandatory minimum penalties, the sentencing judge retains the discretion to enhance that penalty based on the weight of the aggravating and mitigating circumstances presented at the sentencing hearing.<sup>155</sup> Although mitigating factors must also be considered by the judge in determining any penalty enhancement, minimum sentences may ultimately be enhanced to effectively remove the dangerous or violent criminal from the streets. So long as the maximum sentences are not surpassed, the judge retains the discretion to enhance any minimum sentence. However, use of this and the other various sentence enhancing procedures have contributed in part to what may be termed an "incarceration crisis."

### F. *The Incarceration Crisis in America*

The number of convicted felons being sentenced to longer prison terms is rising at an alarming rate.<sup>156</sup> As new "get tough on crime" policies are implemented, the populations of targeted prisons meant to house those felons are expanding rapidly.<sup>157</sup> The results of this burgeoning population are evident in several respects. First, prison conditions have deteriorated so dramatically that state and federal prison systems have often been the target of court-ordered reform.<sup>158</sup> Second, in response to the overpopulation crisis, the number of prisons

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154. See *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (holding that the Eight Amendment is not a per se bar to consideration of "victim impact" evidence, therefore "victim impact" evidence is admissible at sentencing hearings, *except* for that evidence which represents any person's opinion of the defendant or the nature of his crime).

155. See *id.*

156. TODD R. CLEAR, *HARM IN AMERICAN PENOLOGY: OFFENDERS, VICTIMS, AND THEIR COMMUNITIES* 45 (1994). In the United States, between 1973 and 1990, the incarceration rate per 100,000 people increased an incredible 205%. *Id.*; see *supra* note 1 and accompanying text.

157. Paula Mergenhausen, *The Prison Population Bomb*, AM. DEMOGRAPHICS, Feb. 1, 1996, at 36, 38. According to the Bureau of Justice Statistics, the number of state and federal inmates jumped from 319,600 in 1980, to 999,800 in 1994. *Id.* At the same time, the country's population increased at a non-commensurate rate of 15%. *Id.*

158. WAYNE N. WELSH, *COUNTIES IN COURT: JAIL OVERCROWDING AND COURT-ORDERED REFORM* 7-12 (1995).

constructed each year continues to rise correspondingly.<sup>159</sup> Third, the state and the taxpayer bear the costs of supporting the rising number of convicted felons sent to prison for extended terms.<sup>160</sup> Fourth, regardless of the intent of enhanced sentencing provisions, research indicates that a large number of violent criminals are being released or paroled each year to make room for the larger number of nonviolent criminals being sentenced under enhanced sentencing provisions.<sup>161</sup> Finally, overpopulation can have adverse psychological effects on those prisoners incarcerated for nonviolent crimes which may, in turn, ultimately play a role in the rate of recidivism.<sup>162</sup>

### 1. Court-Ordered Reform

Prison overcrowding is rampant throughout the country, and the quality of penal facilities has dropped accordingly.<sup>163</sup> The federal courts have often found it necessary to step into the arena of managing prison facilities, traditionally an area of expertise left to state governments,<sup>164</sup> and issue broad orders of reform.<sup>165</sup> At least forty states have been the target of court reform seeking to either end overpopulation or improve prison conditions as a whole.<sup>166</sup> Oftentimes, the court has left orders in place for extensive periods of time to ensure

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159. Editorial, *The Prison Sell*, ORANGE COUNTY REG., May 14, 1996, at B6, available in LEXIS, News Library, Oreg File. The number of adult prison facilities either in operation or under construction, increased 29% in 1995, from 49,154 to 63,595 facilities; private prisons saw a corresponding 15% increase from 88 to 104 facilities. *Id.*; see Mark Katches, *\$1.65 Billion Tagged to Build Six Prisons*, L.A. DAILY NEWS, Jan. 12, 1996, at N1, available in 1996 WL 6542586 (reporting that the California prison population is growing by approximately 11.8% yearly, and it is projected that, by the year 2005, 18 new California prison facilities will be required).

160. Dan Morain, *Legislators Maneuver on Prison Bond Issue*, L.A. TIMES, June 3, 1996, at A3, available in LEXIS, News Library, Lat File; see David B. Lamb, *Main Street Finds Gold in Urban Crime Wave*, L.A. TIMES, Oct. 9, 1996, at A1, available in LEXIS, News Library, Lat File (reporting that states divert funds from other state programs for prison funding). California's Governor Wilson has sought state approval for the construction of six additional prisons, but has met opposition from legislators who contend that prison spending, which accounts for eight and one-half percent of the state's budget, diverts money from other state programs. *Id.*

161. David B. Kopel, *Sentencing Policies Endanger Public Safety*, USA TODAY, Nov. 1, 1995, at 64.

162. See also Patrick Kinkade et al., *The Consequences of Jail Crowding*, CRIME & DELINQ., Jan. 1995, at 150-61 (discussing research findings of jail crowding which indicate jail crowding attributes to inmate violence and mental problems); see generally PAULA B. PAULUS, PRISON OVERCROWDING: A PSYCHOLOGICAL PERSPECTIVE (1988) (detailing problems of overcrowding and its promotion of psychological problems and criminal behavior).

163. See WELSH, *supra* note 158, at 7; Kinkade, *supra* note 162, at 150.

164. WELSH, *supra* note 158, at 10; Kinkade, *supra* note 162, at 150.

165. WELSH, *supra* note 158, at 7-13 (indicating that overcrowding and poor prison conditions have led to prison litigation, which subsequently lead to prison reform).

166. See *id.* at 4.

that the facilities do not revert to their previous conditions.<sup>167</sup> As a result of such judicial intervention, Congress passed the Prison Litigation Reform Act of 1994, greatly limiting this intervention into prison issues by restricting inmate lawsuits.<sup>168</sup> The Act also authorizes affected states to stay federal orders currently in place.<sup>169</sup> One method of alleviating such overcrowding and substandard prison conditions has been to build new prison facilities.

## 2. *New Prisons*

The primary method of handling the incarceration crisis has been to expand the number of prisons available to accommodate felons.<sup>170</sup> In recent years, the number of prisons built in the United States has continued to escalate.<sup>171</sup> This increase has turned the spotlight on spending and management.<sup>172</sup> State officials have begun to turn away from the historically state-managed facilities in favor of privately-run prisons.<sup>173</sup> Private prisons are becoming increasingly more attractive because of the efficiency of private management.<sup>174</sup>

The opposition to the privatized prisons-for-profit focuses on moral and ethical considerations.<sup>175</sup> California currently diverts funds from its state budget in order to pay private institutions to house and man-

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167. Chris Olert, *Federal Judge KO's 17-year-old Consent Decree in City Jails*, ASSOCIATED PRESS POL. SERV., July 23, 1996, available in 1996 WL 5395910. For example, a New York court order to improve conditions in city jails remained in effect for 18 years. *Id.* Similarly, a Texas court order regulating brutality and overcrowding remained in place for 24 years. Deborah Tedford, *Prison Reform is Challenged*, HOUS. CHRON., May 30, 1996, at A23, available in LEXIS, News Library, Achron File.

168. Prison Litigation Reform Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321-66 to 1321-77 (codified as amended in scattered sections of the U.S.C.).

169. *Id.* Under the Prison Litigation Reform Act, a state can petition the court for review of remedial orders previously in place to control confinement conditions. Paul A. Crotty, *Should Prison Consent Decrees Be Vacated?*, N.Y. L.J., Aug. 22, 1996, at 2. If no unconditional conditions remain at that time, the order will be lifted. *Id.* For example, pursuant to the Act, the Attorney General of California has requested termination of a court order regulating that state's treatment of inmates with serious mental disorders, which the court had previously found to be cruel and unusual. Danny Walsh, *Two State Cases Test Legitimacy of Prison Reform Law*, SACRAMENTO BEE, June 18, 1996, at A4, available in LEXIS, News Library, Sacbee File.

170. See David Shichor & Dale K. Sechrest, *Quick Fixes in Corrections: Reconsidering Private and For-Profit Facilities*, 75 PRISON J. 457, 458 (1995) (identifying that the prison population increase led to prison overcrowding, in turn resulting in court ordered reform, and subsequent prison construction).

171. See CLEAR, *supra* note 156, at 45.

172. See *supra* notes 158-60.

173. DAVID SHICHOR, PUNISHMENT FOR PROFIT 13-14 (1995); see Shichor & Sechrest, *supra* note 170, at 457.

174. See *supra* note 173.

175. See *infra* notes 177-81.

age state criminals.<sup>176</sup> As a result, the shares of some corporate members of the private prison industry are now traded on the stock market,<sup>177</sup> turning prison management into a profitable business for its investors.<sup>178</sup> Opponents contend that the government should not encourage the privatization of prisons.<sup>179</sup> The fear is that, because private prisons have become profit-turning businesses, there will be a separate movement by private prison lobbyists toward increasing minimum and maximum penalties for criminals.<sup>180</sup> From a safety standpoint, private prisons are reported to have a higher rate of convict escapes than that of the publicly managed prison institutions.<sup>181</sup>

In contrast to these criticisms, politicians view the privatization of prisons as having a positive impact on the prison system in general.<sup>182</sup> Proponents contend that because the business element exists, there is more incentive for the prison itself to meet certain standards,<sup>183</sup> rationalizing that without a profit incentive, prisons may fall below standards, inevitably contributing to prison unrest and violence.<sup>184</sup>

176. See *supra* note 161.

177. See *Stock Tips*, TULSA WORLD, June 9, 1996, at E4, available in LEXIS, News Library, Tlswld File (identifying that Wackenhut Corrections maintains a New York Stock Exchange Symbol of WHC); Michael Schuman, *A Surefire Growth Business*, FORBES, Jan. 16, 1995, at 81 (reporting that Esmor Correctional Services is a public company listed on the NASDAQ); see also David Shichor & Dale K. Sechrest, *Delegating Prison Operations to Public or Private Entities*, CORRECTIONS TODAY, Oct. 1, 1996, at 112 (identifying that an increasing number of private prison companies are found in the stock market).

178. See Schuman, *supra* note 177, at 82. Occupancy rates of private prisons are at 98% of Esmor Correctional Services Inc. *Id.* Esmor earned \$1.5 million in profits from \$23 million in revenues in 1994. *Id.*; see also *Stock Tips*, *supra* note 177, at E4 (stating that "the prison industry is a constant growth industry," with Wackenhut revenues growing 21% in 1995).

179. SHICHOR, *supra* note 173, at 45. Theoretical issues arise in privatizing prison management, namely "the delegation of coercive power, public and private domains in punishment, and punishment and profits." *Id.*

180. *Id.* at 158. A leading contention of opponents is that private prison institutions will seek to protect their vested interests in filling their facilities to capacity, thereby ensuring higher profits. *Id.*

181. See Kathy Walt & Polly Ross Hughes, *Private Prison Boom, Gloom; Security, Legal Loopholes Pressing Problems*, HOUS. CHRON., Sept. 1, 1996, at 1, available in LEXIS, News Library, Hcron File (explaining how private prisons have greater security problems than public prisons because they do not have to adhere to the same regulations).

182. See Thomas Clouse, *Idaho Aims Toward Private Prisons*, IDAHO STATESMAN, Feb. 5, 1997, at 1A, available in LEXIS, News Library, Idstmm File (stating that "[r]esearchers, correction officials and people in the industry" are in agreement that private prisons are generally more cost efficient than public institutions, and are managed better than state facilities as well). *But see* Shichor & Sechrest, *supra* note 170, at 459-61 (reporting that differences between state and private prison facilities, in both costs and quality, are minimal at best).

183. SHICHOR, *supra* note 173, at 115-16. The possibility of receiving longer contracts may encourage long-term commitment to the improvement of facilities and services. *Id.*; see Shichor & Sechrest, *supra* note 170, at 462.

184. *Cf.* SHICHOR, *supra* note 173, at 115-16 (inferring that since incentives encourage improvement of facilities and services, if such incentives were absent, the converse would be true).

### 3. Taxpayers' Prisons Costs

While the public demands tougher sentencing for criminals, they may not be aware of the actual costs of prisons they must bear.<sup>185</sup> Initially, funds must be diverted from other areas of a state's budget to compensate for the rising need for additional prisons.<sup>186</sup> In the alternative, the costs must be passed on to the taxpayers. At least 1,300 criminals have been convicted and sentenced to twenty-five years to life under California's three strikes law.<sup>187</sup> Prison costs per inmate vary from state to state, and from public to private institution—ranging from approximately \$14,000 to \$23,000 annually.<sup>188</sup> These figures represent only prison housing costs, and do not include litigation costs.<sup>189</sup> *People v. Superior Court (Romero)*<sup>190</sup> may provide an opportunity for the judiciary to alleviate the prison overcrowding problem, and act as a check on the legislature. Without such a check, it is possible that the rate at which criminals are sentenced under three strikes laws will continue to increase. For each new criminal convicted under three strikes laws, taxpayers will be responsible for a portion of his or her upkeep.

### 4. The Release of Violent Criminals

While new prisons are constantly being constructed, this alone cannot alleviate the problem of overpopulation. One alternative response

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Because private prisons may fall below standards in the absence of incentives, state governments should consider penalties for a private prison's performance failure. *Id.* at 115.

185. *Cf. Three Strikes and You're Out*, HARRISBURG PATRIOT, Sept. 21, 1995, at A12, available in 1995 WL 5076732 (stating that both lawmakers and the public, in general, should be aware of the ramifications associated with longer prison sentences, including limitations on funding, thereby requiring diversion of funds from other state programs).

186. *See supra* note 160 and accompanying text. In California, funds for building and operating prisons are being taken from state higher education programs. Dan Walters, *Battle Between Education and Prisons*, FRESNO BEE, June 13, 1996, at A3, available in LEXIS, News Library, Fresno File.

187. *See Cannon, supra* note 41, at A1.

188. Rick Orlov, *State Spending Favors Prisons: Higher Education Taking a Hit Report Says*, L.A. DAILY NEWS, Oct. 24, 1996, at N4, available in 1996 WL 6578589. In California, it costs \$21,375 per year, per inmate, to house a prisoner. *Id.* In Tennessee, it costs approximately \$35.39 per day to house an inmate at a private prison, and approximately \$34.90 to \$35.45 per day to house an inmate at a state prison. Mike McIntire, *State Prison Costs Down, Clouding Privatization Issue*, HARTFORD COURANT, Jan. 12, 1997, at A1, available in LEXIS, News Library, Htcour File. Inmate housing in Oregon costs approximately \$23,000 per year. Leslie Helm, *Factories with Fences*, L.A. TIMES, Jan. 5, 1997, at D1. Michigan's private prison, managed by United Correctional, costs approximately \$43.66 per day, per inmate. Jeffrey Savitskie, *Michigan Prisons Turn to Managed Care*, DET. NEWS, Dec. 31, 1996, at C1.

189. *See supra* note 40 and accompanying text.

190. 917 P.2d 628 (Cal. 1996).



has been the early release of criminals,<sup>191</sup> many of whom were incarcerated for serious or violent crimes.<sup>192</sup> The convicted persons taking their place are primarily nonviolent felons.<sup>193</sup> Three strikes laws were a response to public demand for safety from violent criminals, yet some states, including California, are granting early release to some violent criminals as one method of combatting the prison overpopulation problem.<sup>194</sup>

### 5. *Psychological Consequences of Prison Overcrowding*

Prison overcrowding has been directly linked to prison violence.<sup>195</sup> Increased incidents of convicts' misconduct toward fellow inmates or prison staff can be attributed to prison overcrowding.<sup>196</sup> This misconduct can include assaultive or disruptive behavior.<sup>197</sup> A second psychological consequence has been noted in those released or paroled criminals who become recidivists. Research has shown that tendencies toward recidivism have been attributed in part to instances of prison overcrowding and increased violence.<sup>198</sup> Furthermore, many criminals sentenced to extended prison terms are nonviolent offenders who are affected by overcrowding.<sup>199</sup> As a result of being subjected to the violent atmosphere of a prison, these nonviolent criminals may take on violent qualities upon their release that were not present prior

191. Gary T. Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CAL. L. REV. 61, 112 n.264 (1993); Nkechi Taifa, "Three-Strikes-And-You're-Out"—Mandatory Life Imprisonment for Third Time Felons, 20 U. DAYTON L. REV. 717, 722 (1995).

192. Chi Chi Sileo, *Crime Fighters Get Streetwise*, INSIGHT ON THE NEWS, Feb. 5, 1996, at 8; see *It's Time to Rewrite the Three Strikes Law*, S.F. CHRON., Feb. 18, 1996, at 8, available in LEXIS, News Library, Sfchrn File (discussing California's policy of releasing inmates early to allow housing of convicts sentenced under the three strikes law).

193. Chi Chi Sileo, *Are Three Strikes Laws Handcuffing the Courts?*, INSIGHT ON THE NEWS, Mar. 13, 1995, at 14 (citing a study identifying that violent criminals sentenced prior to three strikes laws have been released after serving approximately one-third of their sentences, as a means of making room for nonviolent three strikes convicts).

194. *Id.*; see Kopel, *supra* note 161, at 64 (stating that, in order to sentence nonviolent drug-related criminals, the criminal justice system, in the face of prison overcrowding, is unable to protect the public, releasing violent recidivists, or never charging them in the first place).

195. See Jeff Potts, *American Penal Institutions and Two Alternative Proposals for Punishment*, 34 S. TEX. L. REV. 443, 462-66 (1993) (stating that overcrowded conditions in prisons contribute to higher rates of physical violence). *But see* Jeff Bleich, *The Politics of Prison Crowding*, 77 CAL. L. REV. 1125, 1145-46 (1989) (stating that although prison overcrowding bears some relationship to increases in prison violence, there is no exclusive causal link).

196. PAULUS, *supra* note 162, at 15. Most archival studies, based on prison record data, have focused directly on the relationship between overcrowding and social misconduct. *Id.*

197. *Id.*; see Kinkade, *supra* note 162, at 150-61.

198. Potts, *supra* note 195, at 458-60.

199. See *supra* notes 37-38 and accompanying text.

to serving their prison sentences.<sup>200</sup> Thus, being incarcerated may turn a nonviolent person into a violent person,<sup>201</sup> which intuitively runs contrary to the purposes of incarceration and does so in the face of viable alternatives.

#### a. Retribution as Punishment

As recently as the early 1970s, sentencing procedures focused on rehabilitation of offenders.<sup>202</sup> The focus of rehabilitation has been replaced by the perceived need for retribution,<sup>203</sup> primarily due to a belief that rehabilitation of criminals was impossible.<sup>204</sup> The retribution model became an attractive replacement for politicians, mainly because it provided an opportunity to replace the “soft on crime” model with the “get tough on crime” model.<sup>205</sup> Sentencing became essentially political and, as a result, many states created sentencing commissions for the sole purpose of developing structured sentencing guidelines.<sup>206</sup> Opponents of the retributive model of punishment, however, advocate a return to the rehabilitative model.<sup>207</sup>

#### b. Lack of Funds for Prison Rehabilitation Programs

In past years, funding was also provided for rehabilitative programs such as education and vocational training.<sup>208</sup> However, due to the unprecedented increase in the number of persons being sentenced to ex-

200. Michael Vitiello, *Reconsidering Rehabilitation*, 65 TUL. L. REV. 1011, 1036 (1991) (finding that failure to remove low-risk inmates from extended prison conditions may increase rates of recidivism); see Commentary, *Not All Drug Users Deserve a Prison Term*, TAMPA TRIB., Mar. 31, 1996, at 3, available in LEXIS, News Library, Tamtrb File (stating that drug users should be placed in rehabilitative centers rather than prisons); Misti Snow, *Looking Into the Eyes of a Killer*, STAR TRIB. (MINN.-ST. PAUL), July 8, 1996, at 7A, available in LEXIS, News Library, Curnws File (relying on psychological studies by psychiatrist James Gilligan).

201. See *supra* note 200.

202. Stephen D. Soble, *A Regime of Social Death: Criminal Punishment in the Age of Prisons*, 21 N.Y.U. REV. L. & SOC. CHANGE 497, 498 (1994-95). Until the early 1970's, the rehabilitative model of punishment was employed in prisons throughout the country. *Id.*

203. *Id.* at 498-500.

204. *Id.*; see Michael Welch, *Rehabilitation; Holding Its Ground in Corrections*, FED. PROBATION, Dec. 1995, at 3, 5 (citing a 1975 Lipton, Martinson & Wilks Study which found essentially that prison rehabilitation is ineffective); see also LYNN GOODSTEIN & DORIS LAYTON MACKENZIE, *THE AMERICAN PRISON: ISSUES IN RESEARCH AND POLICY* 14-15 (1989) (explaining how the public became skeptical of rehabilitation efforts due to the release of various evaluations of corrective treatment).

205. GOODSTEIN & MACKENZIE, *supra* note 204, at 14-15.

206. *Id.* at 16-17.

207. See Honorable Richard Lowell Nygaard, *The Myth of Punishment: Is American Penology Ready for the 21st Century?*, 5 REGENT U. L. REV. 1 (1995); see generally LOIS G. FORER, *A RAGE TO PUNISH* (1994) (advocating a shift away from retribution and a return to rehabilitation).

208. Welch, *supra* note 204, at 3, 5.

tended prison terms, funds are no longer available for such rehabilitative programs.<sup>209</sup> The discontinuation of previous rehabilitative penal procedures has been linked to past, current, and anticipated future rates of recidivism.<sup>210</sup> Studies have shown that because ex-convicts are released from prison with no education or marketable skills, they feel forced to return to lives of crime.<sup>211</sup> While the time spent in prison is indeed punishment, it is unproductive punishment, returning the released criminal to society in the same, if not worse, position as when the crime was committed.<sup>212</sup> To avoid these inevitable circumstances, attention should be returned toward the rehabilitation of nonviolent criminals through alternative sentencing methods.

### G. *Alternative Sentencing Procedures for Rehabilitating Nonviolent Criminals*

A variety of sentencing procedures exist as alternatives to long or short-term incarceration for nonviolent criminals. First, a judge may impose monetary penalties, restitution, mediation, or even community service as a means of rehabilitative punishment.<sup>213</sup> Additionally, technological advances have resulted in alternative sentencing procedures known as electronic monitoring.<sup>214</sup> Intensive supervision offers yet another alternative method of sentencing to incarceration.<sup>215</sup> Finally, day reporting centers and correctional boot camps have become popular alternative sentencing procedures.<sup>216</sup>

#### 1. *Monetary Penalties, Restitution, Mediation & Community Service*

At the lowest end of the sentencing spectrum, judges often retain the discretion to impose monetary penalties, restitution, mediation, or community service as punishment for less serious or nonviolent

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209. Michael Tonry, *Intermediate Sanctions in Sentencing Reform*, U. CHI. L. SCH. ROUND-TABLE 391, 410 (1995) (advocating the use of intermediate sanctions as opposed to retributive sentencing for nonviolent criminals).

210. Snow, *supra* note 200, at 7A.

211. *Contra* Snow, *supra* note 200, at 7A (identifying a Massachusetts study of 200 inmates who earned college degrees while imprisoned and were subsequently released—none of those 200 released inmates have committed subsequent crimes).

212. *See generally* Lynne Goodstein, *Inmate Adjustment to Prison and the Transition to Community Life*, 16 J. RES. CRIME & DELINQ. 246 (1979) (proposing that when an inmate has been incarcerated and has adapted to a prison environment, he is much less likely to be able to adapt as a productive member of society upon his release from that prison environment).

213. *See infra* notes 218-48.

214. *See infra* notes 249-57 and accompanying text.

215. *See infra* notes 258-71 and accompanying text.

216. *See infra* notes 272-88 and accompanying text.

crimes.<sup>217</sup> In the past, a judge might impose one of these four penalties, in combination with probation, or alone. However, with the rise of mandatory minimum sentencing policies, the category of crimes one of these alternatives may be applied to has markedly narrowed.<sup>218</sup>

Monetary penalties are an attractive alternative to incarceration for a variety of reasons. They are punitive, easily administered, provide collection funds or victim compensation, and act as a deterrent punishment.<sup>219</sup> Four states have enacted pilot monetary penalty schemes known as “day fines” as sentencing alternatives.<sup>220</sup> These pilot schemes are based upon a successful New York day fine program that has been operating since 1988.<sup>221</sup> Day fines are generally imposed in conjunction with probationary sentences.<sup>222</sup> Upon being selected to participate in the program, the offender’s daily income is calculated, a fine amount is derived, a contract is signed, and a repayment schedule is developed.<sup>223</sup> Analysis of the New York day fine program indicates that seventy percent of the offenders participating in the program have paid their fines in full, and thirteen percent have had their sentences revoked.<sup>224</sup> Relatively little coercion was required to

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217. See generally Mark William Bakker, *Repairing the Breach and Reconciling the Discordant: Mediation in the Criminal Justice System*, 72 N.C. L. REV. 1479 (1994) (discussing alternative methods of dispute resolution, including arbitration, mediation, and settlement); Dora L. McNew, *An Introduction to Community Corrections*, 11 HAMLINE J. PUB. L. & POL’Y 31 (1990) (advocating the use of rehabilitative alternative sentencing procedures); Harry Mika, *The Practice and Prospect of Victim-Offender Programs*, 46 SMU L. REV. 2191 (1993) (exploring alternative sentencing procedures as responses to crime, as opposed to conventional incarceration).

218. Cf. Heather McTavish, *Profile: Janet Reno’s Approach to Criminal Justice*, 4 UCLA WOMEN’S L.J. 113, 115 (1993) (supporting the U.S. Sentencing Commission, American Bar Association, and judges who criticize mandatory minimum sentences as unfair in preventing judicial discretion in tailoring sentences to the crime and the criminal); David Yellen, *What Juvenile Court Abolitionists Can Learn from the Failure of Sentencing Reform*, 1996 WIS. L. REV. 577, 587 (identifying that the judiciary is prevented from determining an appropriate sentence based on specific circumstances surrounding a crime, because it is forced to impose unfair and disproportionate sentences as required under mandatory minimum sentencing laws).

219. Sally T. Hillsman, *Day Fines*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 19 (Michael Tonry & Kate Hamilton eds., 1995); see *supra* note 212 and accompanying text.

220. Susan Turner, *Day-Fine Projects Launched in Four Jurisdictions*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 26, 27 (Michael Tonry & Kate Hamilton eds., 1995). Arizona, Iowa, Connecticut, and Oregon have employed pilot day-fine programs which are funded by the Bureau of Justice Assistance. *Id.* at 26-30. Each state’s plan varies in organization and application, although some general characteristics are common to all four states. *Id.* For example, each state determines whether an offender is eligible for the program, and uses day-fine officers to track offender compliance. *Id.*

221. Sally T. Hillsman, *Day Fines in New York*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 21, 26 (Michael Tonry & Kate Hamilton eds., 1995).

222. Turner, *supra* note 220, at 26-30.

223. *Id.* at 27.

224. Hillsman, *supra* note 221, at 24-26.

achieve this level of compliance, indicating that day fines may present an effective intermediate sentencing alternative.<sup>225</sup>

The alternative sanction of restitution requires an offender to reimburse a victim for his or her losses.<sup>226</sup> Restitution acts as compensation for a victim's loss.<sup>227</sup> It forces an offender to focus on the wrong he or she has committed and its consequences.<sup>228</sup> For the state, it is an efficient method of punishing a nonviolent or first-time offender.<sup>229</sup> Restitution is invariably used in connection with another alternative to incarceration such as probation, and is rarely used as a sole alternative to imprisonment.<sup>230</sup>

Several downsides to restitution programs have been reported, however. First, some studies contend that restitution programs are applied discriminatorily, favoring white and middle-class criminals.<sup>231</sup> Second, there is no conclusive information tending to show that restitution positively affects recidivism.<sup>232</sup> Finally, restitution programs are difficult to plan and implement.<sup>233</sup> As a result, it is difficult to gauge their results.

Mediation, like fines and restitution, focuses on the punitive nature of criminal sentencing.<sup>234</sup> Like restitution, mediation is usually imposed concurrently with another form of alternative sentencing.<sup>235</sup> However, in some cases, successful mediation between the offender and his victim will negate any further sentencing.<sup>236</sup> Mediation forces an offender to be confronted by his victim—a role reversal centered on power. In the mediation setting, the victim is in control and the offender assumes a passive role.<sup>237</sup> Theoretically, this puts the offender in an uncomfortable position, which acts as a punishment by forcing the offender to face his or her victim.<sup>238</sup> At the end of the mediation process, the parties discuss the crime and other concerns,

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225. *Id.* at 26.

226. Elmar Weitekamp, *Restitution*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 63, 63-64 (Michael Tonry & Kate Hamilton eds., 1995).

227. Weitekamp, *supra* note 226, at 64.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.* at 65.

233. *Id.*

234. Mark S. Umbreit, *Mediating Conflict Among Victims and Offenders*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 56, 58 (Michael Tonry & Kate Hamilton eds., 1995).

235. Umbreit, *supra* note 234, at 56-58.

236. *Id.*

237. *Id.*

238. *Id.* at 56-57.

and reach an agreement regarding restitution.<sup>239</sup> In some cases the restitution is monetary, while in others, the parties may agree that the offender will “work” for the victim to pay off his or her debt.<sup>240</sup> Although mediators do not impose restitution settlements, approximately ninety-five percent of mediation meetings result in signed restitution agreements.<sup>241</sup>

Community service provides a method of sanctioning the criminal offender, without incarceration, while providing substantial benefits to the community.<sup>242</sup> Orders to perform community service basically require an offender to perform community-based labor without pay.<sup>243</sup> While such a program may sound attractive in theory, community service has been an underused criminal sanction for several reasons.<sup>244</sup> First, community service sentences are not perceived as credible because a state invariably does not have a follow-up procedure to ensure compliance.<sup>245</sup> Second, the costs of community service to the state may exceed the benefits of such a sentence.<sup>246</sup> Finally, it is difficult to fashion a scheme whereby incarceration sentences can be equally converted into community service time.<sup>247</sup> Thus, community service programs are not only difficult to administer, but also difficult to evaluate.

## 2. *Electronic Monitoring*

Electric monitoring is a relatively new concept in alternative sentencing that has been used by many states in a variety of manners.<sup>248</sup> There are different types of electronic monitoring available today, and technology continues to afford new alternatives.<sup>249</sup> Two forms of electronic monitoring involve the use of electronic wristbands or home

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239. *Id.* at 57.

240. *Id.*

241. *Id.*

242. *Introduction to Community Service*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 69, 72 (Michael Tonry & Kate Hamilton eds., 1995).

243. Douglas C. McDonald, *Community Service Sentences*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 72, 72 (Michael Tonry & Kate Hamilton eds., 1995).

244. *Introduction to Community Service*, *supra* note 242, at 69-72.

245. *Id.* at 71.

246. *Id.*

247. *Id.*

248. JOAN PETERSILIA, *EXPANDING OPTIONS FOR CRIMINAL SENTENCING* 34 (1987). At a minimum, California, Colorado, Idaho, Illinois, Kentucky, Michigan, New Jersey, New Mexico, New York, Oklahoma, Oregon, Utah and Virginia use electronic monitoring as an alternative method of sentencing. *Id.*

249. Terry L. Baumer & Michael G. Maxfield, *Electronically Monitored Home Detention*, in *INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES* 104, 106 (Michael Tonry & Kate Hamilton eds., 1995).

confinement.<sup>250</sup> Electronic wristbands involve the use of radio frequency systems,<sup>251</sup> while electronically monitored home confinement is accomplished through the use of an automated computer contact system.<sup>252</sup> In both these methods, law enforcement authorities are electronically informed if the inmate exits a specifically approved area.<sup>253</sup> Preliminary cost-benefit analysis indicates that, per inmate, electronic monitoring programs are less costly than incarceration, and provide an effective alternative to imprisonment.<sup>254</sup> Furthermore, electronic monitoring has been reported to have an eighty-one percent success rate.<sup>255</sup> However, economic analysis has also indicated that in many circumstances additional costs may be required, thereby making the programs unattractive to some states.<sup>256</sup>

### 3. *Intensive Supervision*

Intensive supervision programs (“ISP”) are generally known as probationary or parole programs.<sup>257</sup> Usually, the purpose of an ISP is to facilitate public safety through effective control over an offender, at a much more economical cost to the taxpayer than the costs of incarceration.<sup>258</sup> A variety of programs are implemented to achieve this purpose, which range from drug-testing to home visits.<sup>259</sup> In addition, ISP programs may utilize other sanctions, such as community service, counseling or mandatory employment.<sup>260</sup> The ratio ranges anywhere

250. *Id.* at 104.

251. *Id.* at 104-06. For example, a person convicted of aggravated assault might be sentenced to wear an electronic wristband, which usually limits the distance the offender can travel from his home. *Id.* If he leaves that designated area, an electronic signal would be conveyed to the authorities that he has breached the terms of his sentence. *Id.*

252. *Id.* at 105. Although automated computer programs vary, compliance is monitored through random computer-generated telephone calls. *Id.* During these random telephone calls, a variety of information is requested and analyzed (i.e. the client may be requested to perform certain tasks, or the computer may perform a voice analysis to determine whether the person answering the questions is, in fact, the sentenced offender). *Id.*

253. *Id.* at 105-06.

254. *Id.* at 106.

255. Michael G. Maxfield & Terry L. Baumer, *Electronic Monitoring in Marion County, Indiana*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 108, 109 (Michael Tonry & Kate Hamilton eds., 1995). The 81% success results are based on an analysis of the electronic monitoring program implemented in Marion County, Indiana. *Id.* at 108-09.

256. Baumer & Maxfield, *supra* note 249, at 106. Cost-effectiveness is based on the method in which costs are calculated. *Id.* In some cases, the program will be unable to generate enough user fees to cover program costs. *Id.* It is therefore advisable for a state to perform a cost-benefit analysis prior to implementing an electronic monitoring program. *Id.*

257. Richard Will, *Intensive Supervision*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 89, 89 (Michael Tonry & Kate Hamilton eds., 1995).

258. *Id.*

259. *Id.*

260. *Id.*

from ten to twenty-five parolees to every one probation officer.<sup>261</sup> Currently, at least forty states have adopted some form of ISP, including California and Illinois.<sup>262</sup>

ISP's have been implemented for various purposes: 1) an early release program; 2) a prison alternative; or 3) a method of control over high-risk probationers.<sup>263</sup> Each state's ISP program can differ greatly from another's in both the goals of the program and its application.<sup>264</sup> Furthermore, the success of any ISP program depends in large part on whether the participants were properly selected, whether the program was cost-effective, or whether there was, in fact, a reduction in rates of recidivism.<sup>265</sup> For example, a RAND Corporation study of California's ISP program resulted in mixed findings.<sup>266</sup> Based on analysis of the ISP program alone, the RAND study found no reduction in recidivism rates, but did find that cost savings could be achieved.<sup>267</sup> The California study identified that ISP average costs per offender were \$7,240 to \$8,902 per year,<sup>268</sup> a notable savings compared to incarceration.<sup>269</sup> It should be noted, however, that the effectiveness of any ISP program depends on a variety of variables that may be involved.<sup>270</sup>

#### 4. Day Reporting Centers

Day reporting centers have also been considered as alternatives to incarceration, not only for the attractiveness of cost containment, but also for the emphasis placed on rehabilitation.<sup>271</sup> Studies on the effectiveness of ISPs have indicated a success rate of anywhere between sixty-eight percent and ninety-seven percent in safely managing the

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261. *Id.*

262. *Id.* at 89-90.

263. *Id.*

264. *Id.* at 90.

265. *Id.*

266. Richard Will, *California ISP Programs Evaluated*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 91, 91-94 (Michael Tonry & Kate Hamilton eds., 1995).

267. *Id.* at 92-93. The Rand study found that although the ISP program advocating supervision alone might not be successful in cutting down on recidivism, the study found that a combination of supervision *and* treatment or counseling *may* be successful. *Id.* In addition, the study noted that monies spent on monitoring and incarceration may be better spent on substance abuse treatment and vocational training and placement. *Id.*

268. *Id.* at 93.

269. Orlov, *supra* note 188, at N4.

270. Will, *supra* note 257, at 90-91. For example, results may vary based on the offender population participants that were chosen, or whether offenders were in fact prison-bound. *Id.* at 90.

271. Dale G. Parent, *Day-Reporting Centers*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 125, 125-28 (Michael Tonry & Kate Hamilton eds., 1995).



offenders in society.<sup>272</sup> At least eight states have implemented some form of this sentencing procedure, although the programs and eligibility vary from state to state.<sup>273</sup> In Massachusetts, day reporting center programs consist of home confinement of the inmate, whereby the inmate resides in the home, while reporting on a daily basis to a case manager.<sup>274</sup> Case managers also check on inmates twice a day.<sup>275</sup> Inmates must complete, for approval, an extensive itinerary of the next twenty-four hours, which identifies the inmate's location at all times,<sup>276</sup> and are required to be employed or enrolled in school during his participation in the program.<sup>277</sup>

### 5. *Adult Correctional Boot Camp Programs*

Boot camps represent yet another alternative to incarceration for perpetrators of nonviolent crimes.<sup>278</sup> Boot camps have become popular in recent years as a result of prison overcrowding and the public demand to see criminals punished.<sup>279</sup> As of 1995, there were at least twenty-seven states that operate some form of adult boot camp program, eight states that operate juvenile boot camp programs, and two states that utilize federal boot camp programs.<sup>280</sup> Boot camps are premised on the idea that "short, intensive, and extremely harsh programs would give structure to the lives of offenders and would perhaps rehabilitate them."<sup>281</sup> One of the main goals of boot camps is rehabilitation through a disciplinary regimen, as well as treatment programs.<sup>282</sup> It is the belief of boot camp officers that graduates of the program have gained greater positive and pro-social attitudes,

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272. *Id.* at 127. A study of ISP's in Minnesota reported a 98% success rate in completion of the program. *Id.* A survey of four day centers in Massachusetts revealed a 78% success rate: 20% of the failure rate was attributed to program violations and 2% to new crimes and escapes. John F. Larivee, *Day-Reporting in Massachusetts*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 128, 130-31 (Michael Tonry & Kate Hamilton eds., 1995). Similarly, the Crime and Justice Foundation's Metropolitan Day Reporting Center reported similar results with a 67% success rate, 30% failure for program violations, and 3% failure for new crimes and escapes. *Id.*

273. Parent, *supra* note 271, at 126.

274. Larivee, *supra* note 272, at 128.

275. *Id.*

276. *Id.*

277. *Id.*

278. AMERICAN CORRECTIONAL ASS'N, STANDARDS FOR ADULT CORRECTIONAL BOOT CAMP PROGRAMS vii (1995) [hereinafter BOOT CAMP STANDARDS].

279. *Id.*

280. *Id.*

281. *Id.*; see PETERSILIA, *supra* note 248, at 61.

282. BOOT CAMP STANDARDS, *supra* note 278, at vii.

made educational achievements, and shown a positive level of courtesy and agreeability.<sup>283</sup>

Boot camps must pass a rigorous accreditation program, and provide mission statements, goals, and measurable objectives for participants.<sup>284</sup> Studies have generally concluded that offenders who attend boot camps have better behaviors while in the boot camps, but recidivism rates are not necessarily better than recidivism rates for incarcerated persons.<sup>285</sup> Boot camps may be able to reduce costs, prison populations, and recidivism, but the conditions necessary to achieve such effectiveness are rarely, if ever, satisfied. Therefore, boot camps may only be effective if run under very different and strict guidelines.<sup>286</sup>

A variety of alternative sentencing procedures have been used tentatively in the past, but the potential for more frequent use remains. Because the holding in *People v. Superior Court (Romero)*<sup>287</sup> reinstates the role of judicial discretion in sentencing three strikes felons, the courts retain the possibility of using these alternative sentencing procedures in sentencing nonviolent criminals.

#### H. California's Three Strikes Law and The Separation of Powers

On June 20, 1996, the California Supreme Court decision *People v. Superior Court (Romero)* successfully circumvented California's controversial three strikes legislation aimed at restricting judicial discretion in the sentencing of habitual criminals.<sup>288</sup>

#### I. Procedural History

The defendant in *Romero* was charged with drug possession.<sup>289</sup> He also had four prior convictions for drug possession, second degree burglary, attempted burglary, and first degree burglary.<sup>290</sup> As a result, the defendant was a candidate for life imprisonment under Califor-

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283. *Id.*

284. *Id.*

285. Dale G. Parent, *Boot Camps Failing to Achieve Goals*, in INTERMEDIATE SANCTIONS IN OVERCROWDED TIMES 139, 140 (Michael Tonry & Kate Hamilton eds., 1995). The evaluation, conducted by the National Institute of Justice and a multi-state evaluation, was based on Louisiana's boot camp and compared boot camp graduates and offenders receiving other sentences. *Id.*

286. *Id.* at 140-41; see BOOT CAMP STANDARDS, *supra* note 278, at vii.

287. 917 P.2d 628 (Cal. 1996).

288. William Claiborne, '3 Strikes' Sentencing Overturned, WASH. POST, June 21, 1996, at A1 LEXIS, News Library, Wpost File; see Maura Dolan & Tony Perry, *Justices Deal Blow to '3 Strikes'*, L.A. TIMES, June 21, 1996, at A1.

289. 37 Cal. Rptr. 2d 364 (Ct. App. 1995).

290. *Id.* at 370.

nia's three strikes sentencing law.<sup>291</sup> The offense at issue, drug possession, carried the much lighter penalty of one to six years imprisonment.<sup>292</sup> The defendant pled not guilty to the charge, and at hearing, over prosecution's objection, Judge William D. Mudd offered to strike Romero's previous felony convictions if he changed his plea to guilty.<sup>293</sup> The district court considered many factors in making its offer to the defendant: 1) the history of the law; 2) the prosecution's objection to the offer based on Section 1385 of the California Penal Code;<sup>294</sup> 3) the defendant's background; and 4) the court's knowledge.<sup>295</sup> The court subsequently struck the defendant's prior felony convictions, in direct violation of Section 1385, and imposed a six year sentence as opposed to the sentence of life imprisonment mandated under Section 1385.

The district attorney petitioned for a writ of mandate to reverse the Superior Court's decision to strike Romero's prior felony convictions.<sup>296</sup> The court of appeals subsequently determined the lower court went beyond the bounds of its discretion in dismissing the convictions on its own motion.<sup>297</sup> Therefore, the appellate court issued a writ requiring that the sentence be vacated, and that the defendant be permitted to withdraw his guilty plea.<sup>298</sup> Subsequently the California Supreme Court granted defendant's petition for review.<sup>299</sup>

## 2. California Supreme Court Analysis

In its analysis, the California Supreme Court reviewed the relevant sections of the California Penal Code.<sup>300</sup> The court also relied primarily on its holding in *People v. Tenorio*<sup>301</sup> to overrule the appellate court's decision.<sup>302</sup> *Tenorio* stated that "[t]he prosecutor has never

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291. *Id.* at 371.

292. *Id.*

293. *Id.* at 370.

294. Section 1385 "does not authorize a judge to strike any prior conviction of a serious felony for purposes of enhancement of a sentence" under three strikes legislation. CAL. PENAL CODE § 1385 (West 1996).

295. *Romero*, 37 Cal. Rptr. 2d. at 371.

296. *Id.*

297. *Id.* at 382.

298. *Id.* at 383.

299. *People v. Superior Court (Romero)*, 917 P.2d 628 (Cal. 1996).

300. *Id.* at 628. The relevant sections of the CALIFORNIA PENAL CODE at issue are sections 667, 1170.12, two substantially similar portions of California's three strikes statute, section 1385, which addresses prosecutorial discretion CAL. PENAL CODE §§ 667, 1170.12, 1385 (West 1988 & Supp 1998).

301. 473 P.2d 993 (Cal. 1970) (holding that the legislation in question had allowed an impermissible prosecutorial veto over judicial discretion to dismiss a defendant's prior convictions).

302. *Id.*

been able to ‘exercise’ the power to dismiss a charged prior—he has only been able to invite the judicial exercise of that power.”<sup>303</sup> The supreme court held that allowing a prosecutor the sole power to dismiss a defendant’s prior convictions was an impermissible violation of the doctrine of separation of powers, which extend to the state via Article XIV of the United States Constitution.<sup>304</sup>

The court reasoned that while a legislature may in fact remove the judiciary’s discretion through imposed legislation, the legislature had not done so in this instance, but had merely restricted the *manner* of judicial discretion.<sup>305</sup> Stated simply, the legislature prevented the judiciary from reducing a defendant’s sentence under the three strikes law, but it did not “implicitly eliminat[e] the court’s power to impose a lesser punishment by dismissing, or striking sentencing allegations, under section 1385.”<sup>306</sup> In conclusion, the supreme court reasoned that because the district court retains the power to grant the prosecution’s motion to strike prior felony convictions “in the furtherance of justice,” the court could similarly strike such convictions *sua sponte*.<sup>307</sup> *Romero* was applied retroactively to those cases then on appeal, and to the extent appellate relief was no longer available, offered reconsideration of the sentence upon the filing of a writ of habeas corpus.<sup>308</sup>

### 3. *Legislative Reaction to People v. Superior Court (Romero)*

The California legislature reacted immediately to the *Romero* holding with the General Assembly’s passage of Senate Bill 331.<sup>309</sup> If approved by the Senate, S.B. 331 would have effectively curtailed judicial discretion in the wake of *Romero* by barring the judiciary from dismissing prior felony conviction allegations for *violent* felonies.<sup>310</sup> Under S.B. 331, only *nonviolent* felonies could be dismissed, and only if the current felony was committed more than five years after the defendant was released from custody for the prior felony

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303. *Id.* at 996-97.

304. U.S. CONST. art. XIV.

305. *Romero*, 917 P.2d at 628.

306. *Id.* at 640.

307. *Id.* at 646.

308. *Id.* at 648 n.13.

309. Dan Morain, *Assembly OKs Bill Limiting Judges’ 3-Strikes Leniency*, L.A. TIMES, July 10, 1996, at A1. California Senate Republican Leader Rob Hurtt and three strikes activist Mike Reynolds were the main forces behind the modified three strikes legislation aimed at circumventing the California Supreme Court decision in *People v. Superior Court (Romero)* that returned sentencing discretion to judges in three strikes cases. *Id.*

310. Stephanie Stone, *California Senate Committee Strikes Three Strikes’ Measure Limiting Judges’ Sentencing Ability*, WEST’S LEGAL NEWS, July 18, 1996, available in 1996 WL399702.

conviction.<sup>311</sup> However, on July 16, 1996, a four-to-one vote of the Senate Criminal Procedure Committee rejected S.B. 331, thereby denying the bill's opportunity for a full Senate hearing.<sup>312</sup> The Committee cited confusing language and concern over the fact that eighty percent of felons sentenced under three strikes laws are nonviolent as the primary factors in rejecting the bill.<sup>313</sup> Three strikes laws proponents have not abandoned their cause, however, with Senate Republican Leader Rob Hurtt's current legislation and new initiative plans for the 1998 ballot.<sup>314</sup>

#### 4. *Impact of People v. Superior Court (Romero)*

It will continue to be some time yet before the effects of *Romero*, if any, will be seen in the criminal justice system, the prison population, or state appropriations. Specifically, the results of cases on reconsideration, the numbers of three strikes offenders being sentenced to indeterminate life sentences, and the criminal justice system backlog, are yet unknown. However, early reports indicate that the *Romero* holding will not have a radical impact on the current application of the law.<sup>315</sup>

## II. ANALYSIS

California's three strikes legislation can be viewed as a strategic political maneuver that promised to protect the public. In reality, evidence shows that this law has not achieved its intended protections.<sup>316</sup> Many citizens live in fear of crime and are angry that horrible crimes committed by recidivists such as those against Kimber Reynolds and Polly Klaas occur.<sup>317</sup> Yet, however tragic these crimes may be, they do not justify the political support of a law that further intensifies serious problems inherent within the criminal justice system, especially in light of the variety of alternative sentencing procedures that currently exist throughout the country. Even Marc Klaas, previously heralded

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311. *Id.*

312. Dan Morain & Max Vanzi, *Senate Panel Blocks Revisions of 3-Strikes Law*, L.A. TIMES, July 17, 1996, at A1.

313. *Id.*

314. *Id.*

315. *See, e.g., id.* (reporting that, according to Superior Court Judge J. Stephen Czuleger, "trial judges would rarely grant leniency to repeat felons" because the judiciary is for the most part conservative); *see also* Leslie Wolf, *A Few Felons Here Escape Full Force of 3-Strikes Law*, SAN DIEGO UNION & TRIB., July 9, 1996, at A1, available in LEXIS, News Library, Papers File. (reporting that isolated cases of judges striking, previous felony convictions have been noted, but that such cases are exceptions rather than the norm).

316. *See supra* note 21, 37, 105-09, 185-89 and accompanying text.

317. *See supra* notes 47-48 and accompanying text.

as a most vital advocate of three strikes laws after the death of his twelve year-old daughter, no longer supports such laws.<sup>318</sup>

It is possible that politicians backing three strikes laws truly believe the legislation will solve the recidivist problem that plagues the country, even though the facts show otherwise. Likewise, it is possible that political support of California's three strikes law was not just a means of securing public support following the public tidal wave of rage and fear over the deaths of Kimber and Polly.<sup>319</sup> However, it is difficult to give politicians the benefit of that doubt when faced with the myriad of crucial issues that have increased in urgency and severity as a result of three strikes legislation. Thus, three strikes laws can be viewed as failures in several crucial respects.

In *Romero*,<sup>320</sup> the California Supreme Court had the insight to find that California's three strikes law violated the doctrine of separation of powers, thereby reinstating the historical proposition of judicial discretion.<sup>321</sup> The *Romero* decision must initially be viewed as an opportunity to remedy some of the problems intensified by three strikes laws. In addition, *Romero* must also be viewed as an opportunity to move forward with sentencing alternatives better suited to society as a whole.

#### A. *The Impropriety of Three Strikes Laws*

While California's three strikes law effectively removes a large number of habitual criminals from its streets, it also negatively impacts the citizens in several respects. First, the three strikes law was pushed as a means to rid the streets of violent habitual criminals, like those responsible for the deaths of Kimber Reynolds and Polly Klaas.<sup>322</sup> However, the application of three strikes legislation has

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318. Pamela J. Podger, *Mourning Fathers Now Split Over 3 Strikes*, FRESNO BEE, Aug. 28, 1994, at A1, available in 1994 WL 8567151. While Marc Klaas supported the "three strikes" movement after his daughter's death, he now stands in opposition to the law. *Id.* He stated that he was coerced into his endorsement of the law during the grievous period subsequent to Polly's death. *Id.* His opinion of the law is that "[i]t is too soft on hard crime and too hard on soft crime." *Id.* However, Mike Reynolds, Kimber's father, remains committed to supporting the law. *Id.*

319. *But see* Charles L. Lindner, '3 Strikes' Decision Still Leaves Option of Tough Sentences, FRESNO BEE, June 25, 1996, at B7, available in LEXIS, News Library, Fresno File (identifying that 1994 Assembly Speaker Willie Brown "confessed that Three Strikes was crazy public policy, but that it was *political suicide* to vote against it. Put simply, the politicians needed the state Supreme Court to stop them from making impossible policies that the Legislature could not conceivably finance without gutting the state budget" (emphasis added)).

320. 917 P.2d 628 (Cal. 1996).

321. Claiborne, *supra* note 288, at A1.

322. CAL. PENAL CODE § 667(b) (West 1988 & Supp. 1998); *see supra* note 19.

been much stricter than people may have expected, sentencing a majority of nonviolent criminals rather than the intended violent, habitual criminals.<sup>323</sup> Second, a direct consequence of California's three strikes legislation has been a marked increase in the state's prison population.<sup>324</sup> Third, California, and the rest of the country, tends to blame the criminal justice system as a whole for the levels of crime across the country, yet the all encompassing nature of three strikes laws has further *increased* the backlog in the court system.<sup>325</sup> Finally, it is the public who pays for the financial ramifications of three strikes.<sup>326</sup>

California's politicians were quick to back the initiative, but failed to specifically inform the public of the ramifications the law would have on the system. If this failure was more than mere oversight—if the lawmakers knew exactly what they were doing when they failed to inform the public about the ramifications of the law—then serious questions must be raised about the propriety and intent of the lawmakers who backed California's three strikes legislation.

### *1. Disproportionate and Discriminatory Effects of Three Strikes Laws*

Three strikes laws have accomplished far more than just ridding the streets of violent habitual criminals. California's three strikes law has sentenced at least 14,000 second-time felony offenders and 1,300 third-time felony offenders.<sup>327</sup> Of that total number of criminals sentenced under the three strikes law, only fifteen percent were sentenced for violent crimes, and six percent were sentenced for serious crimes.<sup>328</sup> Thus, that a disproportionate eighty percent of criminals sentenced under three strikes law were incarcerated for nonviolent crimes.<sup>329</sup> The majority of nonviolent criminals sentenced under three strikes laws are drug users and petty thieves.<sup>330</sup>

It is undisputed that the United States has severe crime and drug problems. However, can it be said that the citizens of California intended to lock up nonviolent drug users for twenty-five years to life?

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323. See Ingram, *supra* note 21, at A3.

324. Mergenhagen, *supra* note 157, at 2; see also Cannon, *supra* note 41, at A1 (identifying a study that questions whether this law is just, due to the large number of nonviolent offenders who are incarcerated).

325. See *supra* notes 99-104 and accompanying text.

326. See *supra* note 88-98 and accompanying text.

327. Cannon, *supra* note 41, at A1.

328. Ingram, *supra* note 21, at A3 (discussing a California Department of Corrections study).

329. *Id.*

330. See *supra* notes 37-38 and accompanying text.

Or, to be more graphic, did the citizens of California intend to sentence a man to life imprisonment for stealing a piece of pizza?<sup>331</sup> The case of the pizza man may not be representative of the nonviolent felons sentenced under three strikes laws, but it is strikingly illustrative of the all-encompassing reach of California's three strikes law.

The three strikes law also has a discriminatory effect on the persons sentenced under its guidelines. A California Department of Corrections report has identified that forty-three percent of the criminals convicted under three strikes laws are African-Americans.<sup>332</sup> Therefore, not only do three strikes laws disproportionately sentence second and third-time felony offenders in relation to crimes committed, but they also disproportionately and discriminatorily sentence more African-Americans than any other cognizable racial or ethnic group. Specifically, African-Americans are sentenced under three strikes laws at a rate of thirteen-to-one over Caucasians.<sup>333</sup> A strong argument proposed by critics contends that the racial disparity results from the disproportionate number of black district attorneys (approximately 85) versus white district attorneys (approximately 1,200) prosecuting three strikes cases.<sup>334</sup> The criticism stems from the proposition that racism toward blacks at the charging stage is responsible for the disparity.<sup>335</sup> This is because the district attorney retains the discretion to dismiss prior convictions of criminal defendant's eligible for sentencing under three strikes laws.<sup>336</sup> Upon review of the written intent of the three strikes initiative, it cannot be concluded that such punishments were the intent of the citizens of California.<sup>337</sup> Rather, the intent of three strikes laws was to punish those violent, habitual criminals who are a true threat to society.<sup>338</sup>

## 2. *Burgeoning Prison Population*

Approximately 15,300 criminals have been sentenced under California's three strikes law.<sup>339</sup> This factor alone is largely responsible for

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331. DiSpoldo, *supra* note 37, at 10 (discussing sentencing of nonviolent criminals under three strikes laws for nonviolent and even frivolous crimes).

332. Ingram, *supra* note 21, at A3.

333. Claiborne, *supra* note 21, at A3.

334. *Id.*

335. *Id.*

336. *Id.*

337. CAL. PENAL CODE § 667(b) (West 1988 & Supp 1998); *see supra* note 19.

338. *See supra* note 19.

339. Cannon, *supra* note 41, at A1.



the corresponding increase in California's prison population.<sup>340</sup> The recurring problem today, however, is that criminals are not being sentenced for six, ten or even fifteen year terms, but rather twenty-five years to life. Current prisons are not equipped to handle this increase. California's prison system is presently operating at 192% of its intended capacity, and thirteen of California's penal institutions are operating at more than 200% capacity.<sup>341</sup> Essentially, there are three options: 1) continue to overcrowd the already burgeoning California prisons; 2) construct new prison facilities to handle the overload; or 3) grant prisoners an early release to make room for the incoming prisoners. California has elected to do all three. California's governor has been pushing for state approval of a plan to build six new prison facilities, but has been met with strong opposition.<sup>342</sup> As an alternative to building new prison facilities, many criminals imprisoned for violent crimes prior to the enactment of three strikes have been granted early release.<sup>343</sup> California has used early release to make room for the incoming criminals convicted under three strikes law, the large majority of whom were sentenced for nonviolent crimes.<sup>344</sup> It can hardly be said that this was the result the citizens of California expected—to have violent criminals released so that nonviolent criminals could be sent to prison for twenty-five years to life.

### 3. *Three Strikes Laws Overburden the Criminal Justice System*

One of the theories behind three strikes laws was that they would speed recidivists through the criminal justice system on a "no questions asked" basis.<sup>345</sup> In reality, the converse result has occurred. The criminal justice system in California is now dealing with an increased number of jury trials, a problem it did not face prior to three strikes laws.<sup>346</sup> In essence, three strikes can be blamed for *increasing* the backlog in the California criminal justice system. Furthermore, it could have been anticipated that the harsh penalties rendered under three strikes laws would create a backlog in the criminal justice sys-

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340. See *supra* note 153 and accompanying text; see also Cannon, *supra* note 41, at A1 (questioning the justice of the law, since the dramatic prison population increase has resulted largely from sentencing nonviolent felons).

341. Andy Furillo, *Pressures Building in State's 32 Prisons*, SACRAMENTO BEE, Jan. 19, 1997, at A1, available in LEXIS, News Library, Sacbee File.

342. See *supra* notes 155-60.

343. See *supra* notes 191-92 and accompanying text.

344. See *supra* notes 193-94 and accompanying text.

345. King, *supra* note 20, at A3; see also WELSH, *supra* note 158, at xiii.

346. See *supra* notes 99-104 and accompanying text.

tem, which is contrary to the goals of the citizens and legislators who pushed the law.

#### 4. *Financial Burdens of Three Strikes Laws*

When faced with the overwhelming increase in convicted criminals sent to prison, the question arises whether the public was aware of the number of people who would be sentenced under three strikes legislation. If the public was aware of how high that number would be, a second question must arise whether they realized the financial impact the law would have on the state. The funds to pay for the consequences of three strikes legislation (i.e. court costs and imprisonment) must come from somewhere. Whether funds are diverted from another area of the state government, received from the federal government, or directly taxed on the public, someone must pay the costs for those criminals accused and sentenced under three strikes or any criminal laws.<sup>347</sup> The taxpayer pays for the housing for all criminals sentenced to prison, and one may assume the taxpayer accepts the state's allocation of funds. However, when faced with paying the cost of life imprisonment for a man whose third offense was stealing some cookies from a restaurant,<sup>348</sup> the taxpayer may be more concerned about how those state funds are spent. With prison housing costing approximately \$21,375 per year, per inmate,<sup>349</sup> those are some pretty expensive cookies.

In California, jury trials are up at least forty percent, and that increase is considered a direct result of the three strikes legislation.<sup>350</sup> The state is responsible for paying the costs of every criminal case that goes to trial.<sup>351</sup> Thus, for every nonviolent crime charged under a three strikes law that goes to trial, the taxpayer is paying the higher cost of a jury trial instead of the lower cost of a plea bargain.

#### B. *Theoretical Problems with Three Strikes Laws*

There are two main theoretical problems that arise as a consequence of three strikes legislation. First, how does one justify the business of building prisons to house criminals convicted under three strikes laws? Second, how does one justify the severity of a twenty-

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347. See *supra* notes 40, 93, 157, 180-81 and accompanying text.

348. DiSpaldo, *supra* note 37, at 10 (identifying a man who received an indeterminate life sentence for breaking into a restaurant and stealing some cookies).

349. Orlov, *supra* note 188, at N4

350. Butterfield, *supra* note 99, at A1.

351. See *supra* notes 39-40 and accompanying text.

five years to life sentence in connection with a third strike felony that is nonviolent?

### 1. *Prisons for Profit*

The building of prisons for profit has become a hot commodity on the stock exchange.<sup>352</sup> States now contract with private entities to build and manage new private prison facilities.<sup>353</sup> Prison conditions at many older state facilities are abhorrent, and therefore, new prisons afford inmates better living conditions. However, the money used to build and manage private prison facilities could just as easily be used to fund new *state* operated institutions. The practice of privatizing prisons, therefore, raises two problematic issues. First, private companies with no relationship to the criminal or the victim profit from the incarceration of a criminal.<sup>354</sup> Second, state funding of a private prison system adds a foreign element of politics to the criminal justice system.<sup>355</sup> For example, suppose a politician were to give in to political pressure from a private prison lobbying group seeking to pass more stringent sentencing laws. Business people in the “prison industry” would essentially be pushing the legislature to increase the severity of sentencing laws. Any such increase would protect the private prisons’ interests, by requiring that additional prisons be built, or by keeping the current private prisons in business turning profits. This policy is inherently wrong. There should be no opportunity for a private business interest group to lobby politicians for favorable legislation that affects our criminal justice system for the sole purpose of increasing their profit margins.

### 2. *Sentences Unjustified for Nonviolent Felons*

Constitutional claims of cruel and unusual punishment, due to sentences being disproportionate to the crime in nonviolent three strikes convictions, have failed.<sup>356</sup> Although these constitutional claims have failed, the argument remains that these sentences are simply unfair. One can look at a life sentence imposed for the third strike of stealing a piece of pizza, and rationally determine that the sentence is unfair or disproportional.

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352. *See supra* notes 177-78 and accompanying text.

353. *See supra* notes 173-74 and accompanying text.

354. *See supra* notes 180 and accompanying text.

355. *See supra* notes 182 and accompanying text.

356. *See, e.g.*, *People v. O’Roark*, 52 Cal. Rptr. 2d 870 (Ct. App. 1996); *People v. Ruiz*, 52 Cal. Rptr. 2d 561 (Ct. App. 1996); *People v. Superior Court (Romero)*, 37 Cal. Rptr. 2d 364 (Ct. App. 1995).

The problem inherent in California's three strikes law is that it is completely discretionless. The only question raised is whether a person committed three felonies—the law is *not* tailored to encompass *only* violent criminals. Furthermore, it does not place any limits on the time frames in which the felonies are committed.<sup>357</sup> For example, imagine a young man living in California, who has been convicted of two nonviolent crimes. He received probation for both crimes and went on to lead a productive life as a member of society. Twenty years later, he commits another nonviolent crime and is sentenced to an indeterminate life sentence under California's three strikes law. It can hardly be said that he was a *habitual* criminal.

There is no doubt that the public is tired of violent, habitual criminals being released back into society. Similarly, it is easy to see why the public is tired of habitual petty criminals receiving either light sentences or early release. A felony is a serious crime, and serious crimes should be punished. However, there are better and more cost effective methods for punishing and *rehabilitating* nonviolent criminals. These alternative punishments would cost a fraction of what it would cost to house a prisoner sentenced for twenty-five years to life.<sup>358</sup> It seems apparent that sentencing a nonviolent criminal to a rehabilitation program would not only be more proportional and humane than imposing an indeterminate life sentence, but also much less costly. California's three strikes law completely removed judicial discretion in sentencing. *Romero's* holding affords a necessary return to that historical principle. Therefore, *Romero* must be viewed as an opportunity to actively pursue sentencing alternatives to incarceration.

### III. ALTERNATIVE DIRECTIONS

There are a multitude of sentencing procedures, currently in use throughout the country, that are just as effective as three strikes laws and less costly to the public. Every single state in the country has some form of mandatory minimum sentencing legislation in place.<sup>359</sup> It seems, therefore, that the states believe the mandatory minimums are necessary to act as both a deterrent to other criminals, and as a retributivist punishment to the criminal being sentenced. In addition to mandatory minimum sentencing, many states employ consecutive sentencing, sentence enhancements, and extended sentencing provisions.<sup>360</sup> Furthermore, all states have the ability to hold aggravation

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357. See CAL. PENAL CODE §667 (West 1988 & Supp 1998).

358. See *supra* notes 214-88.

359. BUREAU OF JUSTICE ASSISTANCE, *supra* note 111, at 21-22.

360. See *supra* notes 127-41 and accompanying text.

or mitigation hearings to determine the appropriate sentence for a criminal.<sup>361</sup>

Minimum sentences are just that—minimums. They can be increased so long as they do not exceed the maximum sentence allowed by statute. Many states, in response to recidivism, have enacted habitual sentencing laws or de facto three strikes laws.<sup>362</sup> Even these habitual sentencing laws may not be necessary in light of the emergence of truth-in-sentencing acts.<sup>363</sup> If states were to enact and abide by truth-in-sentencing laws, the possibility of parole for violent criminals would be removed. Three strikes laws are simply an unnecessary sentencing procedure. Illinois is an excellent example of a state that has enacted a wide variety of sentencing procedures. For example, Illinois employs the use of mandatory minimum/maximum sentencing, concurrent sentencing, an habitual criminal act, and truth-in-sentencing legislation, all of which are centered around that state's felony classification system.<sup>364</sup> Thus, a variety of sentencing procedures exist which utilize judicial discretion in sentencing the violent criminal.

Furthermore, a multitude of sentencing alternatives are in place throughout the country that replace incarceration as a punishment for nonviolent criminals. The least restrictive alternatives a judge may impose are monetary penalties, restitution, mediation, or community service.<sup>365</sup> These options serve not only to punish the criminal, but also to contribute to society and/or compensate the victims of crimes. More supervised forms of punishment are available for nonviolent criminals who may be considered a more questionable safety risk. As discussed previously, these alternative punishments include electronic monitoring, intensive supervision, day reporting centers, and adult correctional boot camp programs.<sup>366</sup> These programs are more economical than imprisonment and provide an opportunities for the convicted criminals to participate in rehabilitative programs. In this way, not only are nonviolent offenders punished for their crimes, but they are also given the opportunity to become productive members of society.

While current studies indicate that such alternative sentencing programs are no more effective than imprisonment, these studies have not demonstrated that alternative sentencing programs are *less* effec-

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361. See *Payne v. Tennessee*, 501 U.S. 808, 824 (1991).

362. See *supra* notes 118-26 and accompanying text.

363. See *supra* notes 142-53 and accompanying text.

364. Aspen, *supra* note 122, at 348-49 (discussing Illinois' Class X sentencing law).

365. See *supra* notes 218-48 and accompanying text.

366. See *supra* notes 249-87 and accompanying text.

tive than imprisonment.<sup>367</sup> At this point in history, rehabilitation and retribution by themselves have failed. It is time to implement a more innovative sentencing policy that will benefit society as a whole, namely a *combination* approach that encompasses education, prevention, rehabilitation, and retribution. Past and current policies have been an ineffective deterrent on crime—the time has come for change.

#### IV. CONCLUSION

At best, it can be said that the people of California were unaware of the ramifications of supporting the three strikes initiative. At the same time, it can hardly be said that California's lawmakers were equally unaware.<sup>368</sup> It is the politician's job to do what is in the best interests of the constituents, who are likely unaware of the grave impact of the laws they seek to have passed. While politicians cannot be expected to know every ramification of a law they support, likewise they should not be expected to react in a "knee-jerk" fashion in passing a law based primarily on public outrage over two brutal murders. California lawmakers did not act in the best interests of the people when they pushed a law that overburdened the criminal justice system, contributed to a skyrocketing prison population, provided for the early release of violent criminals, and required increased state spending in the areas of prison housing and criminal litigation, thereby requiring diversion of funds from other important areas of state spending and increases in taxes.

*People v. Superior Court (Romero)*<sup>369</sup> must be viewed as a chance to rectify the problems compounded by California's three strikes law, and as a necessary return to the historical function of judicial discretion. Without such judicial discretion, one can easily see the ramifications on the prison system, the criminal justice system, and society as a whole. California is a representative example of a state suffering from such adverse ramifications.

Instead of viewing *Romero* as a new beginning, it will probably be viewed by the public and politicians as another judicial effort to be soft on criminals. It is shameful that the public is not truly aware of the realities and gravity of the issues involved, and that people in the position to give them that information are unwilling to do so. People see crime and they want to put an end to it. Politicians, regrettably, are only too eager to please the people who keep them elected, argua-

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367. See *supra* notes 241-79 and accompanying text.

368. Lindner, *supra* note 319, at B7 (reporting that it would have been political suicide for a politician to vote against the proposed three strikes law in 1994).

369. 917 P.2d 628 (Cal. 1996).

bly at all costs. The truth of the matter is that there are severe costs attached to California's three strikes law—financially, factually, and theoretically. If not for the *Romero* holding, one can only speculate what steps other states might have taken toward remodeling their laws to mirror California's three strikes law.

Furthermore, three strikes laws have failed as deterrents to crime. Criminals are very much aware of three strikes laws, as well as their application and sentencing ramifications. This conclusion can be inferred from the incredible number of felons sentenced under three strikes.<sup>370</sup> This conclusion can also be seen in some specific factual instances. At one end of the spectrum, Kevin Lee Robinson conspired to bomb various county buildings hoping to destroy his criminal records and thereby avoid trial and sentencing under three strikes laws, putting innocent people's lives in jeopardy in the process.<sup>371</sup> At the other end of the spectrum, Clinton James Warner took his own life so that he would not be forced to serve an indeterminate life sentence under three strikes laws for his charge of drug possession.<sup>372</sup> The facts surrounding three strikes laws indicate that an extraordinarily large number of habitual offenders have been convicted and sentenced under these laws, yet habitual criminals are not deterred from committing further crimes.

The rehabilitation model of punishment has failed, but so has the retribution model. The time has come to focus on a combination approach—namely education, prevention, rehabilitation, and retribution. Educate the people and prevent them from turning to crime and drugs in the first place. Rehabilitate and punish nonviolent criminals through the extensive variety of alternative sentencing programs available. Finally, punish those violent criminals who deserve it through incarceration. Punishment of violent criminals is what the prison system was developed for, and should remain the purpose of prison systems.

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370. Cannon, *supra* note 41, at A1 (identifying that approximately 15,300 felons in California have been convicted and sentenced under three strikes law).

371. Harris, *supra* note 108, at A3.

372. Hoyer, *supra* note 109, at B4.



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# Sentencing in California:

## Moving Toward a Smarter, More Cost-Effective Approach





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## Acknowledgments

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# Executive Summary

Californians have a collective interest in living in a safe and healthy environment. The state’s criminal justice system is responsible for reducing crime and intervening when crime occurs, including apprehending and sentencing the perpetrator, in order to promote safe communities. In recent decades, however, harsh, one-size-fits-all sentencing laws contributed to the creation of a bloated and costly correctional system that generally fails to serve the interests of Californians.

California has adopted significant criminal justice reforms over the past several years. In 2014, voters approved Proposition 47, which reclassified several drug and property crimes as misdemeanors. In addition, in 2011 state policymakers “realigned” to the state’s 58 counties responsibility for supervising many people convicted of nonserious, nonviolent, and nonsexual felonies. Despite these positive steps, California’s sentencing laws continue to overly rely on incarceration as the consequence for committing a felony or a misdemeanor, rather than promoting community-based interventions that could provide better avenues for rehabilitation.

To be sure, California counties have adopted many alternative sentencing options following the 2011 realignment of responsibility for people convicted of low-level felonies. However, these approaches are not the norm across the state, and state sentencing laws continue to emphasize incarceration.

## QUICK TAKE

California must develop a sentencing system that is proportionate, practical, and takes into account the diverse situations in which crimes occur.

Research casts serious doubt on the effectiveness of mass incarceration as a means of promoting public safety. Given the high social and financial costs of incarceration, California could revise its sentencing laws to more fully embrace alternative interventions intended to hold accountable people who commit a crime, correct problematic behaviors, and help communities and survivors of crime heal. Moreover, while incarceration will continue to be warranted for many offenses – including violent crimes – the question for state policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources. As one step forward, policymakers could establish a sentencing commission to examine the impact of sentence length on targeted populations, with the goal of ensuring that sentences are proportionate to the seriousness of the crime as well as to the risk that the person will reoffend. Policymakers also could amend the state’s sentencing laws to generally scale back sentence lengths.

In sum, significantly divesting from incarceration as a sentencing tool – and moving toward alternative sentencing options – could both increase public safety and be more cost-effective.

# How Does Sentencing Work in California?

California law identifies three types of “crimes and public offenses” each having a certain range of potential consequences:<sup>1</sup>

- **Felonies** are the most serious offenses – such as homicide or robbery – and are punishable by incarceration in a local jail or in a state prison, depending on the circumstances; supervision by a probation officer in the community; or incarceration followed by probation.<sup>2</sup> In some cases, adults convicted of homicide can be sentenced to death.<sup>3</sup> Due to the passage of Assembly Bill 109 in 2011 (criminal justice “realignment”), many nonviolent, nonserious, nonsexual felony crimes are punishable by incarceration in local jails rather than in state prisons. This transfer of key criminal justice responsibilities to the counties significantly reduced the state prison population, although not the overall cost of the state correctional system.<sup>4</sup>
- **Misdemeanors** are moderately serious offenses – such as possession of drugs for personal use or petty theft – and are punishable by incarceration in a local jail for a maximum of one year, supervision by a probation officer in the community, a fine, or some combination of the three.<sup>5</sup> Due to voter approval of Proposition 47 in November 2014, various nonviolent drug and property crimes were reclassified from felonies or “wobblers” (crimes that could be treated as either a misdemeanor or felony for sentencing purposes) to misdemeanors, reducing the potential sentence for these crimes to a maximum of one year in local jails. As a result, both state prison and local jail populations have declined.<sup>6</sup>
- **Infractions** are minor offenses – such as seatbelt violations or littering – and are punishable by a fine.<sup>7</sup>

California’s criminal justice system uses three types of sentences for people who are convicted of crimes: probation, indeterminate sentencing, and determinate sentencing.

## People Sentenced to Probation Are Supervised in the Community

In 1903, California developed a sentence of “probation,” through which the court suspends the sentence of incarceration and orders the person to be supervised in the community by a probation officer.<sup>8</sup> The court may do this in cases where it believes the individual can be safely supervised in the community or where it would be “in the interest of justice” to do so.<sup>9</sup> The court may also place conditions on probation, such as requiring that the individual attend therapy or perform community service. If the person violates such conditions, the court may revoke probation and impose a sentence of incarceration instead. Probation can also be granted in combination with a period of incarceration, a sentencing approach known as “probation and jail.”

Eligibility for probation has been narrowed several times.<sup>10</sup> However, probation remains a common sentence in California. In fact, in 2014, of the 217,688 felony convictions in California, more than half (56 percent) resulted in a sentence combining probation and jail.<sup>11</sup>

### KEY TERMS

**PROBATION:** A sentence in which a person is supervised in the community, either in lieu of or in combination with a period of incarceration.

**INDETERMINATE SENTENCE:** A minimum term of imprisonment with no prescribed maximum. After serving the minimum term a person remains incarcerated until a parole board determines the person should be released.

**DETERMINATE SENTENCE:** A fixed term of imprisonment with a defined release date.

## Indeterminate and Determinate Sentencing Establish a Period of Incarceration

Individuals who are not eligible for probation and who are sentenced to a period of incarceration are assigned a sentence according to one of two schemes: indeterminate or determinate sentencing. Broadly speaking, indeterminate sentencing focuses on the *individual* who committed the crime, whereas determinate sentencing focuses on the *nature of the crime* itself.

### California Used Indeterminate Sentencing From 1917 Through the Mid-1970s

From 1917 to 1976, California used indeterminate sentencing, under which judges sentenced individuals to incarceration for a range of time – for example, five years to life for robbery – and individuals were released at some point after serving at least the minimum term, when a parole board determined that they had sufficiently rehabilitated.<sup>12</sup> Under indeterminate sentencing, the parole board was originally developed in California as a means of relieving prison overcrowding. However, indeterminate sentencing failed to eliminate overcrowding, and the public became disillusioned with a system that often seemed arbitrary and with rehabilitative efforts that did not appear to produce measureable results. Today, only certain serious crimes, such as first-degree murder, remain subject to indeterminate life sentences (or capital punishment).

### In 1976, the Legislature Moved California Toward a Focus on Determinate Sentencing

In response to the concerns with indeterminate sentencing, the Legislature enacted the determinate sentencing law (DSL) in 1976 – ushering in the state’s current sentencing structure – with the goal of increasing transparency and uniformity in sentencing.<sup>13</sup> The DSL also aimed to reduce prison overcrowding by providing for shorter base sentences and restricting sentencing “enhancements,” which are sentence extensions made by the judge based on the particular circumstances of the case.

Under the DSL, a judge must impose one of three specified terms for each criminal law violation, and the individual must serve a minimum portion of the term imposed.<sup>14</sup> For example, California’s Penal Code specifies terms of two, three, or five years of incarceration for second-degree robbery.<sup>15</sup> The DSL also allowed for some enhancements that increased the length of the base sentence, including for specific conduct during the crime, such as the use of a gun.<sup>16</sup> Sentenced individuals’ release dates are calculated automatically and do not depend on a showing of rehabilitation. Upon release, the individual is typically supervised in the community by a parole or probation officer. Incarcerated individuals receive credits for time spent in custody prior to sentencing and can earn credits for good behavior or for working while serving their sentence, thereby reducing the length of their incarceration.

With the move toward determinate sentencing, the overall purpose of sentencing shifted. The focus was less on the rehabilitation of the incarcerated person and more on a “do the crime, do the time” philosophy that focused primarily on punishment.

## State Policymakers Increased Sentence Lengths, Which Contributed to a Rising State Prison Population

While the DSL originally provided limited periods of incarceration and constrained the ability of the courts to lengthen sentences, legislators began to enact many new sentencing laws and enhancements in response to public and political pressure.<sup>17</sup> These new laws typically sought to increase sentence lengths and were often fueled by specific high-profile crimes without concern for the potential financial or societal consequences. Laws like these add complexity to the system and have resulted in disproportionate sentences. For example:

- **In 1994, the Legislature approved the “Three Strikes and You’re Out” law in response to the kidnapping and murder of 12-year-old Polly Klaas, thereby increasing prison terms for certain felony crimes.**<sup>18</sup> Individuals with

one prior conviction for a violent or serious felony who are convicted of *any* new felony – a “second-strike” offense – receive a prison term that is twice what it would otherwise be under state law. Individuals with at least two prior “strike” convictions who are convicted of a new violent or serious felony – a “third-strike” offense – receive a life sentence with a minimum term of 25 years.<sup>19</sup> California’s prisons housed 34,353 second strikers and 8,064 third strikers as of June 30, 2013 – almost one-third (31.9 percent) of the total population incarcerated by the state.<sup>20</sup> A study of California’s three-strikes law showed that it had no demonstrable impact on violent crime levels.<sup>21</sup> The law has been widely criticized as overly broad and – before it was amended in 2012 – resulted in life prison sentences for minor crimes, including petty theft and simple drug possession.<sup>22</sup>

- In 1997, the Legislature passed the “Use a Gun and You’re Done” law that significantly increased sentencing enhancements for possessing a gun at the time of committing a specified felony, such as robbery, homicide, or certain sex crimes.**<sup>23</sup> Under the law, if someone uses a gun while committing one of the identified crimes, their sentence is extended by 10 years, 20 years, or 25 years-to-life, depending on how the gun was used. Often the enhancement for gun use is longer than the sentence for the crime itself. For example, in the case of second-degree robbery, a person could serve a maximum of five years for the robbery and an extra 10 years for brandishing a gun during the robbery, even if the gun was unloaded or otherwise inoperable. Someone convicted of first-degree murder would be sentenced to at least 50 years-to-life if a gun was used, whereas if the murder was carried out using another method – such as strangulation – the sentence would be half the length (25 years-to-life). A judge has no discretion in applying this enhancement; if a gun was used, a judge must apply it.

Shortly after the DSL was enacted, the number of adults incarcerated by the state rose substantially and quickly outstripped the “design capacity” of the state’s prisons (Figure 1).<sup>24</sup> Moreover, for about 30 years after enactment of the DSL California’s incarcerated population continued to grow.<sup>25</sup> These trends were largely due to changes in drug law enforcement, an increased share of felony convictions resulting in prison sentences, and sentencing enhancements – such as the three-strikes law – that greatly extended sentence lengths.<sup>26</sup>

## California’s Prisons Remain Overcrowded Despite Recent Reforms

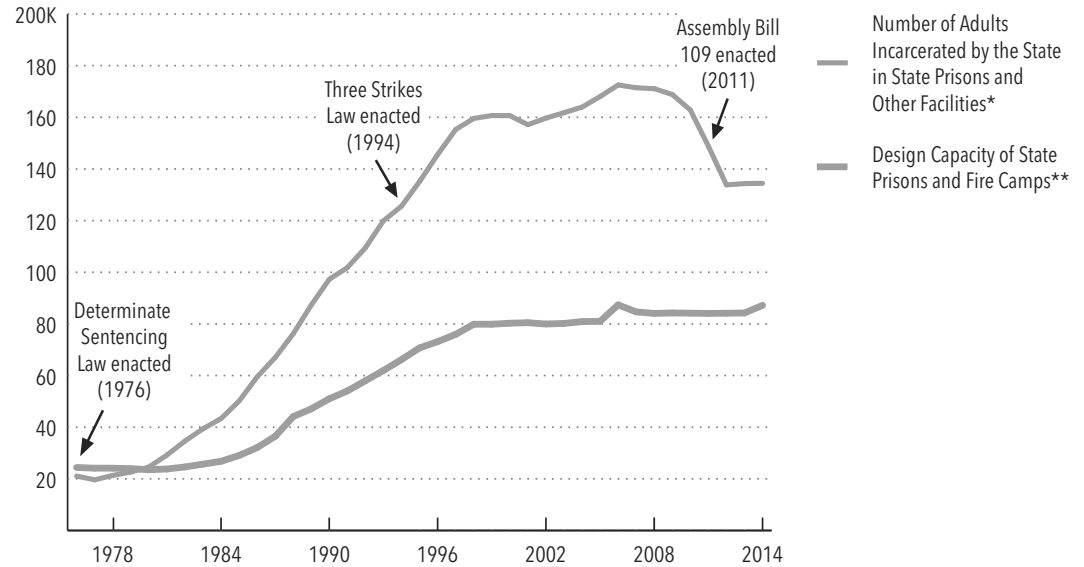
In recent years, California has enacted a series of policy changes – including to the state’s sentencing laws – intended to reduce the number of adults incarcerated in state prisons and boost investment in rehabilitation.<sup>27</sup> These reforms were largely prompted by a 2009 federal court order requiring the state to reduce – although not eliminate – prison overcrowding.<sup>28</sup> The most significant change was criminal justice “realignment,” which was set in motion by Assembly Bill 109 of 2011. This bill transferred to the state’s 58 counties responsibility for supervising many people convicted of nonserious, nonviolent, and nonsexual felonies.<sup>29</sup> In addition, state officials have implemented a number of postsentencing measures intended to reduce the prison population.<sup>30</sup> These include creating new options for people to be released before the end of their sentence. Most recently, voter approval of Proposition 47 in November 2014 reclassified several drug and property crimes as misdemeanors, thereby excluding prison as a sentencing option for these crimes.<sup>31</sup>

These sentencing law changes diverted thousands of people from the state prison system. Consequently, the prison population has fallen below the court-ordered level. However, it is not yet clear that the state can maintain the requisite reductions over the long term.<sup>32</sup> Furthermore, even if the state can maintain the prison population at the reduced level, state prisons would still be extremely overcrowded.

FIGURE 1

## California Incarcerates More Adults Than State Prisons and Fire Camps Were Designed to Hold

Incarceration Level Has Exceeded System Capacity Since 1980



\* Figures include adults housed in state prisons, fire camps, private prisons, state hospitals, and other facilities as of December 31 each year.  
 \*\* Reflects the number of adults these facilities were designed to house as of June 30 each year.  
 Source: California Department of Corrections and Rehabilitation



## Shifting the Focus to Alternative Sentencing Options and Shorter Prison Sentences

California’s sentencing laws overly rely on incarceration as the consequence for committing a felony or a misdemeanor rather than promoting community-based interventions that could provide better avenues for rehabilitation.<sup>33</sup> Governor Jerry Brown highlighted this imbalance in his 2015 inaugural address, in which he questioned the use of lengthy sentences and endorsed finding “less expensive, more compassionate and more effective ways to deal with crime.”<sup>34</sup> To be sure, California counties have adopted many alternative sentencing options following

the 2011 realignment of responsibility for people convicted of low-level felonies. These alternatives include electronic monitoring, community-based treatment programs, and day reporting centers.<sup>35</sup> However, these approaches are not the norm across the state, and state sentencing laws continue to emphasize incarceration.

Research casts serious doubt on the effectiveness of mass incarceration as a means of promoting public safety.<sup>36</sup> Given the high social and financial costs of incarceration, California could revise its sentencing laws to more fully embrace alternative interventions intended to hold accountable people who commit a crime, correct problematic behaviors, and help communities and survivors of crime heal. Moreover, while incarceration will continue to be warranted for many offenses – including violent crimes – the question for state policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources. As one step

forward, policymakers could establish a sentencing commission to examine the impact of sentence length on targeted populations, with the goal of ensuring that sentences are proportionate to the seriousness of the crime as well as to the risk that the person will reoffend. Policymakers also could amend the state's determinate sentencing scheme to generally scale back sentence lengths.

## Policymakers Should Diversify the Sentencing Toolkit With Alternative Sentencing Options

When criminal justice intervention is warranted, there are a number of graduated sanctions available that do not involve a prolonged period of incarceration and that show promising public safety outcomes. The experiences of counties in implementing these alternatives since the 2011 realignment provides a foundation for creating a comprehensive state framework to help expand and deepen the impact of community-based sentencing options.

### Initial Contact Diversion, Problem-Solving Courts, and Deferred Case Resolution

These are interventions in which a person charged with a crime agrees to fulfill certain requirements, such as participation in a work, educational, or rehabilitative program in the community. Upon completion of the requirements, the criminal charges are dismissed. If a person fails to complete the requirements, the more traditional intervention process can be invoked and the person may face incarceration. These alternative approaches allow for less restrictive interventions to be pursued first, giving the defendant a chance to avoid the lifetime harm of a criminal record.

- **Initial contact diversion** programs allow a police officer to refer a person to a drug treatment program in lieu of taking them into custody.<sup>37</sup>
- **Problem-solving courts** provide judicial supervision combined with rehabilitative services to individuals in a collaborative court

process that focuses on addressing underlying problems such as addiction.<sup>38</sup>

- **Deferred case resolution** is a mechanism available through the traditional court process, by which a prosecutor defers the filing of charges or the court delays entering a judgment to allow an individual the opportunity to fulfill certain requirements in lieu of incarceration.<sup>39</sup>

Programs that result in the dismissal of criminal charges usually target specific populations with complex needs that state prisons are not equipped to address, such as untreated problematic drug use or untreated mental health issues.<sup>40</sup> California operates a range of diversion programs for less serious first-time offenses as well as problem-solving courts to address more complex issues such as problematic drug use, drunk driving, veteran-specific issues, mental illness, homelessness, and truancy and other youth-specific issues. These approaches promote targeted accountability by crafting interventions that require individuals to address their problematic behaviors and also provide an opportunity for the criminal justice system to address the broader needs of the community. When compared to incarceration, these types of alternative interventions have been shown to lead to improved public safety outcomes.<sup>41</sup>

### Electronic Monitoring, Community-Based Supervision, and Graduated Sanctions and Rewards

These are community-based sentences that are carried out locally – typically by the probation department – and that require a person to meet certain terms and conditions for a specified period of time. Individuals are subject to varying levels of supervision, depending on their risk of reoffending. Specifically:

- **Electronic monitoring** tracks individuals' location in real time to ensure that they are complying with curfews or geographic restrictions. Electronic monitoring is often used to enforce a sentence of home detention, by which a person serves out a sentence in a

specific residence rather than in a prison or jail.<sup>42</sup>

- **Community-based supervision** is most often used for people who commit low-level drug or property crimes and are deemed at low risk to reoffend. A probation officer monitors a person through regular meetings and follow-ups in order to ensure that the individual is abiding by the terms of the sentence, such as obeying all laws, maintaining sobriety, or attending rehabilitative programs.<sup>43</sup>
- **Graduated sanctions and rewards** can be used to ensure compliance and punish noncompliance with the terms of the sentence. Strategies include increasing or decreasing the level of oversight, altering the terms and conditions of supervision, or verbally reprimanding or congratulating the supervised person.<sup>44</sup>

Research supports the use of community-based supervision combined with both graduated sanctions that are applied quickly and targeted rehabilitative services for people across a broad spectrum of risk to reoffend.<sup>45</sup> This approach ensures accountability through the swift imposition of sanctions, targets treatment to address problematic behavior, and is less disruptive to communities compared to incarceration because it allows for family ties and other relationships to be maintained and restored rather than curtailed or severed.

### **Flash Incarceration, Split Sentences, and Local Incarceration Paired With a Work-Release Program**

These are alternatives to *state* incarceration in situations when some period of incarceration is deemed necessary.<sup>46</sup> Graduated lengths of incarceration can be used to ensure an effective allocation of jail resources. For example:

- **Flash incarceration** allows probation officers to impose up to 10 days of incarceration in jail for more serious violations of the terms of

community supervision, such as failure to enroll in a court-ordered program.<sup>47</sup>

- **Split sentences** assign part of a low-level felony sentence as incarceration in jail and the other part as community supervision. Since 2014, California law has required a split sentence for people convicted of nonviolent, nonserious, nonsexual offenses, unless the court finds that a such a sentence would not be in the interest of justice.<sup>48</sup>
- **Local incarceration paired with a work-release program** allows incarcerated people to participate in community service in exchange for a reduced jail sentence. For example, working an eight-hour day could reduce a jail sentence by one day. State law provides a maximum one-year sentence in jail for misdemeanors and sentences of varying lengths for nonviolent, nonserious, nonsexual felonies.<sup>49</sup>

Compared to a prison term, incarceration in a local jail provides a greater opportunity for individuals to maintain ties with family as well as with other community supports. In addition, rehabilitative treatment providers can engage people who are incarcerated locally in programming that could continue in the community after individuals are released from jail.<sup>50</sup> Shorter periods of incarceration in jail paired with community-based interventions allow courts to hold people accountable for their actions while permitting law enforcement to work with individuals in the community in which they will continue to live upon exiting the justice system.

### **Sentencing Should Focus on Appropriate Sanctions and Treatments While Considering How to Repair the Harm Caused to Crime Victims**

All of the sentencing options described above should involve matching an individual's action with the appropriate sanction and treatment based on (1) the seriousness of the criminal conduct and (2) the person's risk of reoffending.<sup>51</sup> In addition, all of these



sentencing options can include restorative justice practices that focus on repairing the harm caused to the crime victim.<sup>52</sup> Research shows that many survivors of crime are repeatedly subject to victimization, that a majority of them do not receive help in dealing with the resulting trauma, and that being subject to violence is a risk factor for future criminal behavior.<sup>53</sup> In fact, people who work in the criminal justice system generally recognize that most people who commit crime have been previously victimized themselves.<sup>54</sup> Including, as part of sentencing, access to trauma recovery services – for both survivors and people who commit crimes – could help to break cycles of violence and heal communities.

### **Policymakers Can Help to Expand and Deepen the Impact of Alternative Sentencing Options Across California**

California counties have been implementing sentencing alternatives – such as those discussed above – and related risk- and needs-based practices. However, the state could take a more systematic approach to implementing these various methods, with an emphasis on expanding and deepening their impact. For example, California could increase the use of risk and needs assessments during sentencing, use community-based sentencing options for a broader set of crimes, and expand eligibility for diversion programs so that alternatives to incarceration are used whenever possible.

### **Policymakers Should Reevaluate the Length of Prison Sentences**

Incarceration will continue to be warranted for a range of offenses, including violent crimes. The question for policymakers is whether sentence lengths are appropriate and reflect an efficient use of public resources, particularly in light of the fact that “longer prison terms have been a key driver of prison populations and costs,” according to one national study.<sup>55</sup> State corrections spending remains stubbornly

high in California despite recent criminal justice reforms and the substantial drop in the number of people involved with the state correctional system.<sup>56</sup> Cutting the length of prison terms would further reduce the number of incarcerated adults and thereby allow the state to close prisons and other correctional facilities, generating substantial ongoing savings that could be redirected to other public services and systems.<sup>57</sup> To achieve this outcome – a smaller state prison system – policymakers would have to reduce the length of imprisonment for a broad range of crimes, not simply for nonviolent offenses.<sup>58</sup> Experts note that reducing prison lengths of stay has little to no impact on either crime rates or recidivism.<sup>59</sup>

Of course, the effects of *violent* crime can be devastating and lethal. As a result, prolonged incapacitation of people who have committed such crimes is often necessary. However, even under California’s current sentencing laws, the majority of people serving prison terms for violent crimes will eventually return to their communities. In addition, there is wide variation in the types of violent crimes, in the motives of the people who commit these crimes, and in the circumstances under which these crimes occur. As a result, blanket sentencing schemes that increase sentence lengths are both ineffective and an inefficient use of public resources.

As a key step toward improving the state’s sentencing policies, policymakers could create a sentencing commission to evaluate the impact of sentence length on targeted populations. The goal would be to modify sentences in order to ensure that they are proportionate to the seriousness of the crime as well as to the risk that an individual will reoffend. In addition, policymakers could amend the state’s determinate sentencing scheme to scale back sentence lengths generally. Reforms such as these would bring about a more flexible approach to sentencing that accounts for the particular crime as well as the characteristics of the person who committed it.

# Diversifying Sentences Could Both Increase Public Safety and Be More Cost-Effective

California's criminal justice system should balance the use of sentencing options based on their demonstrated public safety benefits and the efficient use of public resources. This section discusses research on various sentencing options, including state incarceration, to weigh the benefits against the related costs. This review suggests that while people who have committed violent crimes may need to be incarcerated for a period of time to protect the public, significantly divesting from incarceration as a sentencing tool – and moving toward alternative sentencing options – could both increase public safety and be more cost-effective.

## A Heavy Reliance on State Incarceration Does Not Appear to Promote Public Safety

Incarceration is thought to reduce crime in two ways: incapacitation and deterrence. As an added means of crime reduction, California's corrections system aims to promote rehabilitation both while individuals are incarcerated and after they have been released to state parole.<sup>60</sup>

Research casts doubt on the efficacy of prolonged incarceration as a crime-fighting tool.<sup>61</sup> Studies show that heavy reliance on incarceration is not necessary for public safety, and that, in fact, states can experience lower crime rates when they incarcerate *less*.<sup>62</sup> For example, during periods when California, New Jersey, and New York were significantly *decreasing* their prison populations relative to nationwide trends, these states saw greater *reductions* in violent crime than did the rest of the country.<sup>63</sup>

In addition, there is reason to doubt the deterrent effect of incarceration. Many people are under the influence of alcohol or other drugs when they commit the crimes for which they are incarcerated.<sup>64</sup> Furthermore, many incarcerated people have significant mental health issues that likely influenced the behavior that resulted in their incarceration.<sup>65</sup>

### KEY TERMS

**INCAPACITATION:** Incarcerating individuals removes them from society and physically prevents them from committing more crime in the community during their sentence.<sup>66</sup> The longer individuals are incarcerated, the less opportunity they have to commit new crimes in the community. Incapacitation is only effective as a crime-reduction tool if an individual would have reoffended in the community absent incarceration.

**DETERRENCE:** Incarceration sends a message to society about the consequences of violating the law, with the aim of discouraging others from committing a crime. In addition, the experience of incarceration may dissuade the person who is incarcerated from committing another crime in the future for fear of facing incarceration again. For incarceration to have a deterrent effect, individuals must think rationally about the possible punishment for their actions and weigh that punishment against the potential benefits of the crime before committing it.<sup>67</sup>

**REHABILITATION:** The California Department of Corrections and Rehabilitation (CDCR) defines rehabilitation as "chang[ing] the criminal mindset, so offenders leave prison prepared to be healthy, productive members of society."<sup>68</sup> One measurable outcome of successful rehabilitation is reduced recidivism, which the CDCR defines as "relaps[ing] into crime resulting in a return to prison."<sup>69</sup> To this end, the CDCR provides various educational, vocational, and health treatment programs to certain eligible people in its prisons and in the community under the supervision of parole agents in order to reduce the likelihood that they will reoffend.

Evidence that many people's judgments are impaired – either through drug use or untreated mental illness – when committing crimes runs counter to a basic premise of incarceration's deterrent effect: that people are able to rationally assess the costs and benefits of their criminal behavior at that moment. Even for individuals who do not have mental health or drug use issues, they are often unaware of specific sentencing outcomes, thereby diminishing the deterrent effect.<sup>70</sup>

When a deterrent effect is apparent in sentencing, studies show that this effect depends more on the certainty of being caught than on the severity of the punishment.<sup>71</sup> However, for violent crime the certainty of punishment is typically lacking. California's rate of "clearance" for violent crimes – that is, the number of cases considered "solved" by law enforcement as a percentage of all crimes reported – has been in the range of 40 percent to 47 percent over the last 10 years.<sup>72</sup> In other words, many violent crimes in California do not result in an arrest – even when reported to the police – let alone a conviction and subsequent incarceration, a fact that potentially reduces the deterrent effect of the possible sentence.

Finally, state imprisonment currently may not work well to rehabilitate people and help prevent reoffending. In California, more than half (54 percent) of adults returned to prison within three years from release, according to the CDCR's most recent recidivism study.<sup>73</sup> Almost half of the adults who reoffended within three years did so within the first six months of release. Moreover, longer periods of incarceration in state facilities – which are often located far from individuals' homes – can break community and familial ties that have been linked with decreased recidivism.<sup>74</sup>

### **Incarceration Is Expensive**

At most, about one-quarter of the drop in violent crime can be attributed to increases in incarceration.<sup>75</sup> Yet, this reduction has come at a high price, considering that California annually spends more

than \$10 billion on the state corrections system. This includes the cost of staffing and operating 34 state prisons, which outnumber the combined campuses of the California State University (CSU) and the University of California (UC).<sup>76</sup>

Staffing adult prisons is expensive because many custodial and security positions must be filled 24 hours a day, 365 days a year.<sup>77</sup> Each of these round-the-clock positions needs approximately three to five staff to fill it.<sup>78</sup> If an employee is unavailable – due to an illness, for example – the position must still be filled, either by a relief officer who is specifically retained on a full-time basis to fill empty positions as needed, or by an officer working overtime.<sup>79</sup> In 2012-13, the state spent about \$279 million on correctional officer overtime, almost two-thirds of which was related to staff absences.<sup>80</sup>

In addition, partly due to a federal court order to improve prison medical care as well as an aging prison population with greater health care needs, per capita spending for adults in state prisons has more than doubled in recent years, rising from \$25,307 in 2000-01 to \$63,848 in 2015-16.<sup>81</sup>

### **Incarceration Presents a Health Risk**

In addition to being costly, incarceration raises significant health and safety concerns for incarcerated individuals as well as for their families. Incarceration causes significant harm to an individual's physical and mental health. Researchers have observed hypervigilance, social withdrawal, and post-traumatic stress among incarcerated people.<sup>82</sup> There are also higher rates of contagious diseases – such as tuberculosis and hepatitis – in correctional facilities.<sup>83</sup> Elderly people in prison are more susceptible to chronic diseases, infirmities, and physical disabilities.<sup>84</sup> Older incarcerated adults also tend to require more intensive medical care and accommodations that are difficult to provide within existing state prison facilities.<sup>85</sup> Finally, incarceration often results in extreme familial instability, which has been linked to poor health outcomes among the children of incarcerated parents.<sup>86</sup>

## Community-Based Interventions Can Be Cheaper and Result in Better Outcomes Than Incarceration

Community-based interventions that work in conjunction with or as alternatives to incarceration can be less expensive and result in better outcomes. (These interventions are discussed in the previous section: “Shifting the Focus to Alternative Sentencing Options and Shorter Prison Sentences.”) In particular, problem-solving courts demonstrate significantly lower recidivism rates among participants, compared to nonparticipants.<sup>87</sup> For example, a study of problem-solving courts focusing on problematic drug use in California found that arrest rates for participants declined by 85 percent within two years, compared to the two years prior to participation.<sup>88</sup> Orange County drug court and mental health court graduates have about a 29 percent recidivism rate for any crime, significantly lower than the 74 percent rate for the drug court control group, according to a 2013 report.<sup>89</sup> These alternative sentencing options are much less expensive than incarceration because of reduced operating costs. For example, San Francisco’s drug courts estimated savings of \$48 million over 13 years from lower case-processing costs and reduced recidivism.<sup>90</sup> Orange County collaborative courts, which serve a range of populations, have saved an estimated \$75 million from reduced use of the jail between 1995 and 2013.<sup>91</sup>

Moreover, the benefits of community-based sentences, such as electronic monitoring and intensive supervision, often outweigh the costs of these approaches as a result of reduced crime.<sup>92</sup> While the cost of community-based approaches varies depending on the intensity of the supervision as well as on each individual’s treatment needs, on average supervision costs amount to about \$1,500 per person, per year.<sup>93</sup>

When incarceration is necessary, shorter periods of local incarceration may be preferable to state incarceration. In 2011, the cost of incarceration in jail averaged \$113.87 per person, per day – or about \$41,563 per year – which is significantly less than the

cost of state prison and has the advantage of being closer to the incarcerated person’s home.<sup>94</sup> This allows family and other social supports to be maintained and thereby decreases the likelihood that individuals will reoffend.<sup>95</sup> Moreover, shorter periods of incarceration that are swift and certain – such as flash incarceration – have been shown to deter reoffending.<sup>96</sup>

## Conclusion: Moving California Toward More Effective Sentencing Policies

Research shows that investing in a broader range of sentencing options that target the underlying causes of criminal behavior and work within the affected community can hold accountable people who commit a crime, reduce reoffending, and strengthen communities. In addition, prioritizing community-based sentencing options and reducing lengths of stay when incarceration is necessary can save the state money through decreased operational costs and reduced crime. In order to ensure that such reforms are successful, California would need to strengthen its investment in community-based corrections infrastructure, including day reporting centers, drug and mental health treatment programs, problem-solving court systems, and services for survivors of crime.

### FOR MORE INFORMATION

For a historical overview of California’s sentencing laws, see Kara Dansky, “Understanding California Sentencing,” *University of San Francisco Law Review* 43 (Summer 2008), pp. 45-86. For a detailed review of the application of current sentencing laws, see J. Richard Couzens and Tricia A. Bigelow, *Felony Sentencing After Realignment* (Revised August 2015).

## ENDNOTES

- 1 California Penal Code, Section 16.
- 2 California Penal Code, Section 17(a).
- 3 California Penal Code, Section 190.2.
- 4 Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015).
- 5 California Penal Code, Section 19.2. There are some offenses that can be charged either as a misdemeanor or a felony depending on the circumstances.
- 6 Marcus Lofstrom and Brandon Martin, *Public Safety Realignment: Impacts So Far* (Public Policy Institute of California: September 2015).
- 7 California Penal Code, Sections 19.6 and 19.8(b). There are some offenses that can be charged either as an infraction or a misdemeanor depending on the circumstances.
- 8 See California Penal Code, Section 1203(a); David H. Melnick, "Probation in California: Penal Code Section 1203" *California Law Review* 50 (1962), pp. 651-671; and Legislative Analyst's Office, *Achieving Better Outcomes for Adult Probation* (May 29, 2009).
- 9 Criteria affecting eligibility for probation are found in California Rules of Court, Rules 4.413 and 4.414.
- 10 For example, people with prior convictions for certain serious and/or violent crimes are not eligible for probation. Individuals who commit offenses using deadly weapons are presumptively ineligible for probation and may only be granted probation if it would be in the interest of justice to do so. See California Penal Code, Sections 1203(e) and (k).
- 11 Criminal Justice Statistics Center, *Crime in California 2014* (Department of Justice: 2015), Table 40, p. 53.
- 12 Information in this paragraph on indeterminate sentencing is from Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 58-66; Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp.1-2; and Paula A. Johnson, "Senate Bill 42 – The End of the Indeterminate Sentence," *Santa Clara Law Review* 17 (1977), pp. 133-134. According to Dansky, prior to 1917, California used a criminal code based on definitions contained in the common law of England. Judges had unguided discretion to impose a sentence within a particular range specified for the crime, and the sentenced individual was required to complete the full sentence imposed.
- 13 Information in this paragraph on determinate sentencing is from Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 67-68, and Paula A. Johnson, "Senate Bill 42 – The End of the Indeterminate Sentence," *Santa Clara Law Review* 17 (1977), pp. 145-146.
- 14 Information in this paragraph on determinate sentencing is from Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp. 2-3, and Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 67-71.
- 15 California Penal Code, Section 213(a)(2).
- 16 Originally, the total sentence including the enhancements could not exceed double the base term except for a violent crime or when certain other conditions were met. Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), p. 6.
- 17 Albert J. Lipson and Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research* (Rand: June 1980), pp. 6 and 15, and Kara Dansky, "Understanding California Sentencing," *University of San Francisco Law Review* 43 (Summer 2008), pp. 68-69.
- 18 Mike Males, Daniel Macallair, and Khaled Taqi-Eddin, *Striking Out: The Failure of California's "Three Strikes and You're Out" Law* (Justice Policy Institute: March 1999), p. 2. The three-strikes law was signed by Governor Pete Wilson in March 1994 and subsequently reaffirmed by the voters through passage of Proposition 184 in November 1994. Proposition 184, a citizens' initiative, was essentially identical to the law approved by state policymakers.
- 19 The requirement that the third strike be a violent or serious felony – as opposed to any felony – was added in 2012 with the passage of Proposition 36, which also allowed people serving third-strike sentences for nonviolent or nonserious felonies to apply for resentencing as second strikers. J. Richard Couzens and Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law* (Barrister Press: February 2015), p. 5.
- 20 California Department of Corrections and Rehabilitation, Office of Research, *Second and Third Striker Felons in the Adult Institution Population* (June 30, 2013), Table 1. This is the most recent CDCR report on the three-strikes prison population as of December 10, 2015.
- 21 Mike Males, *Striking Out: California's "Three Strikes And You're Out" Law Has Not Reduced Violent Crime. A 2011 Update* (Center on Juvenile and Criminal Justice: April 2011).
- 22 A requirement that the third strike be a violent or serious felony was added in 2012 with the passage of Proposition 36. Proposition 36 also allowed people serving third strike sentences for nonviolent or nonserious felonies to apply for resentencing as second strikers. J. Richard Couzens and Tricia A. Bigelow, *The Amendment of the Three Strikes Sentencing Law* (Barrister Press: February 2015), p. 5; and Stanford Law School Three Strikes Project and NAACP Legal Defense and Education Fund, *Progress Report: Three Strikes Reform (Proposition 36) – 1,000 Prisoners Released* (September 2013), p. 4.

- 23 California Penal Code, Section 12022.53. Information in this paragraph on the “Use a Gun and You’re Done” law is from Little Hoover Commission, *Sensible Sentencing for a Safer California* (February 2014), pp. 9-10.
- 24 “Design capacity” refers to the number of people the facilities were designed to hold based on one person per cell, single bunks in dormitories, and no beds in spaces not designed for housing. See Corrections Independent Review Panel, *Reforming Corrections* (California Performance Review: June 2004).
- 25 In 2006, California began using private prisons to house incarcerated adults in order to address overcrowding in state prisons. Kara Dansky, “Understanding California Sentencing,” *University of San Francisco Law Review* 43 (Summer 2008), p. 69, and Randall G. Shelden and Selena Teji, *Collateral Consequences of Interstate Transfer of Prisoners* (Center on Juvenile and Criminal Justice: July 2012), p. 2.
- 26 Legislative Analyst’s Office, *A Primer: Three Strikes – The Impact After More Than a Decade* (October 2005), pp. 4-7, and Franklin E. Zimring and Gordon Hawkins, “The Growth of Imprisonment in California,” *British Journal of Criminology* 34 (1994), pp. 84-89.
- 27 For a summary of the major changes, see Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015), pp. 1-2, and Legislative Analyst’s Office, *The 2014-15 Budget: Administration’s Response to Prison Overcrowding Order* (February 28, 2014), p. 2.
- 28 In August 2009, a panel of federal judges ruled that overcrowding was the main reason that California was failing to provide prisoners with health care that met US constitutional standards. This three-judge panel ordered the state to reduce the prison population to 137.5 percent of the system’s design capacity, a decision that was upheld by the US Supreme Court in 2011. The court subsequently extended the state’s deadline for complying with this order to February 28, 2016. For an overview of the three-judge panel’s order, see Legislative Analyst’s Office, *The 2014-15 Budget: Administration’s Response to Prison Overcrowding Order* (February 28, 2014), pp. 2-3.
- 29 State policymakers also provided counties with an ongoing source of revenues to pay for their new responsibilities under realignment. For a detailed overview of the 2011 realignment – which also included health and human services programs – see Scott Graves, *Finishing the Job: Moving Realignment Toward Completion in 2012* (California Budget & Policy Center: June 2012).
- 30 US Supreme Court, *Brown v. Plata*, 563 US \_\_\_ (2011), downloaded from <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf> on August 28, 2014. (As shown in the citation, the page number for this case is left blank because the US Supreme Court has not yet printed the bound volume of the *United States Reports*.) Also see related court documents, “Order Granting in Part and Denying in Part Defendants’ Request for Extension of December 31, 2013 Deadline” (available at <http://www.cdcr.ca.gov/News/docs/3jp-Feb-2014/Three-Judge-Court-order-2-20-2014.pdf>); and “Defendant’s December 2014 Status Report in Response to February 10, 2014 Order” (available at <http://www.cdcr.ca.gov/News/docs/3JP-Dec-2014/December-2014-Status-Report.pdf>).
- 31 In addition, Proposition 47 directs any state savings that result from the measure to drug and mental health treatment, victim services, and K-12 truancy prevention. Selena Teji, *Proposition 47: Should California Reduce Penalties For Drug and Property Crimes and Invest in Treatment?* (California Budget & Policy Center: September 2014), pp. 1-3.
- 32 California Department of Corrections and Rehabilitation, *Spring 2015 Population Projections* (May 2015).
- 33 California Penal Code, Sections 16, 18, 19, and 19.6.
- 34 Edmund G. Brown Jr., *Governor Brown Sworn In, Delivers Inaugural Address* (Office of Governor Edmund G. Brown Jr.: January 5, 2015), available at <http://gov.ca.gov/news.php?id=18828>.
- 35 California Penal Code, Section 17.5(a)(8).
- 36 Steven Raphael and Michael A. Stoll, *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom* (Russell Sage Foundation: 2009).
- 37 For example, see the Law Enforcement Assisted Diversion (LEAD) program in Seattle and King County, Washington. Information available at <http://leadkingcounty.org/about/>.
- 38 Robert V. Wolf, *California’s Collaborative Justice Courts: Building a Problem-Solving Judiciary* (Judicial Council of California, Administrative Office of the Courts: 2005), pp. 2 and 5.
- 39 Robert Soo Song, “Deferred Entry of Judgment for Criminal Defendants,” *Los Angeles Lawyer* 29 (November 2006).
- 40 Robert V. Wolf, *California’s Collaborative Justice Courts: Building a Problem-Solving Judiciary* (Judicial Council of California, Administrative Office of the Courts: 2005), pp. 2 and 5; Robert Soo Song, “Deferred Entry of Judgment for Criminal Defendants,” *Los Angeles Lawyer* 29 (November 2006); Selena Teji, *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget and Policy Center: September 2014), p. 3.
- 41 Robert V. Wolf, *California’s Collaborative Justice Courts: Building a Problem-Solving Judiciary* (Judicial Council of California, Administrative Office of the Courts: 2005), pp. 2 and 5, and Holly A. Wilson and Robert D. Hoge, “The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review,” *Criminal Justice and Behavior* 40 (May 2013).
- 42 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), p. 3.
- 43 Chief Probation Officers of California, “Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision” *CPOC Issue Brief 1* (Spring 2014).
- 44 Chief Probation Officers of California, “Graduated Sanctions: Strategies for Responding to Violations of Probation Supervision” *CPOC Issue Brief 1* (Spring 2014) and Peggy Burke, *Filling in the Gaps: Increasing the Available Range of Responses to Violations* (US Department of Justice: 2001).

- 45 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), p. 6, and Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers With Swift and Certain Sanctions: Evaluating Hawaii's HOPE* (National Institute of Justice: 2009).
- 46 Brandon Martin and Ryken Grattet, *Alternatives to Incarceration in California* (Public Policy Institute of California: April 2015), pp. 3-4.
- 47 Less serious violations of the terms of community supervision – such as failing to follow curfew hours – may be addressed through referral to an appropriate treatment program or more intensive supervision requirements. For an example of the spectrum of violations and sanctions under community supervision, see Chief Probation Officers of California, *Sample Guidelines for Risk-Based Sanctions* (Spring 2014), available at <http://www.cpos.org/assets/guidelines%20for%20risk-based%20sanctions%20and%20rewards.pdf>.
- 48 California Penal Code, Section 1170(h)(5); and California Rules of Court, Rule 4.415.
- 49 California Penal Code, Sections 19.2 and 1170(h).
- 50 Selena Teji, *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget and Policy Center: September 2014), p. 4.
- 51 Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek, *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts From a National Working Group* (National Center for State Courts: 2011).
- 52 California Community Justice Project, *Restorative Conferencing* (Judicial Council of California, Administrative Office of the Courts: 2006).
- 53 Heather Warnken, *Untold Stories of California Crime Victims: Research and Recommendations on Repeat Victimization and Rebuilding Lives* (Chief Justice Earl Warren Institute on Law and Social Policy: April 2014), pp. 9 and 17.
- 54 Abbe Smith, "The 'Monster' in All of Us: When Victims Become Perpetrators," *Suffolk University Law Review* 38 (February 2010) and Heather Warnken, *Untold Stories of California Crime Victims: Research and Recommendations on Repeat Victimization and Rebuilding Lives* (Chief Justice Earl Warren Institute on Law and Social Policy: April 2014), pp. 9 and 17.
- 55 The Pew Center on the States, *Time Served: The High Cost, Low Return of Longer Prison Terms* (June 2012), pp. 1-2.
- 56 Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015), p. 1.
- 57 Scott Graves, *Corrections Spending Through the State Budget Since 2007-08: Still High Despite Recent Reforms* (California Budget & Policy Center: November 2015), p. 7.
- 58 Ryan King, et al., *Reducing Mass Incarceration Requires Far-Reaching Reforms* (Urban Institute: August 2015); John Pfaff, "For True Penal Reform, Focus on the Violent Offenders," *Washington Post* (July 26, 2015); Marc Mauer and David Cole, "How to Lock Up Fewer People," *New York Times* (May 23, 2015); Dana Goldstein, *How to Cut the Prison Population by 50 Percent* (The Marshall Project: March 4, 2015); Leon Neyfakh, "OK, So Who Gets to Go Free?" *Slate* (March 4, 2015); and James Austin, *How Much Time Should Prisoners Serve?* (American Correctional Association: 2013).
- 59 According to Marc Mauer and David Cole, "We could cut sentences for violent crimes by half in most instances without significantly undermining deterrence or increasing the threat of repeat offending." Marc Mauer and David Cole, "How to Lock Up Fewer People," *New York Times* (May 23, 2015). Furthermore, according to James Austin, "The science on how much time prisoners should serve from a public safety perspective is very clear. Increasing or decreasing prisoner [length of stay] has no impact on recidivism or crime rates. But it has an extremely dramatic impact on the size of the prison population." James Austin, *How Much Time Should Prisoners Serve?* (American Correctional Association: 2013).
- 60 In 2004, an independent review panel appointed by Governor Arnold Schwarzenegger found that California's correctional system was defective in almost every way. The panel recommended 239 changes beginning with a reorganization to create the California Department of Corrections and Rehabilitation, which went into effect on July 1, 2005. See [http://cpr.ca.gov/Review\\_Panel/](http://cpr.ca.gov/Review_Panel/) for more information. This reorganization reinstated the correctional system's responsibility to rehabilitate rather than just to punish. See Office of Public and Employee Communications, *Successes and Challenges: The CDCR Story* (California Department of Corrections and Rehabilitation: no date), pp. 1 and 3.
- 61 Anthony N. Doob and Cheryl Marie Webster, "Sentence Severity and Crime: Accepting the Null Hypothesis," *Crime and Justice* 30 (2003), pp. 143-195; Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: January 2012), p. 92; and Mike Males, Daniel Macallair, and Megan Doyle Corcoran, *Testing Incapacitation Theory: Youth Crime and Incarceration in California* (Center on Juvenile and Criminal Justice: July 2006), p. 13.
- 62 Marc Mauer and Nazgol Ghandnoosh, *Fewer Prisoners, Less Crime: A Tale of Three States* (The Sentencing Project: Revised July 2014), p. 1; Mike Males, Daniel Macallair, and Megan Doyle Corcoran, *Testing Incapacitation Theory: Youth Crime and Incarceration in California* (Center on Juvenile and Criminal Justice: July 2006), p. 11; Ryan S. King, Marc Mauer, and Malcolm C. Young, *Incarceration and Crime: A Complex Relationship* (The Sentencing Project: 2005), p. 4.
- 63 Marc Mauer and Nazgol Ghandnoosh, *Fewer Prisoners, Less Crime: A Tale of Three States* (The Sentencing Project: Revised July 2014), p. 1.
- 64 Christopher J. Mumola, *Substance Abuse and Treatment, State and Federal Prisoners, 1997* (US Department of Justice: January 1999).
- 65 See Selena Teji, *Proposition 47: Should California Reduce Penalties for Drug and Property Crimes and Invest in Treatment?* (California Budget & Policy Center: September 2014), p. 3, and Stanford Law School Three Strikes Project, *When Did Prisons Become Acceptable Mental Healthcare Facilities?* (May 28, 2014).

- 66 Incarceration does not prevent an individual from committing crimes while incarcerated. Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: January 2012), p. 92.
- 67 Jamie Fellner, *Old Behind Bars: The Aging Prison Population in the United States* (Human Rights Watch: January 2012), p. 92; and Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (The Sentencing Project: November 2010), p. 2.
- 68 California Department of Corrections and Rehabilitation, *Frequently Asked Questions (FAQs)*, accessed on April 14, 2015 at <http://www.cdcr.ca.gov/rehabilitation/faqs.html#rehabilitation>.
- 69 There are many other definitions of recidivism, including committing a new crime that does not result in another prison term. Therefore, CDCR recidivism figures may be conservative. California Department of Corrections and Rehabilitation, *Frequently Asked Questions (FAQs)*, accessed on April 14, 2015 at <http://www.cdcr.ca.gov/rehabilitation/faqs.html#recidivism>.
- 70 Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (The Sentencing Project: November 2010), p. 3.
- 71 Andrew von Hirsch, et al., *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Hart Publishing: 1999) and Daniel S. Nagin and Greg Pogarsky, "Integrating Celerity, Impulsivity, and Extralegal Sanction Threats into a Model of General Deterrence: Theory and Evidence," *Criminology* 39 (2001), pp. 865-892.
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## **Los Angeles Times**

California Legislature

SEPT. 13, 2017, 2:33 P.M.

REPORTING FROM SACRAMENTO

# **California lawmakers vote to give judges discretion over longer sentences in gun crimes**



Patrick McGreevy



State Sen. Steven Bradford, left, shown talking to Secretary of State Alex Padilla, won a change to sentencing laws Wednesday. (Rich Pedroncelli / Associated Press)

State lawmakers on Wednesday approved a bill that would allow judges to decide against imposing prison-sentence enhancements of 10 or more years in cases where firearms are used to commit a felony.

<http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-california-lawmakers-vote-to-give-1505337885-htmlstory.html>

The Senate sent the bill to Gov. Jerry Brown for consideration after its author, Sen. Steven Bradford (D-Gardena), said crime is not reduced by the current mandate requiring judges to add sentence enhancements if a gun is used.

"I hope this [bill] will lead to more fair and equitable sentencing in cases involving guns where no one is hurt and a shot was not fired," Bradford said.

The senator said longer sentences do not deter crime, but instead "disproportionately increase racial disparities in prison populations and they greatly increase the population of incarcerated persons."

The measure passed the Senate on a 21-13 vote with Republicans in opposition, as they were earlier in the week in the Assembly.

Assemblywoman Melissa Melendez (R-Lake Elsinore) noted she recently attended the funeral of a sheriff's deputy shot to death by a criminal.

"You want to get rid of an enhancement for someone who kills cops?" she asked her colleagues.

Bradford said there still will be cases that will see sentence enhancements.

"This bill does not prohibit firearms sentencing enhancement," Bradford told his colleagues Wednesday, saying it allows judges to "exercise justice as they see fit," and "make sure the punishment fits the nature and severity of the crime."

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# Senator Steven Bradford

REPRESENTING THE 35<sup>TH</sup> DISTRICT

## SB 620 – Firearm Enhancements: Judicial Discretion

### SUMMARY

SB 620 would increase the fairness of the justice system by allowing a court, in the interest of justice and at the time of sentencing, to strike a sentence enhancement for using or discharging a firearm when a person is convicted of committing a felony. Allowing judicial discretion is consistent with other sentence enhancement laws and retains existing sanctions for serious crimes.

### BACKGROUND

California has some of the most severe sentence enhancements for gun use in the nation. While most sentence enhancements can be declined if the judge believes they are unjust in a specific case, gun enhancements are mandatory in all cases—judges are forbidden from tailoring these sentences to an individual’s case and culpability. These mandatory terms have resulted in a rigid and arbitrary system that has meted out punishments that are severely disproportionate to the person’s culpability and that do not serve the interest of justice or public safety.

In November 2016, voters overwhelmingly passed Proposition 57, which allowed judges, rather than prosecutors, to determine whether youth are tried as adults. Californians strongly believe in the importance of judicial discretion and its role of creating a fairer justice system.

Research shows that increasing an already long sentence has no material deterrent effect, and studies have failed to find any conclusive evidence that gun enhancements reduce gun crimes.

However, enhancements like these have been the primary drivers of prison overcrowding and our extreme periods of incarceration. The California prison system remains under Federal oversight for overcrowded conditions, and also houses more prisoners serving a life or de facto life sentence than anywhere else in the nation. More than one out of every four prisoners in the state is serving time under gun enhancements. Mandatory enhancements also increase racial disparities:

Research shows that prosecutors are more likely to charge people of color with mandatory sentence enhancements than they are white people, even for the same crime.

### SOLUTION

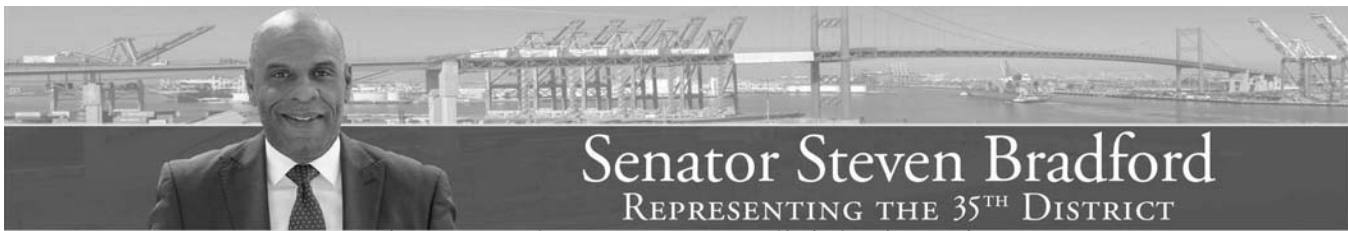
SB 620 is a modest step towards ensuring the criminal justice system is fair and balanced. Specifically, it would give judges the discretion to review the facts of a case and strike the enhancements for using a firearm in the commission of a felony, in the interest of justice, consistent with other sentence enhancement laws. It does not eliminate these enhancements or any existing sanctions for serious crimes.

### SUPPORT

See next page

### CONTACT

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Senator Steven Bradford  
REPRESENTING THE 35<sup>TH</sup> DISTRICT

SB 620 – Firearm Enhancements: Judicial Discretion

## SUPPORT

American Civil Liberties Union (co-sponsor)  
Friends Committee on Legislation of California (co-sponsor)  
A New Way of Life Reentry Project  
Alliance for Boys and Men of Color  
American Friends Service Committee  
Anti-Recidivism Coalition  
Burns, K., Attorney  
California Attorneys for Criminal Justice  
California Public Defenders Association  
Californians for Safety and Justice  
Californians United for a Responsible Budget  
Center on Juvenile and Criminal Justice  
Communities United for Restorative Youth Justice  
Contra Costa Public Defender  
Courage Campaign  
# Cut 50  
Ella Baker Center for Human Rights  
Fathers & Families of San Joaquin  
Fair Chance Project  
Free Indeed Reentry Project  
Friends Committee on Legislation of California  
Homeboy Industries  
homies unidos  
Human Rights Watch  
Initiate Justice  
Legal Services for Prisoners with Children  
Lewis, Mildred Inex Los Angeles Regional Reentry Partnership  
Motivating Individual Leadership for Public Advancement (MILPA)  
National Association for the Advancement of Colored People (NAACP)  
Ron Finley Project  
Root and Rebound  
San Francisco Public Defender  
Silicon Valley De-Bug  
W. Haywood Burns Institute  
Women Who Never Give-Up  
Youth Justice Coalition



**Re: *The People v. Tirado*, Case No. S257658**

**DECLARATION OF ELECTRONIC SERVICE  
AND SERVICE BY PLACEMENT AT PLACE OF BUSINESS  
FOR COLLECTION AND DEPOSIT IN MAIL**

(Code Civ. Proc., § 1013a, subd. (3); Cal. Rules of Court, rules 8.78(f))

I, *Sebastian Lowe*, declare as follows:

I am, and was at the time of the service mentioned in this declaration, over the age of 18 years and am not a party to this cause. My electronic service address is [eservice@capcentral.org](mailto:eservice@capcentral.org) and my business address is 2150 River Plaza Dr., Ste. 300, Sacramento, CA 95833 in Sacramento County, California.

On **May 8, 2020**, I served the persons and/or entities listed below by the method checked. For those marked “Served Electronically,” I transmitted a PDF version of **ATTACHMENTS TO APPELLANT’S MOTION FOR JUDICIAL NOTICE** by TrueFiling electronic service or by e-mail to the e-mail service address(es) provided below. Transmission occurred at approximately **12:20 p.m.** For those marked “Served by Mail,” I enclosed a copy of the document identified above in an envelope or envelopes, addressed as provided below, and placed the envelope(s) for collection and mailing on the date and at the place shown below, following the Central California Appellate Program’s ordinary business practices. I am readily familiar with this business’s practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in sealed envelope(s) with postage fully prepaid.

|                                                                              |                       |
|------------------------------------------------------------------------------|-----------------------|
| Office of the Attorney General                                               | Jose Guadalupe Tirado |
| P.O. Box 944255                                                              | BF2536                |
| Sacramento, CA 94244                                                         | PO Box 409099 (MCSP)  |
| <a href="mailto:SacAWTTrueFiling@doj.ca.gov">SacAWTTrueFiling@doj.ca.gov</a> | Ione, CA 95640        |

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2424 Ventura Street  
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| <input type="checkbox"/> Served by Mail                   | <input checked="" type="checkbox"/> Served by Mail |



I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Executed on **May 8, 2020**, at Sacramento, California.

*/s/ Sebastian Lowe*  
Sebastian Lowe

**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **PEOPLE v.**  
**TIRADO**

Case Number: **S257658**

Lower Court Case Number: **F076836**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **tschriever@capcentral.org**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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| EXHIBITS           | S257658_ExhibitsToJudicialNoticeMotion_Tirado |
| MOTION             | S257658_JudicialNoticeMotion_Tirado_revised   |

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

5/8/2020

Date

/s/Sebastion Lowe

Signature

Schriever, Theresa (308781)

Last Name, First Name (PNum)

Central California Appellate Program

Law Firm