

AMENDED IN ASSEMBLY AUGUST 30, 2021

AMENDED IN ASSEMBLY JULY 1, 2021

AMENDED IN SENATE APRIL 27, 2021

AMENDED IN SENATE APRIL 8, 2021

AMENDED IN SENATE MARCH 23, 2021

AMENDED IN SENATE FEBRUARY 8, 2021

SENATE BILL

No. 81

Introduced by Senator Skinner
(Coauthor: Assembly Member Lee)

December 15, 2020

An act to amend Section 1385 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 81, as amended, Skinner. Sentencing: dismissal of enhancements.

Existing law generally authorizes a court to dismiss an action or to strike or dismiss an enhancement in the furtherance of justice.

This bill would, except as specified, require a court to dismiss an enhancement if it is in the furtherance of justice to do so. ~~The bill would create a presumption that it is in the furtherance of justice to dismiss an enhancement in specified circumstances. The bill would state that this presumption is only overcome upon a showing by clear and convincing evidence that dismissal of the enhancement would endanger public safety. The bill would require a court to consider and afford great weight to evidence offered by the defendant to prove that specified mitigating circumstances are present. The bill would provide that proof~~

of the presence of one or more specified mitigating circumstances weighs greatly in favor of dismissing an enhancement, unless the court finds that dismissal would endanger public safety, as defined.

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 1385 of the Penal Code is amended to
 2 read:

3 1385. (a) The judge or magistrate may, either on motion of
 4 the court or upon the application of the prosecuting attorney, and
 5 in furtherance of justice, order an action to be dismissed. The
 6 reasons for the dismissal shall be stated orally on the record. The
 7 court shall also set forth the reasons in an order entered upon the
 8 minutes if requested by either party or in any case in which the
 9 proceedings are not being recorded electronically or reported by
 10 a court reporter. A dismissal shall not be made for any cause that
 11 would be ground of demurrer to the accusatory pleading.

12 (b) (1) If the court has the authority pursuant to subdivision (a)
 13 to strike or dismiss an enhancement, the court may instead strike
 14 the additional punishment for that enhancement in the furtherance
 15 of justice in compliance with subdivision (a).

16 (2) This subdivision does not authorize the court to strike the
 17 additional punishment for any enhancement that cannot be stricken
 18 or dismissed pursuant to subdivision (a).

19 (c) (1) Notwithstanding any other law, the court shall dismiss
 20 an enhancement if it is in the furtherance of justice to do so, except
 21 if dismissal of that enhancement is prohibited by any initiative
 22 statute.

23 ~~(2) There shall be a presumption that it is in the furtherance of~~
 24 ~~justice to dismiss an enhancement upon a finding that any of the~~
 25 ~~circumstances in subparagraphs (A) to (I), inclusive, are true. This~~
 26 ~~presumption shall only be overcome by a showing of clear and~~
 27 ~~convincing evidence that dismissal of the enhancement would~~
 28 ~~endanger public safety.~~

29 (2) *In exercising its discretion under this subdivision, the court*
 30 *shall consider and afford great weight to evidence offered by the*
 31 *defendant to prove that any of the mitigating circumstances in*
 32 *subparagraphs (A) to (I) are present. Proof of the presence of one*

1 *or more of these circumstances weighs greatly in favor of*
2 *dismissing the enhancement, unless the court finds that dismissal*
3 *of the enhancement would endanger public safety. “Endanger*
4 *public safety” means there is a likelihood that the dismissal of the*
5 *enhancement would result in physical injury or other serious*
6 *danger to others.*

7 (3) *While the court may exercise its discretion at sentencing,*
8 *nothing in this subdivision shall prevent a court from exercising*
9 *its discretion before, during, or after trial or entry of plea.*

10 (A) *Application of the enhancement would result in a disparate*
11 *racial impact. discriminatory racial impact as described in*
12 *paragraph (4) of subdivision (a) of Section 745.*

13 (B) *Multiple enhancements are alleged in a single case. In this*
14 *instance, all enhancements beyond a single enhancement shall be*
15 *dismissed.*

16 (C) *The application of an enhancement could result in a sentence*
17 *of over 20 years. In this instance, the enhancement shall be*
18 *dismissed.*

19 (D) *The current offense is connected to mental illness.*

20 (E) *The current offense is connected to prior victimization or*
21 *childhood trauma.*

22 (F) *The current offense is not a violent felony as defined in*
23 *subdivision (c) of Section 667.5.*

24 (G) *The defendant was a juvenile when they committed the*
25 *current offense or ~~prior offenses.~~ any prior juvenile adjudication*
26 *that triggers the enhancement or enhancements applied in this*
27 *case.*

28 (H) *The enhancement is based on a prior conviction that is over*
29 *five years old.*

30 (I) *Though a firearm was used in the current offense, it was*
31 *inoperable or unloaded.*

32 ~~(3)~~

33 (4) *The circumstances listed in paragraph (2) are not exclusive*
34 *and the court maintains authority to dismiss or strike an*
35 *enhancement in accordance with subdivision (a).*

36 ~~(4)~~

37 (5) *For the purposes of subparagraph (D) of paragraph (2), a*
38 *mental illness is a mental disorder as identified in the most recent*
39 *edition of the Diagnostic and Statistical Manual of Mental*
40 *Disorders, including, but not limited to, bipolar disorder,*

1 schizophrenia, schizoaffective disorder, or post-traumatic stress
2 disorder, but excluding antisocial personality disorder, borderline
3 personality disorder, and pedophilia. A court may conclude that a
4 defendant’s mental illness was connected to the offense if, after
5 reviewing any relevant and credible evidence, including, but not
6 limited to, police reports, preliminary hearing transcripts, witness
7 statements, statements by the defendant’s mental health treatment
8 provider, medical records, records or reports by qualified medical
9 experts, or evidence that the defendant displayed symptoms
10 consistent with the relevant mental disorder at or near the time of
11 the offense, the court concludes that the defendant’s mental illness
12 substantially contributed to the defendant’s involvement in the
13 commission of the offense.

14 (5)

15 (6) For the purposes of this subdivision, the following terms
16 have the following meanings:

17 (A) “Childhood trauma” means that as a minor the person
18 experienced physical, emotional, or sexual abuse, physical or
19 emotional neglect, ~~or had a household member who experienced~~
20 ~~mental illness, a substance use disorder, intimate partner violence,~~
21 ~~absence due to divorce or separation, or incarceration.~~ *neglect. A*
22 *court may conclude that a defendant’s childhood trauma was*
23 *connected to the offense if, after reviewing any relevant and*
24 *credible evidence, including, but not limited to, police reports,*
25 *preliminary hearing transcripts, witness statements, medical*
26 *records, or records or reports by qualified medical experts, the*
27 *court concludes that the defendant’s childhood trauma*
28 *substantially contributed to the defendant’s involvement in the*
29 *commission of the offense.*

30 (B) “Prior victimization” means the person was a victim of
31 intimate partner violence, sexual violence, or human trafficking,
32 or the person has experienced psychological or physical trauma,
33 including, but not limited to, abuse, neglect, exploitation, or sexual
34 violence. *A court may conclude that a defendant’s prior*
35 *victimization was connected to the offense if, after reviewing any*
36 *relevant and credible evidence, including, but not limited to, police*
37 *reports, preliminary hearing transcripts, witness statements,*
38 *medical records, or records or reports by qualified medical experts,*
39 *the court concludes that the defendant’s prior victimization*

1 *substantially contributed to the defendant's involvement in the*
2 *commission of the offense.*
3 ~~(6)~~
4 (7) *This subdivision shall not apply retroactively. apply to*
5 *sentencings occurring after the effective date of the act that added*
6 *this subdivision.*