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**SB-483 Sentencing: resentencing to remove sentencing enhancements.** (2021-2022)

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**Senate Bill No. 483**

**CHAPTER 728**

An act to add Sections 1171 and 1171.1 to the Penal Code, relating to resentencing.

[ Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 483, Allen. Sentencing: resentencing to remove sentencing enhancements.

Prior law, in effect until January 1, 2020, required a sentencing court to impose an additional one-year term for each prior separate prison term or county jail felony term served by the defendant for a nonviolent felony, as specified. Prior law, in effect until January 1, 2018, required a sentencing court to impose on a defendant convicted of specified crimes relating to controlled substances, an additional 3-year term for each prior conviction of specified controlled substances crimes, including possession for sale of opiates, opium derivatives, and hallucinogenic substances, as specified. Existing law limits the imposition of these sentencing enhancements to certain specified circumstances.

This bill would declare an enhancement imposed pursuant to one of these prior provisions to be legally invalid. The bill would state the intent of the Legislature to prohibit a prosecutor or court from rescinding a plea agreement based on a change in sentence as a result of this measure. The bill would require the Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county to identify those persons in their custody who are serving a sentence that includes one of these enhancements and provide this information to the sentencing court, as specified. The bill would require this information to be provided by March 1, 2022, for those individuals who are currently serving time for the enhancement and by July 1, 2022, for all others. The bill would require the court, after verifying specified information, to recall the sentence and resentence the individual to remove any invalid sentence enhancements. The bill would require the court to grant this relief to those individuals who have served their base term and any other enhancements and are currently serving the enhancement described above by October 1, 2022, and all other individuals by December 31, 2023. The bill would prescribe specific considerations for the court in resentencing, such as requiring that the resentencing result in a lesser sentence, unless the court finds that a lesser sentence would endanger public safety. The bill would require the court to appoint counsel for an individual subject to resentencing.

By requiring additional duties of county officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** The Legislature finds and declares that in order to ensure equal justice and address systemic racial bias in sentencing, it is the intent of the Legislature to retroactively apply Senate Bill 180 of the 2017–18 Regular Session and Senate Bill 136 of the 2019–20 Regular Session to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. It is the intent of the Legislature that any changes to a sentence as a result of the act that added this section shall not be a basis for a prosecutor or court to rescind a plea agreement.

**SEC. 2.** Section 1171 is added to the Penal Code, to read:

**1171.** (a) Any sentence enhancement that was imposed prior to January 1, 2018, pursuant to Section 11370.2 of the Health and Safety Code, except for any enhancement imposed for a prior conviction of violating or conspiring to violate Section 11380 of the Health and Safety Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentence enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d) (1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

(3) The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

**SEC. 3.** Section 1171.1 is added to the Penal Code, to read:

**1171.1.** (a) Any sentence enhancement that was imposed prior to January 1, 2020, pursuant to subdivision (b) of Section 667.5, except for any enhancement imposed for a prior conviction for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code is legally invalid.

(b) The Secretary of the Department of Corrections and Rehabilitation and the county correctional administrator of each county shall identify those persons in their custody currently serving a term for a judgment that includes an enhancement described in subdivision (a) and shall provide the name of each person, along with the person's date of birth and the relevant case number or docket number, to the sentencing court that imposed the enhancement. This information shall be provided as follows:

(1) By March 1, 2022, for individuals who have served their base term and any other enhancements and are currently serving a sentence based on the enhancement. For purposes of this paragraph, all other enhancements shall be considered to have been served first.

(2) By July 1, 2022, for all other individuals.

(c) Upon receiving the information described in subdivision (b), the court shall review the judgment and verify that the current judgment includes a sentencing enhancement described in subdivision (a). If the court determines that the current judgment includes an enhancement described in subdivision (a), the court shall recall the sentence and resentence the defendant. The review and resentencing shall be completed as follows:

(1) By October 1, 2022, for individuals who have served their base term and any other enhancement and are currently serving a sentence based on the enhancement.

(2) By December 31, 2023, for all other individuals.

(d) (1) Resentencing pursuant to this section shall result in a lesser sentence than the one originally imposed as a result of the elimination of the repealed enhancement, unless the court finds by clear and convincing evidence that imposing a lesser sentence would endanger public safety. Resentencing pursuant to this section shall not result in a longer sentence than the one originally imposed.

(2) The court shall apply the sentencing rules of the Judicial Council and apply any other changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

(3) The court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice.

(4) Unless the court originally imposed the upper term, the court may not impose a sentence exceeding the middle term unless there are circumstances in aggravation that justify the imposition of a term of imprisonment exceeding the middle term, and those facts have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial.

(5) The court shall appoint counsel.

(e) The parties may waive a resentencing hearing. If the hearing is not waived, the resentencing hearing may be conducted remotely through the use of remote technology, if the defendant agrees.

**SEC. 4.** If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.