



Please Note: The majority of these bills were signed by the Governor in 2021 and have since become law. This overview may not contain a complete list of every bill that may impact you, and the information is not intended as legal advice. If you have questions about how any of these laws may apply to you, please consult an experienced attorney.

IMPORTANT BILLS FROM THE 2021 LEGISLATIVE SESSION IN CALIFORNIA

I. Bills Impacting Trial, Sentencing, and Resentencing Procedures

SB 81 (Skinner)

SB 81 establishes guidance when a judge is deciding whether to dismiss an enhancement by requiring judges to give “great weight” to evidence that proves certain mitigating circumstances, such as the following. (1) the underlying conviction is not a violent felony; (2) application of the enhancement would result in a discriminatory racial impact; (3) the underlying conviction is connected to mental illness, prior victimization, or childhood trauma; or (4) the enhancement is based on a prior conviction that is over five years old.

AB 124 (Kamlager)

AB 124 provides a pathway to relief for a person arrested or convicted of a nonviolent offense that was a direct result of being a victim of human trafficking, intimate partner violence, or sexual violence. This bill would also give judges the discretion to avoid imposing sentencing enhancements and to consider a reduced sentence if the person has experienced psychological, physical, or childhood trauma, was a youth at the time of the offense, or was a victim of intimate partner violence or human trafficking.

AB 333 (Kamlager)

AB 333 requires that the use of gang enhancements be more evidence-based. The bill would end a prosecutor’s ability to claim people are gang members simply because they come from the same community as each other or are related to each other. The bill would also separate gang allegations from underlying charges at trial and would require direct evidence of active gang allegations. Additionally, the bill would remove certain offenses from the list of crimes that define a pattern of criminal gang activity.

SB 483 (Allen)

SB 483 retroactively eliminates sentence enhancements for certain prior drug convictions. In 2017 and 2019, the California State Legislature repealed sentence enhancements that added three years of incarceration for each prior drug offense (SB 180-Mitchell) and one year for each prior prison or felony jail term (SB 136-Weiner). However, these reforms only applied to cases after the bills became law. SB 483 would retroactively eliminate these sentence enhancements, ensuring that no one is serving time based on enhancements that the Legislature has already deemed unfair and ineffective.

SB 567 (Bradford)

SB 567 requires the court to impose the middle term of imprisonment unless there are aggravating circumstances that have been (1) stipulated by the defendant or (2) found true beyond a reasonable doubt at trial by the jury or judge. Existing state law specifies that there are three terms of sentences for felony offenses – a low term, a middle term, and a high term. Prior to SB 567, the choice of which term was appropriate was at the discretion of the court.

AB 625 (Arambula)

AB 625 requires the State Public Defender to undertake a study to assess appropriate workloads for public defenders and indigent defense attorneys, and to develop a report with findings and recommendations by January 1, 2024. The report will be developed in consultation with the California Public Defenders Association and other subject matter experts.

SB 775 (Becker)

SB 775 clarifies existing law to include voluntary manslaughter and attempted murder convictions as eligible for relief under SB 1437. Although SB 1437 effectively abolished California’s long-held and unjust felony murder laws in cases where a person did not kill or intend to kill, some appellate courts have incorrectly reasoned that the law applies only to murder and not to attempted murder. This bill may assist thousands of incarcerated people who have been or could be deemed ineligible for relief due to the technical language of SB 1437.

AB 1347 (Jones-Sawyer)

AB 1347 prohibits insurers, bail agents, or other bail licensees from charging an extra premium or a renewal fee while a case is pending, and would require that the duration of the contract agreement be until bail is exonerated. The bill also makes the insurer, bail agent, or other bail licensee liable to the person affected by a violation of these provisions for all damages that person sustains plus \$3,000 in statutory damages, and court costs and reasonable attorney’s fees, as specified.

AB 1452 (Ting)

AB 1452 authorizes the creation of a San Francisco-based pilot program to pay low-income jurors \$100 per day for each day that they are required to report for service as a trial juror. The bill would require the pilot program to collect data self-reported by jurors who receive the increased fee and would require the pilot program court and its justice partners to select a third-party entity to prepare an analysis and report of that data. The pilot program will be terminated on or before December 31, 2023.

AB 1540 (Ting)

AB 1540 strengthens Penal Code Section 1170(d)(1) – also known as “second look” sentencing – by giving the Attorney General the authority to recommend a person for resentencing if they prosecuted the case. It would also strengthen procedural due process by

providing notice to the incarcerated person recommended for resentencing, establishing court deadlines, and ensuring a clear right to a hearing and to counsel. The bill would also clarify that a judge can reduce a charge to a lesser-included or lesser-related offense and provide a presumption in favor of resentencing when law enforcement makes a referral.

II. Bills Impacting Prison Rights, Processes, and Conditions

AB 110 (Petrie-Norris)

AB 110 requires the California Department of Corrections and Rehabilitation (CDCR) to provide information about incarcerated individuals to the Employment Development Department (EDD) – including names, birth dates, and social security numbers – for the purpose of preventing payments on ineligible claims for unemployment compensation benefits.

AB 263 (Arambula)

AB 263 requires private detention facilities to comply with state public health orders and occupational safety and health regulations.

AB 292 (Stone)

AB 292 prevents non-adverse, non-disciplinary transfers from disrupting an incarcerated person's programming. This bill would also limit disruptions to rehabilitative programming by requiring that programming continue during lockdowns, and will direct the California Department of Corrections and Rehabilitation (CDCR) to implement programming that is not solely based on in-person methods in order to increase access to remote programming. Additionally, the bill will address the unequal access to the higher credit-earning rate associated with Fire Camp participation by requiring CDCR to offer the same increased credit-earning potential for in-prison programming.

SB 416 (Hueso)

SB 416 provides incarcerated students access to face-to-face college instruction by higher education providers and would amend Title 15 to recognize full-time enrollment in college as a full-time work or training assignment, in order to recognize the value of a college education more fully. This bill would prevent CDCR from contracting with a for-profit distance or correspondence provider because relying on these providers would deprive incarcerated students of the benefits of classroom-based instruction provided by the state's public postsecondary institutions.

AB 417 (McCarty)

AB 417 establishes the Rising Scholars Network, a program that would authorize the California Community Colleges Chancellor's Office to enter into agreements with up to 50 community colleges to provide additional funds in support of postsecondary education for students. Funds received by participating community colleges under this program can be

used to provide impacted students with resources such as academic counseling, academic tutoring, financial aid information, application assistance, and more. Notably, both currently and formerly incarcerated students are eligible.

III. Bills Impacting Formerly Incarcerated and Other System-Impacted People

SB 241 (Umberg)

SB 241 allows all courts to conduct all hearings, conferences, proceedings, and civil trials with remote technology for a period that exceeds the expiration of COVID emergency orders.

SB 446 (Glazer)

SB 446 aims to make it easier for a convicted person later found factually innocent of the crime to receive compensation under the CA Victim Compensation Board. The bill shifts the burden of proof from the wrongfully convicted person to the Attorney General in compensation proceedings.

AB 628 (E. Garcia)

AB 628 builds on the 2017 California Unified Strategic Workforce Development Plan (The State Plan) and narrows it to specifically address the employment needs of marginalized communities, including low-income workers of color and previously incarcerated individuals. The bill also expands the Breaking Barriers to Employment Initiative to assist these individuals in gaining access to education employment programs and careers. The bill is supported by a \$25 million dollar budget allocation.

AB 1228 (Lee)

AB 1228 reforms the probation system so that an individual accused of violating probation is only detained if a court finds it necessary for public safety. The bill specifically requires a court to release people on probation who are awaiting their formal revocation hearing unless the court finds that there is clear and convincing evidence that they pose a public safety risk.

SB 92 (Committee on Budget and Fiscal Review)

SB 92 gives counties in California the authority to establish secure youth treatment facilities in place of sending youth 14 years of age or older to the Division of Juvenile Justice (DJJ). The bill intends to divert youth to more community-based alternatives, and follows SB 823, which declared the Legislature's intention to permanently close the DJJ.

IV. Bills Impacting Policing

SB 2 (Bradford)

SB 2 requires officers in California to be certified by a statewide commission in order to be employed by any law enforcement agency. The bill also aims to implement a statewide system for revoking the license of police officers who commit serious misconduct. The statewide decertification process means that police officers who have been fired, or resigned while under investigation for misconduct, can no longer bounce around from community to community. Officers who were fired for excessive force, sexual misconduct, and dishonesty will be prevented from finding another law-enforcement position in a different community.

SB 16 (Skinner)

SB 16 expands public access to police misconduct records and strengthens communities' ability to hold law enforcement agencies accountable. The bill opens access to records on officers who have engaged in biased or discriminatory behavior, conducted unlawful arrests or searches, or used force that is excessive or unreasonable.

AB 26 (Holden)

AB 26 requires officers to immediately report excessive force, prohibits retaliation against officers that report violations by other officers, and aligns discipline for officers who use excessive force with discipline for officers who fail to intercede to stop the use of excessive force.

AB 118 (Kamlager)

AB 118 creates a pilot grant program to strengthen community-based alternatives to law enforcement responders in emergency situations such as intimate partner violence and mental health crises. Each grantee under the program will receive a minimum award of \$250,000 per year.

SB 715 (Portantino)

SB 715 authorizes the Attorney General to investigate a police-involved killing of a civilian if there is a reasonable dispute as to whether the civilian was armed.

AB 750 (Jones-Sawyer)

AB 750 expands the crime of perjury to include not only direct false statements made by law enforcement officers in a police report but also (1) false statements made to a fellow officer that are added to a police report and (2) false statements by a third party that are added to a police report, when the author of the report knows the statements to be false.

V. Continuing Two-Year Bills

Please note: These bills were introduced in the 2021 legislative session, and are still under consideration by the Legislature in 2022. They have not yet become law.

ACA 3 (Kamalger)

This measure would change California’s constitution by completely prohibiting involuntary servitude, which is currently allowed as punishment for crime.

AB 256 (Kalra)

AB 256 would extend the California Racial Justice Act of 2020, which prohibits the state from seeking a criminal conviction or sentence on the basis of race, ethnicity, or national origin. The bill would clarify that any person who can show bias is eligible to apply for relief, regardless of the date of their conviction. If an individual can show that anyone involved in the case – such as a judge, attorney, expert witness, or juror – demonstrated bias during the process, or if they can show statistical evidence of demographic inequities in charges, convictions, or sentences for the same crime, they may be eligible for relief.

SB 300 (Cortese)

SB 300 would reform California’s “felony murder special circumstance” law to ensure that the death penalty and life without possibility of parole (LWOP) cannot be imposed on those who did not kill, nor intend that a person die, during a crime. Additionally, the bill would undo the existing law that does not allow judges to strike special circumstances at sentencing and restore judicial discretion to impose a sentence of 25-years-to-life, rather than death or LWOP. This bill is *not* retroactive, meaning that only those who are sentenced under the law after it takes effect will be impacted.

AB 937 (Carrillo)

AB 937 would protect individuals deemed eligible for release from prisons and jails from being transferred to Immigration and Customs Enforcement (ICE) without a federal warrant. The bill also prohibits state agencies, local agencies, and courts from using immigration status to deny participation in a diversion program, rehabilitation program, mental health program, or placement in a credit-earning program.

AB 960 (Ting)

AB 960 would expand opportunities for prison release for incarcerated people with serious physical impairments and would streamline the consideration process so that more medically-vulnerable people are able to receive quality care in community settings.

VI. Notable Policy Changes in the State Budget Package

1. *Increased funding for the Board of Parole Hearings*
 - The state budget package increased the number BPH commissioners to 21 commissioners, and provided \$1.3 million for addition staffing in the Office of Victim & Survivor Rights & Services (OVSRS) to increase services for crime survivors throughout the parole process.
 - The Board was also appropriated \$8.8 million dollars to require state-appointed attorneys to provide counsel to incarcerated individuals before their Comprehensive Risk Assessment (CRA) interview. Attorneys are required to provide at least two hours of client consultation within 30 days of their appointment.
2. *Increased funding to address staff misconduct*
 - The state budget package included \$98.5 million dollars to support (1) video surveillance and body-worn cameras on officers at six prisons, (2) changes to the existing statewide process for handling allegations of staff misconduct, and (3) additionally supervisory staffing at six prisons. In addition, the budget package included \$37.6 million dollars to install and operated fixed video surveillance cameras at four additional prisons.
3. *Prison closures*
 - The state budget package included additional information about the Newsom Administration's 2020 plan to close two state prisons by 2023:
 1. Deuel Vocational Institution was deactivated in September 2021.
 2. There are plans for the California Correctional Center in Susanville to close in June 2022; however, the city of Susanville has filed a lawsuit challenging this closure and the legal fight may continue past the planned timeline.