



*Please Note: These bills have not yet become law and are still being considered by the State Legislature. The information included in this overview is subject to change. In the event that a bill is passed and signed into law by October 10, 2021, it will most likely not take effect until January 1, 2022. This overview does not contain a complete list of every new bill that may impact you. Additionally, the information contained in this overview is not intended as legal advice. If you have questions about how any of these pending bills may apply to you, please consult an experienced attorney.*

## **IMPORTANT BILLS FROM THE ONGOING 2021 LEGISLATIVE SESSION IN CALIFORNIA**

### **I. Bills Impacting Trial and Sentencing Procedures**

#### **AB 124**

AB 124 would provide a pathway to relief for a person arrested or convicted of a violent 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.

#### **SB 300**

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 333**

AB 333 would require 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.

### **AB 679**

AB 679 would seek to prevent wrongful convictions by prohibiting the use of incentivized in-custody informant testimony in certain felony prosecutions. Incentivized informants are individuals who stand to benefit by offering incriminating testimony against another person, and incentives can include favorable treatment in that informant's own criminal case, money, or other goods or consideration.

## **II. Bills Impacting Prison Rights, Processes, and Conditions**

### **ACA 3**

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

### **AB 292**

AB 292 would prevent 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**

SB 416 would provide 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 more fully recognize the value of a college education. 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**

AB 417 would establish 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 currently and formerly incarcerated 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 and application assistance, and more.

### **AB 990**

AB 990 would clarify that the right to personal visits is a civil right and ensure that this right may not be infringed on except as necessary and only if narrowly tailored to address legitimate security concerns. This bill would also prohibit denials of visits as discipline for conduct unrelated to visiting, prohibit denials of visits based on certain mistakes on a visitor's application, and prohibit denials of visits based on the

visitor or incarcerated person’s law enforcement history unless related to serious abuses of visiting rules.

### **AB 1007**

AB 1007 establishes the Forced or Involuntary Sterilization Compensation Program to provide victim compensation to any survivor of state-sponsored sterilization conducted in response to eugenic laws<sup>1</sup> that existed in the California between 1909 and 1979. Additionally, compensation would be provided to any survivor who was coercively sterilized after 1979 while in CDCR custody. The state has set aside \$7.5 million for the reparations program, and both currently and formerly incarcerated people are expected to be eligible for compensation.

## **III. Bills Impacting Resentencing and Sentencing Enhancements**

### **AB 256**

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 483**

SB 483 would retroactively eliminate 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

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<sup>1</sup> California’s eugenics laws allowed medical officials to order the forced sterilization of people they deemed unfit to have children. Black, Latinx, and Indigenous women were disproportionately impacted by these horrific policies.

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 apply these eliminations, ensuring that no one is serving time based on enhancements that the Legislature has already deemed unfair and ineffective.

### **SB 775**

SB 775 would clarify 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 simple reform would clarify the law and assist thousands of incarcerated people who have been or could be deemed ineligible for relief due to the technical language of SB 1437.

### **AB 1540**

AB 1540 would strengthen 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.

## **IV. Bills Impacting Formerly Incarcerated and System-Impacted People**

### **AB 328**

AB 328 would establish the Reentry Housing and Workforce Development Program, which would fund evidence-based housing and housing-based services interventions in order to provide people with recent histories of incarceration access to safe and stable housing. The bill would require that the following services be made available for participants: case management services, parole discharge planning, linkages to education and employment services, transportation assistance to obtain services and healthcare, and other services.

### **SB 586**

SB 586 would repeal various administrative fees that agencies and courts are authorized to impose in order to fund elements of the criminal legal system, and would eliminate outstanding debts resulting from these fees. This bill would specifically get rid of requirements that participants pay the full costs of mandatory programming. The bill would also prohibit basing the termination of probation on the payment of certain legal fees, and would prohibit certain fines from being issued unless the court determines that the individual has the ability to pay.

### **AB 717**

AB 717 would expand the in-prison CAL-ID program to ensure that every person released from state prison can receive a valid California identification card driver's license. The bill would specifically ensure that all CDCR facilities have the necessary equipment to process California ID cards, authorize CDCR to assist incarcerated people with obtaining necessary documents such as birth certificates and social security cards, establish a timeline for incarcerated people to obtain the necessary documents, and require CDCR to provide an annual report on the implementation of the CAL-ID program.

### **SB 731**

SB 731 would expand automatic arrest record sealing to include felony arrest if the individual was neither charged nor convicted either six years after the arrest or otherwise three years after the arrest for a

less serious felony. The bill would also expand automatic conviction record relief to include nonserious, nonsexual, and nonviolent felonies after an individual completes all terms of incarceration, probation, and a further period of four years without any new convictions. This sealing would be available to individuals retroactive to January 1, 2005. The bill would expand discretionary expungement relief to include certain felony cases where the individual served time in prison.

### **AB 937**

AB 937 protects 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.

## **V. Bills That Will Not Move Forward this Year**

*Please note: Some of the following bills have been made into two-year bills and are expected to move forward next year.*

### **SB 481**

SB 481 would allow a judge to strike or dismiss a special circumstance, and impose a new sentence of 25 years to life, for an individual who was sentenced to LWOP for crimes they committed at age 25 years or younger, and has served 15 years of their original sentence. Current law prohibits judges from dismissing or striking a special circumstance, which mandates an LWOP sentence, denying many people the opportunity to have a youth offender parole hearing. After the special circumstance is struck, they would become eligible for a youth offender parole hearing, and have their age at the time of the crime rightfully considered.

### **SB 763**

SB 763 would allow an individual convicted of a felony offense who is or was a member of the U.S. military, and who may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of their military service, to petition for a recall of sentence even if they were sentenced after January 1, 2015. Current law only allows someone who meets these criteria to petition for resentencing if they were sentenced prior to January 1, 2015.

### **AB 960**

AB 960 would expand eligibility for medical parole to include individuals experiencing debilitating pain or disease, hospice care, and/or health issues related to chronological age. The bill would create a Medical Parole Panel at each CDCR institution, which would be comprised of a department psychologist or social worker, a representative of California Correctional Health Services, and the patient's primary care provider. The bill also removes CDCR's authority to return an individual to custody if their health improves.

### **AB 1127**

AB 1127 would prohibit any strike offenses that an individual committed as a juvenile from being used to enhance any felonies that they might commit in the future. This bill would also retroactively allow anyone whose prior juvenile strike was used to enhance an adult felony (i.e., through the Three Strikes Law) to petition for resentencing. Evidence shows that juvenile strikes disproportionately affect youth of color, especially Black youth, and this bill would allow California to lead the nation in addressing the disparate impact of this punitive law.

### **AB 1210**

AB 1210 would require that at least 60 percent of Board of Parole Hearing (BPH) commissioners come from diverse personal and professional backgrounds that include medical and mental health expertise, social work, drug treatment, and lived experience of being



released through the discretionary parole process after serving a life sentence in prison. Although AB 1210 will not be moving forward in the State Legislature, the 2021-2022 state budget package authorizes the appointment of commissioners who may have “professional or lived experience or educational background” in areas such as social work, foster care, rehabilitation, reentry, etc.

### **AB 1224**

AB 1224 would recognize the racial bias that people sentenced to death or LWOP have experienced. The bill creates a process for reconsideration of these sentences when specified factors are present, including the individual’s behavior and growth since their conviction, their age at the time of the offense and their present age, the diminished culpability of juveniles, their present state of mental and physical health, and more. The bill also establishes a presumption that the special circumstance finding should be dismissed where a person has served more than 20 years since the crime without committing or attempting to commit an act of violence.

### **AB 1509**

AB 1509 would eliminate the use of most gun enhancements; reduce the time added by remaining gun enhancements to no more than 3 years; and create a pathway for reassessment for those currently serving time due to gun enhancements. Estimates show that approximately 40,000 people in CDCR custody have some form of gun enhancement as part of their sentences, which is nearly 40 percent of the entire incarcerated population. People of color are disproportionately impacted by gun enhancements, representing more than 89 percent of those subject to these enhancements.