



SB 966 (Mitchell)

The RISE Act: Repeal Ineffective Sentencing Enhancements

SB 966 by Senator Holly Mitchell (D-Los Angeles) would repeal the three-year sentence enhancement for prior drug convictions. The enhancement is applied consecutively — three years for every prior conviction for possession for sale, sale or similar drug offense to any person currently convicted for a similar offense. Since realignment, this has resulted in hundreds being sentenced to county jails for more than five or even ten years.¹

These enhancements were originally intended to deter drug selling, and reduce the availability of controlled substances. As with other punitive drug war strategies, they are a proven failure — drugs are cheaper, stronger and more widely available than any time in our state's history. These enhancements have the effect of sentencing thousands of people — mainly young men and women of color — to long periods of incarceration in overcrowded state prisons and county jails, destabilizing families and communities.

Furthermore, this failed approach has proven enormously expensive, robbing state and local budgets that should be spent on schools, health and social services, and policies that actually reduce drug use — drug treatment, after-school programs, and housing, among them.

The RISE Act will repeal costly and ineffective sentencing enhancements, reflecting the Legislature's and voters' consensus that we must divest from mass incarceration in order to invest in vitally needed public services.

Why we need the RISE Act — SB 966 (Mitchell)

The RISE Act will free up taxpayer dollars for investment in cost-effective community-based programs instead of costly jail expansion. By repealing enhancements for prior drug convictions, SB 966 would reduce jail overcrowding and stop the rush to build and staff costly new jails. Since 2007, California has spent \$2.2 billion² on county jail expansion – not including the costs borne by the counties for these construction projects, the increased staffing, or the debt service for these high-interest loans. These funds could be better invested in programs and services that meet community needs and improve public safety, including community-based mental health and substance use treatment programs, job programs, and affordable housing.

Governor Brown endorsed a measure for the 2016 ballot that will allow persons to be paroled after they complete their base sentence, regardless of enhancements. However, that measure only applies to persons sentenced to state prison, and will have no effect on jail overcrowding.

SB 966 would address extreme sentences. Enhancements result in sentences being far more severe than is just, sensible, or effective. Under current law, a person may face two to four years in jail for possessing drugs for sale under the base sentence. But if the person has two prior

¹ California State Sheriffs Association letter to "Interested Parties" April 25, 2014.

² Includes funding programs in AB 900 (2007), SB 1022 (2012), and SB 863 (2014).

convictions for possession for sale, they would face an additional six years years in jail – for a total of ten years. As of 2014, there were more than 1,700 people in California jails sentenced to more than five years. The leading cause of these long sentences was non-violent drug sale offenses.

SB 966 would reduce racial disparities in the criminal justice system. Although rates of drug use and sales are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted, and incarcerated for drug law violations than are whites.³ Research also shows that prosecutors are twice as likely to pursue a mandatory minimum sentence for Blacks as for whites charged with the same offense.⁴

SB 966 would help restore balance in the judicial process. Prosecutors use enhancements as leverage to extract guilty pleas, even from the innocent. Prosecutors threaten to use enhancements to significantly increase the punishment defendants would face should they exercise their right to a trial. According to Human Rights Watch, “plea agreements have for all intents and purposes become an offer drug defendants cannot afford to refuse.”⁵

SB 966 will stop the cruel punishment of persons suffering from a substance abuse disorder. People who suffer untreated substance abuse disorders often sell drugs to pay for the drugs that their illness compels them to consume. It is fundamentally unjust, as well as counterproductive, to put a sick person in jail to address behaviors better handled in a medical or treatment setting.

Sentencing enhancements do not prevent or reduce drug sales and have destabilizing effects on families and communities. Research finds that the length of sentences does not provide any deterrent or significant incapacitation effect: longer sentences for drug offenses do not reduce recidivism, nor do they affect drug availability. Most people who commit crimes are either unaware of penalties or do not think they will be caught.⁶ Research shows that people incarcerated for selling drugs are quickly replaced by other people.⁷

However, incarceration can lead to more crime by destabilizing families and communities. Many people who return from incarceration face insurmountable barriers to finding jobs and housing and reintegrating into society. Family members of incarcerated people also struggle with overwhelming debt from court costs, visitation and telephone fees, and diminished family revenue.⁸ The longer the sentence, the more severe these problems.

Support:

Californians United for a Responsible Budget (co-sponsor)

Drug Policy Alliance (co-sponsor)

Ella Baker Center for Human Rights (co-sponsor)

A New PATH (Parents for Addiction Treatment and Healing)

A New Way of Life

³ Human Rights Watch, “Decades of Disparity: Drug Arrests and Race in the United States.” (2009).

⁴ Sonja B Starr and Marit Rehani, “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker,” Yale Law Journal 123, no. 1 (2013).

⁵ Human Rights Watch, “An Offer You Can’t Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty.” (2013).

⁶ Russell, Sarah F, “Rethinking Recidivist Enhancements: The Role of Prior Drug Convictions in Federal Sentencing,” 43 UC Davis L. Rev. 1135 (2010).

⁷ U.S. Sentencing Commission, Fifteen Years of Guideline Sentencing: An assessment of how well the federal criminal justice system is achieving the goals of sentencing reform (2004).

⁸ Ella Baker Center for Human Rights, Forward Together, and Research Action Design, “Who Pays? The True Cost of Incarceration on Families” (2015).

ACLU of California
Alameda County Public Defender
Alliance for Boys and Men of Color
American Friends Service Committee
Anti Recidivism Coalition
Arts for Incarcerated Youth Network
Asian Americans Advancing Justice California
Asian American Criminal Trial Lawyers Association
Asian Pacific Environmental Network
Bay Area Black Worker Center
California Association of Alcohol and Drug Program Executives
California Attorneys for Criminal Justice
California Coalition for Women Prisoners
California Partnership
California Prison Moratorium Project
California Public Defender Association
Californians for Safety and Justice
Causa Justa : Just Cause
Center for Health Justice
Center for Living and Learning
Center on Juvenile and Criminal Justice
Centro Legal De La Raza
Coalition for Humane Immigrant Rights of LA
Coleman Advocates for Children and Youth
Communities United Against Violence
Communities United for Restorative Youth Justice
Community Works: Project WHAT!
Contra Costa County Office of the Public Defenders
Contra Costa Supervisor John Giaoa
Courage Campaign
Critical Resistance - Los Angeles
East Bay Alliance for a Sustainable Economy
Enlace
Essie Justice Group
Fathers & Families of San Joaquin
Forward Together
Friends Committee on Legislation
Further the Work
Harm Reduction Services
HealthRIGHT360
Healthy Communities Oakland
HIV Education and Prevention Project of Alameda
Holman United Methodist Church
Human Rights of the Incarcerated at Cal
Immigrant Legal Resource Center
Islamic Shura Council of Southern California
Justice Not Jails
Justice Now

Justice Policy Institute
L.A. Community Action Network
Law Enforcement Against Prohibition
Lawyers' Committee for Civil Rights, SF.
Legal Services for Prisoners with Children
Marijuana Lifer Project
Motivating Individual Leadership for Public Advancement
Monterey Bay Central Labor Council
Mortgage Personnel Services
National Association of Social Workers, California Chapter
National Association of Social Workers, Women's Council - CA Chapter
National Center for Youth Law
Needle Exchange Emergency Distribution - Berkeley
Oakland Rising
Office of Richmond Mayor Tom Butt
Orange County Needle Exchange Program
Parent Voices California
PICO California
Presente
Prison Activist Resource Center
Prison Law Office
Prison Policy Initiative
Project Inform
Reentry Success Center
Resource Center for Nonviolence
Rubicon Programs
RYSE Youth Center
Safe Return Project
San Diego Organizing Project
San Francisco Public Defender's Office
Santa Cruz County Community Coalition to Overcome Racism
SHIELDS for Families
Silicon Valley DeBug
Sin Barras
Street Level Health Project
Tarzana Treatment Centers
The Sentencing Project
The S.T.O.P. Hepatitis Task Force
The Village Project, INC
The Women's Foundation of California
Time for Change Foundation
Transgender Gender Variant Intersex Justice Project
Underground Scholars Initiative at UC Berkeley
Western Regional Advocacy Project
W. Haywood Burns Institute
Young Women's Freedom Center
Youth Justice Coalition

Individuals:

Sheila Pinkel, Professor Pomona College

+2

For more information:

Lizzie Buchen, Californians United for a Responsible Budget, lizzie@curbprisonspending.org

Emily Harris, Ella Baker Center for Human Rights, emily@ellabakercenter.org

Eunisses Hernandez, Drug Policy Alliance, euherandez@drugpolicy.org

Glenn Backes, Public Policy Research & Consulting/EBC/DPA glennbackes@mac.com