

ASSEMBLY BILL

No. 3037

Introduced by Assembly Member Essayli

February 16, 2024

An act to amend Sections 1385 and 12022.53 of the Penal Code, relating to sentencing.

legislative counsel's digest

AB 3037, as introduced, Essayli. Sentencing: dismissal of enhancements.

Existing law generally authorizes a court to dismiss an action in the furtherance of justice. Existing law requires a court to dismiss an enhancement if it is in the furtherance of justice to do so, except if dismissal of that enhancement is prohibited by any initiative statute.

This bill would make the provision relating to the dismissal of enhancements inapplicable to firearms-related enhancements, but would allow the court to dismiss these firearm-related enhancements pursuant to the court's general authority to dismiss an action, as specified.

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

1 court shall also set forth the reasons in an order entered upon the
2 minutes if requested by either party or in any case in which the
3 proceedings are not being recorded electronically or reported by
4 a court reporter. A dismissal shall not be made for any cause that
5 would be ground of demurrer to the accusatory pleading.

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

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

13 (c) (1) (A) Notwithstanding any other law, the court shall
14 dismiss an enhancement if it is in the furtherance of justice to do
15 so, except if dismissal of that enhancement is prohibited by any
16 initiative statute.

17 (B) *Notwithstanding subparagraph (A), the court may, pursuant*
18 *to subdivision (a), dismiss an enhancement pursuant to Section*
19 *12022.53 if it is in the furtherance of justice.*

20 (C) *An enhancement imposed pursuant to Section 12022.53 is*
21 *not subject to subparagraph (A).*

22 (2) In exercising its discretion under this subdivision, the court
23 shall consider and afford great weight to evidence offered by the
24 defendant to prove that any of the mitigating circumstances in
25 subparagraphs (A) to (I) are present. Proof of the presence of one
26 or more of these circumstances weighs greatly in favor of
27 dismissing the enhancement, unless the court finds that dismissal
28 of the enhancement would endanger public safety. “Endanger
29 public safety” means there is a likelihood that the dismissal of the
30 enhancement would result in physical injury or other serious danger
31 to others.

32 (A) Application of the enhancement would result in a
33 discriminatory racial impact as described in paragraph (4) of
34 subdivision (a) of Section 745.

35 (B) Multiple enhancements are alleged in a single case. In this
36 instance, all enhancements beyond a single enhancement shall be
37 dismissed.

38 (C) The application of an enhancement could result in a sentence
39 of over 20 years. In this instance, the enhancement shall be
40 dismissed.

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

2 (E) The current offense is connected to prior victimization or
3 childhood trauma.

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

6 (G) The defendant was a juvenile when they committed the
7 current offense or any prior offenses, including criminal
8 convictions and juvenile adjudications, that trigger the enhancement
9 or enhancements applied in the current case.

10 (H) The enhancement is based on a prior conviction that is over
11 five years old.

12 (I) Though a firearm was used in the current offense, it was
13 inoperable or unloaded.

14 (3) While the court may exercise its discretion at sentencing,
15 this subdivision does not prevent a court from exercising its
16 discretion before, during, or after trial or entry of plea.

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

20 (5) For the purposes of subparagraph (D) of paragraph (2), a
21 mental illness is a mental disorder as identified in the most recent
22 edition of the Diagnostic and Statistical Manual of Mental
23 Disorders, including, but not limited to, bipolar disorder,
24 schizophrenia, schizoaffective disorder, or post-traumatic stress
25 disorder but excluding antisocial personality disorder, borderline
26 personality disorder, and pedophilia. A court may conclude that a
27 defendant's mental illness was connected to the offense if, after
28 reviewing any relevant and credible evidence, including, but not
29 limited to, police reports, preliminary hearing transcripts, witness
30 statements, statements by the defendant's mental health treatment
31 provider, medical records, records or reports by qualified medical
32 experts, or evidence that the defendant displayed symptoms
33 consistent with the relevant mental disorder at or near the time of
34 the offense, the court concludes that the defendant's mental illness
35 substantially contributed to the defendant's involvement in the
36 commission of the offense.

37 (6) For the purposes of this subdivision, the following terms
38 have the following meanings:

39 (A) "Childhood trauma" means that as a minor the person
40 experienced physical, emotional, or sexual ~~abuse~~, *abuse or physical*

1 or emotional neglect. A court may conclude that a defendant's
2 childhood trauma was connected to the offense if, after reviewing
3 any relevant and credible evidence, including, but not limited to,
4 police reports, preliminary hearing transcripts, witness statements,
5 medical records, or records or reports by qualified medical experts,
6 the court concludes that the defendant's childhood trauma
7 substantially contributed to the defendant's involvement in the
8 commission of the offense.

9 (B) "Prior victimization" means the person was a victim of
10 intimate partner violence, sexual violence, or human trafficking,
11 or the person has experienced psychological or physical trauma,
12 including, but not limited to, abuse, neglect, exploitation, or sexual
13 violence. A court may conclude that a defendant's prior
14 victimization was connected to the offense if, after reviewing any
15 relevant and credible evidence, including, but not limited to, police
16 reports, preliminary hearing transcripts, witness statements, medical
17 records, or records or reports by qualified medical experts, the
18 court concludes that the defendant's prior victimization
19 substantially contributed to the defendant's involvement in the
20 commission of the offense.

21 (7) This subdivision shall apply to all sentencings occurring
22 after January 1, 2022.

23 SEC. 2. Section 12022.53 of the Penal Code is amended to
24 read:

25 12022.53. (a) This section applies to the following felonies:

26 (1) Section 187 (murder).

27 (2) Section 203 or 205 (mayhem).

28 (3) Section 207, 209, or 209.5 (kidnapping).

29 (4) Section 211 (robbery).

30 (5) Section 215 (carjacking).

31 (6) Section 220 (assault with intent to commit a specified
32 felony).

33 (7) Subdivision (d) of Section 245 (assault with a firearm on a
34 peace officer or firefighter).

35 (8) Section 261 or former Section 262 (rape).

36 (9) Section 264.1 (rape or sexual penetration in concert).

37 (10) Section 286 (sodomy).

38 (11) Section 287 or former Section 288a (oral copulation).

39 (12) Section 288 or 288.5 (lewd act on a child).

40 (13) Section 289 (sexual penetration).

1 (14) Section 4500 (assault by a life prisoner).

2 (15) Section 4501 (assault by a prisoner).

3 (16) Section 4503 (holding a hostage by a prisoner).

4 (17) Any felony punishable by death or imprisonment in the
5 state prison for life.

6 (18) Any attempt to commit a crime listed in this subdivision
7 other than an assault.

8 (b) Notwithstanding any other law, a person who, in the
9 commission of a felony specified in subdivision (a), personally
10 uses a firearm, shall be punished by an additional and consecutive
11 term of imprisonment in the state prison for 10 years. The firearm
12 need not be operable or loaded for this enhancement to apply.

13 (c) Notwithstanding any other law, a person who, in the
14 commission of a felony specified in subdivision (a), personally
15 and intentionally discharges a firearm, shall be punished by an
16 additional and consecutive term of imprisonment in the state prison
17 for 20 years.

18 (d) Notwithstanding any other law, a person who, in the
19 commission of a felony specified in subdivision (a), Section 246,
20 or subdivision (c) or (d) of Section 26100, personally and
21 intentionally discharges a firearm and proximately causes great
22 bodily injury, as defined in Section 12022.7, or death, to a person
23 other than an accomplice, shall be punished by an additional and
24 consecutive term of imprisonment in the state prison for 25 years
25 to life.

26 (e) (1) The enhancements provided in this section shall apply
27 to any person who is a principal in the commission of an offense
28 if both of the following are pled and proved:

29 (A) The person violated subdivision (b) of Section 186.22.

30 (B) Any principal in the offense committed any act specified
31 in subdivision (b), (c), or (d).

32 (2) An enhancement for participation in a criminal street gang
33 pursuant to Chapter 11 (commencing with Section 186.20) of Title
34 7 of Part 1 shall not be imposed on a person in addition to an
35 enhancement imposed pursuant to this subdivision, unless the
36 person personally used or personally discharged a firearm in the
37 commission of the offense.

38 (f) Only one additional term of imprisonment under this section
39 shall be imposed per person for each crime. If more than one
40 enhancement per person is found true under this section, the court

1 shall impose upon that person the enhancement that provides the
2 longest term of imprisonment. An enhancement involving a firearm
3 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,
4 or 12022.55 shall not be imposed on a person in addition to an
5 enhancement imposed pursuant to this section. An enhancement
6 for great bodily injury as defined in Section 12022.7, 12022.8, or
7 12022.9 shall not be imposed on a person in addition to an
8 enhancement imposed pursuant to subdivision (d).

9 (g) Notwithstanding any other law, probation shall not be
10 granted to, nor shall the execution or imposition of sentence be
11 suspended for, a person found to come within the provisions of
12 this section.

13 (h) The court may, in the interest of justice pursuant to
14 *subdivision (a) and subparagraph (B) of paragraph (1) of*
15 *subdivision (c) of Section 1385* and at the time of sentencing, strike
16 or dismiss an enhancement otherwise required to be imposed by
17 this section. The authority provided by this subdivision applies to
18 any resentencing that may occur pursuant to any other law.

19 (i) The total amount of credits awarded pursuant to Article 2.5
20 (commencing with Section 2930) of Chapter 7 of Title 1 of Part
21 3 or pursuant to Section 4019 or any other law shall not exceed
22 15 percent of the total term of imprisonment imposed on a
23 defendant upon whom a sentence is imposed pursuant to this
24 section.

25 (j) For the penalties in this section to apply, the existence of any
26 fact required under subdivision (b), (c), or (d) shall be alleged in
27 the accusatory pleading and either admitted by the defendant in
28 open court or found to be true by the trier of fact. When an
29 enhancement specified in this section has been admitted or found
30 to be true, the court shall impose punishment for that enhancement
31 pursuant to this section rather than imposing punishment authorized
32 under any other law, unless another enhancement provides for a
33 greater penalty or a longer term of imprisonment.

34 (k) When a person is found to have used or discharged a firearm
35 in the commission of an offense that includes an allegation pursuant
36 to this section and the firearm is owned by that person, a
37 coparticipant, or a coconspirator, the court shall order that the
38 firearm be deemed a nuisance and disposed of in the manner
39 provided in Sections 18000 and 18005.

1 *(l)* The enhancements specified in this section shall not apply
2 to the lawful use or discharge of a firearm by a public officer, as
3 provided in Section 196, or by any person in lawful self-defense,
4 lawful defense of another, or lawful defense of property, as
5 provided in Sections 197, 198, and 198.5.

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