

January 20, 2022

Dear Friend,

Vivian and Anissa here, writing to you as the Ella Baker Center for Human Rights (EBC) Fall Policy Interns! We wanted to send you our end of the year policy newsletter to update you on our campaigns and organizing work. Additionally, the 2021 legislative session just ended and we wanted to update you on other laws that affect sentencing and incarceration in California. We hope this is helpful for your personal advocacy, and for others in your life who could benefit from this newsletter.

EBC also has many materials in Spanish; if you would prefer to receive materials in Spanish, please let us know so we can update our records! Additionally, please know that over the last 18 months, our mailing list has more than tripled in size. This means that our community is stronger than ever, but it also means that it may take us longer to respond to your letters. We apologize if you wrote to us this year and we didn't reply to you yet. We are doing our best and will try to be in touch as soon as possible! We encourage you to continue sharing your experiences, ideas, and feedback with us.

About the Ella Baker Center for Human Rights

We are named after the brilliant, Black hero of the civil rights movement who inspired and guided emerging leaders. We exemplify Ella Baker's legacy by building the power of Black, brown, and poor people, shifting resources away from prisons and punishment and towards opportunities that make our communities safe, healthy, and strong. Currently, we work to end criminalization and mass incarceration in the United States. We have also been leading work to respond to COVID-19 outbreaks across California state prisons, jails, and ICE detention centers by advocating to stop involuntary transfers, expand releases without categorical exclusions, protect the health and safety of incarcerated people, and provide accurate information to people inside and to their families.

Below you will find an update on the legislation that was co-sponsored for the 2021 legislative cycle, along with some of the important legislation that our allies led in the 2021-2022 cycle.

2021 Legislation Co-Sponsored by the Ella Baker Center

AB 256 California Racial Justice Act for All (Asm. Kalra) is now a 2-year bill, meaning that its progress is on hold until next year. AB 256 asserts civil rights in the courtroom: explicitly prohibiting the state from discriminating on the basis of race, ethnicity, or national origin to seek or obtain a conviction or sentence. AB 256 would apply this protection *retroactively* to include prior convictions where racism was a factor. Retroactive relief would be phased in, beginning with anyone currently incarcerated who is convicted of a felony and for people facing deportation. In 2023, AB 256 will extend to formerly incarcerated people with felony convictions dating back to 10 years to file a motion for relief. By 2025, AB 256 will apply to any felony conviction ever. Currently, AB 256 has passed out of the Assembly and is in the Senate Appropriations Committee.

AB 292 Access to Programming Act (Asm. Stone) was passed and signed by the Governor, making it law! AB 292 reduces barriers to programming, like interruptions due to transfers, quarantines, lockdowns and conflicting work assignments. It encourages more hours of programming available to all people incarcerated under CDCR, despite their security level or length of sentence. It ensures alternatives to in-person programming are offered and that those alternatives do not limit or negatively affect the quality or quantity of in-person programming. Unfortunately, the bill was amended to remove provisions establishing a pathway for people serving convictions for either nonviolent or violent offenses to earn the same amount of good conduct credits once their VIO administrative determinant is removed.

SB 483 Repeal Ineffective Sentence Enhancements (RISE) Act (Sen. Allen) was passed and signed by the Governor, making it law! Effective Jan. 1, 2022, this bill will reduce prison and jail populations by retroactively applying the repeal of the three-year (SB 180, 2017) and one-year (SB 136, 2019) sentence enhancements. This bill requires CDCR and Sheriffs to identify folks with these enhancements and provide their information to resentencing courts by July 1st, 2022 -- for individuals who have served their base term and are currently serving a sentence based on an enhancement -- and by December 31, 2023 for all other individuals. Every person has a right to a resentencing hearing with the presumption that their sentence enhancements will be removed. This presumption can be overcome and the same sentence can be reimposed, but a higher sentence cannot be. Individuals can also request a lower sentence based on additional changes in law or other mitigating factors and counsel must be appointed.

SB 300 Sentencing Reform Act of 2021 (Sen. Cortese) is now a 2-year bill, meaning that its progress is on hold until next year. This bill would reform California's unjust "felony murder special circumstances" law to ensure that the death penalty or LWOP would not be imposed on those who did not kill a person, or who as an accomplice did not intend that a person die. It will restore the judge's discretion to strike a 'special circumstances' enhancement. Unfortunately, the bill was amended to remove the section that provided for resentencing of persons currently in prison with a LWOP or death sentence. Currently, it has passed out of the Senate and is in the Assembly.

Other Bills Enacted Into Law

These bills were passed by the state legislature and signed by the Governor, making them law. Unless otherwise stated, the following laws go into effect on January 1, 2022.

AB 124 (Asm. Kamlager) Second Look 1170(d) Resentencing Act requires the court to consider intimate partner violence and other traumatic experiences as contributing factors in sentencing and resentencing decisions. If the trauma of those experiences affected the defendant's crime of conviction, it would require the court to sentence them to the lowest possible sentence. Unfortunately, it was amended to exclude provisions that would have allowed currently incarcerated people to refer themselves for resentencing.

AB 333 (Asm. Kamlager) STEP Forward Act will limit the use of gang enhancements by narrowing the scope of what is considered a "criminal gang" and what are defined as "criminal gang activities." Namely, it would remove burglary, looting, felony vandalism, and specified personal identity fraud violations from the crimes that define a pattern of criminal gang activity.

AB 518 (Asm. Wicks) Violations Punishable in Different Ways will end the requirement that a person be punished under the law with the longest possible term of imprisonment possible.

AB 624 (Asm. Bauer-Kahan) Youth Fair Process Act strengthens the existing mechanism for review of a juvenile court's order transferring a youth from juvenile to adult court. This legislation requires appellate courts to immediately review on appeal a transfer decision if the youth's lawyer files within 30 days of the trial court's order.

AB 1540 (Asm. Ting) Ensuring Due Process & Equity in CA Resentencing Laws addresses implementation issues of Penal Code section 1170(d)(1) by ensuring that an incarcerated person is notified about their resentencing referral, creating court deadlines and the right to counsel, providing a presumption in favor of resentencing for all law enforcement referrals, and clarifying that a judge can reduce a charge to a lesser-included or lesser-related offense. The bill will also give the Attorney General the power to recommend a person for resentencing when they prosecuted the case, and move PC § 1170(d)(1) to its own new Penal Code section (1170.03) to clarify the law.

SB 73 (Sen. Wiener) Repealing Mandatory Jail Sentences for Nonviolent Drug Offenses will repeal mandatory minimum sentences for persons convicted of specified nonviolent drug offenses and provide judges with the discretion to grant probation.

SB 81 (Sen. Skinner) Make the Crime Match the Time aims to provide guidance on when judges may apply sentence enhancements by clarifying the parameters a judge must follow to improve fairness in sentencing and help ensure that penalties more closely reflect the circumstances of the crime. SB 81 establishes a presumption that judges should not apply enhancements unless there is clear and convincing evidence that not using the enhancement would endanger the public.

SB 317 (Sen. Stern) Credit for Placement in Mental Hospital will permit application of conduct credits for persons confined in a state hospital or other mental health treatment facility pending their return of mental competency. The bill would authorize a court, upon finding the defendant incompetent to stand trial, to suspend the proceedings and take certain actions, including granting diversion not to exceed one year. It also modifies existing procedures relating to a finding of mental incompetence for misdemeanor defendants.

SB 383 (Sen. Cortese) The Juvenile Justice Diversion Act seeks to expand opportunities for youth who commit nonviolent felonies by increasing access to diversion programs. This includes giving access to youth that may have sold, possessed, or distributed controlled substances.

SB 416 (Sen. Hueso) Incarcerated Students' Bill of Rights Act will provide incarcerated students protections while they seek post-secondary education by protecting access to face-to-face classroom-based instruction or distance-learning courses that meet the entrance standards. The bill would also require incarcerated students who are enrolled in full-time college programs to be deemed by CDCR to be assigned to a full-time work or training assignment, rather than having to combine their full-time college program with a half-time work or career program.

SB 775 (Sen. Becker) Expansion of SB 1437 Limit on Felony Murder allows people convicted via the felony murder rule to petition for resentencing or appeal if they were prosecuted for murder, attempted murder, or voluntary manslaughter. Folks can petition for resentencing (or challenge on direct appeal) if they were prosecuted under the natural and probable consequences doctrine or the theory where malice is imputed to a person based solely on their participation in a crime.

Other 2-Year Bills

These are 2-year bills, meaning that they will be on the inactive file until the beginning of January 2022 when they can be reintroduced for votes.

AB 503 (Asm. Stone) End “Endless Probation” for CA Youth will create statutory guidelines to tailor the length of time youth spend on probation and ensure that the probation conditions are developmentally appropriate. It would also remove the authority of a county board of supervisors to impose restitution fees on youth.

AB 679 (Asm. Friedman) Testimony of In-Custody Informants will make testimony or information obtained by an in-custody informant inadmissible in a felony prosecution if it was obtained in exchange for a grant or promise by an attorney representing the state. The bill would also expand the definition of “in-custody information” to include when the informant and the suspect/defendant are in custody of law enforcement, in any custodial setting.

AB 717 (Asm. Stone) Expanding the California Identification Program will provide all people released from the custody of CDCR the chance to receive legal photo identification before their reentry into society. Amended such that people being released who didn’t have a Cal ID card or driver’s license before release will receive a Cal ID card, while people who already had a driver’s license will be offered a duplicate or renewal driver’s license.

AB 937 (Asm. Carrillo) VISION Act will prohibit any state or local agency from arresting or facilitating the arrest or transfer to ICE detention centers. It would also end CDCR’s mandate to implement procedures to identify all undocumented incarcerated people in their custody and restricts local and state governments from sharing immigrant status information.

AB 960 (Asm. Ting) Expand Medical Parole would create a panel at each institution, composed of a department psychologist, primary care provider, and representative from California Correctional Health Care Services, to be the state’s authority on medical parole decisions. The bill would expand qualifying criteria for medical parole, establish a new medical parole process, and remove CDCR’s authority to return an individual to custody if they are no longer eligible for medical parole.

SB 731 (Sen. Durazo) Sunset of Criminal Convictions will create a comprehensive process to automatically seal conviction and arrest records in California once a person has fully completed their sentence and successfully gone two years without law enforcement contact, expanding this relief to people who were convicted of a felony on or after January 1, 2005. Records of arrests that didn’t result in a conviction, including for felonies, would also be automatically sealed.

ACA 3 (Sen. Kamlager) Involuntary Solitude will amend the California Constitution to remove the conditional language that states slavery and involuntary servitude is prohibited “except to punish crime.” This would thereby abolish slavery and involuntary servitude without exception.

Bills that are Stalled

These bills are technically still active, but have not yet made substantial progress through their first legislative house. They have a deadline that they must move forward by early spring 2022, and we will provide more updates on them as we learn more about their status.

AB 329 (Asm. Bonta) The Pretrial Justice Reform Act creates a more fair pretrial system by ensuring that people accused do not remain in custody simply because they cannot afford bail. The bill will set bail at \$0 for most misdemeanors and low-level felonies.

SB 82 (Skinner) Petty Theft will define first degree petty theft as taking \$950 or less of property without a deadly weapon or causing great bodily injury. It would require these thefts be charged as petty theft, which is a misdemeanor, rather than burglary or robbery. It categorizes all other petty theft as second-degree petty theft. Finally, it would allow someone who has been convicted of robbery to petition the court to vacate their conviction or resentence them if their actions would be considered petty theft under the new law.

SB 481 (Sen. Durazo) Sentencing: Special Circumstances will allow people serving a LWOP sentence for an offense that was committed when they were under 25 years old to petition the court to recall and resentence them to a lesser sentence. This would include people with a conviction that includes torture or in which the victim was a public safety official, including a firefighter or police officer. This bill creates a youth offender parole hearing for the purpose of reviewing the parole suitability of any person under 25 years old at the time of the alleged offense.

Bills that Died in 2021

These bills died in committee or on the floor, or were passed by the legislature and then vetoed by the Governor. They can be taken up again in the future, but will need to start the process over again.

AB 990 (Asm. Santiago) Keeping Families Connected would have strengthened visiting rights in California's state prisons by making them a civil right. The bill was amended to focus on removing specific barriers to visiting by prohibiting denials of visiting based on: a rule violation that did not occur during visiting with the affected visitor; errors or omissions on a visiting application if the information is in the applicant's DOJ criminal background report; and the visitor's or incarcerated person's contact history with law enforcement except for serious violations of visiting rules. This bill was passed by both houses of the legislature, but vetoed by the Governor.

AB 1224 (Asm. Levine) Restore Power to Dismiss Special Circumstances would have restored the power of judges to dismiss special circumstances after a jury verdict and goes further by requiring dismissal in many circumstances, including if it has been more than 20 years since the conviction and the individual has not been charged with any violent acts since.

AB 1509 (Asm. Lee) Anti-Racism Sentencing Reform Act would have eliminated most gun enhancements and reduced all others to 1/2/3 years while allowing for retroactive relief.

SB 243 (Sen. Wiener) End Wrongful Convictions Act would have expanded the definition for false forensic science in habeas law to give convicted persons a more just shot at relief when the court finds that the forensic science was not evidence-based or if there has been the emergence of a dispute in the relevant scientific community and the evidence is no longer reliable.

SB 493 (Sen. Bradford) The PROMYSE (Promoting Youth Success and Empowerment) Act would have required at least 95% of Juvenile Justice Crime Prevention Act (JJCPA) funds to be invested in community-based organizations for trauma-informed and youth development work.

California Budget Update

The legislature & the Governor have finalized the 2021-22 budget, including the following highlights:

- Includes an EBC budget play allocating \$1.75 million General Fund for a one-year Board of Parole Hearings pilot to require state-appointed attorneys to provide an additional hour of counsel to incarcerated persons before they are interviewed for their comprehensive risk assessment and to represent them before the full board if their case is referred to the full board for review at a monthly executive meeting. This shall include at least one hour of counsel, education, and advice on the importance of the comprehensive risk assessment and its role in the parole decision making process.
- Reduces debt for Californians of low-income by eliminating various criminal administrative fees, including the elimination of the civil assessment.
- Restores \$200 million ongoing General Fund to allow courts to re-open temporarily closed courtrooms and process case backlogs that have accumulated during the pandemic. Also, includes an additional \$72 million General Fund ongoing to support trial court operations.
- Creates a “Rehabilitation, Re-entry and Recidivism Reduction” package of \$200+ million starting in 2021-22 for career development, rehabilitative programming, local support for individuals to remain out of the criminal justice system, and removal of barriers to successful re-entry.
- Provides \$27.6 million General Fund in 2021-22 and \$7 million ongoing for the new Office of Youth and Community Restoration under the Health and Human Services Agency to support the continuum of youth justice in the state to improve youth outcomes, reduce and eliminate racial disparities, and enhance public safety.
- Includes \$12 million General Fund one-time to CDCR for 60 minutes of telephone calls to each incarcerated person every two weeks at no cost to them or the person receiving the telephone call. This will be in addition to, and will not supplant, the existing 15 minutes every two weeks of no cost telephone calls currently provided to incarcerated persons or the persons receiving telephone calls. Also includes 60 electronically transmitted outgoing written messages, equivalent to an email or instant message, per month at no cost to the incarcerated person or the person they are communicating with.
- Includes supplemental reporting language for a long-term prison infrastructure plan to limit unnecessary General Fund expenditures.
- Adds a 3rd day of in-person visitation on Fridays at all institutions, and provides visitors with free transportation on select days throughout the year to all prisons via chartered buses.
- Includes \$175 million General Fund for various programs to support survivors of domestic violence, sexual violence, human trafficking, and forced sterilization.

We will know more about the status of these bills, as well as new bills that are introduced next year, once the next legislative session starts in 2022. In the meantime, we and the rest of the Ella Baker Center will be advocating, organizing, and spreading the word and we ask you to join us. Thanks to everyone who built with us this year. It’s an honor to fight for freedom with you.

In Solidarity,



Anissa Silva
Fall Policy Intern



Vivian Kuang
Fall Policy Intern