



An Overview of the 2021 Legislative Year

In July, a huge budget surplus enabled Gov. Newsom to sign a historic state budget for fiscal year 2021-2022 with significant funding increases for the state's safety net, relief for persons and small businesses impacted by the COVID 19 pandemic, education, housing, increases in childcare, early childhood education and health care. The new budget also makes notable investments in mitigating climate change, drought, and wildfire resiliency and closing the digital divide. (For a detailed look at the 2021-2022 budget agreement check the California Budget and Policy Center's analysis [here](#).)

In mid-November, the Legislative Analyst's Office issued its fiscal outlook with a prediction that state revenues will continue to grow at historic rates and that California will begin the 2022-2023 fiscal year with a \$31 billion surplus. What follows is an overview of the first year of the biennial session with an eye towards year two.

Justice Reform

The Legislature recognizes the harmful and corrosive role that race plays at all levels of the justice system as well as the harm inflicted on individuals and communities by lengthy sentences. While lengthy sentences do little to improve public safety, they fueled California's huge prison expansion in the 1990s along with its unsustainable impact on state and local budgets.

In 2020, Gov. Newsom signed [AB 2542](#), by Ash Kalra (D-Santa Clara), which prohibits the state from seeking a conviction or imposing a sentence based on race,

ethnicity, or national origin. Statistical evidence confirms systemic bias in charging and sentencing decisions. People of color have been excluded from jury service without cause, and prejudicial racist statements have made their way into California courtrooms. While AB 2542 marks a huge advancement, it only applies prospectively.

This year, [AB 256](#), the California Racial Justice Act (Kalra) would make those provisions retroactive. Therefore, defendants previously convicted of offenses where race played a prominent role in their conviction would have grounds to appeal their conviction. AB 256 passed the full Assembly and the Senate Public Safety Committee. It is now in the Senate Appropriations Committee, and the author plans to move the bill in early 2022.

The Legislature continues to push back on mandatory sentencing schemes and sentencing enhancements. Both were popular in the 1980s and 1990s and are key drivers of mass incarceration. Sentencing enhancements often exceed the amount of the base sentence and are applied disproportionately to people of color and persons suffering from mental illness. Mandatory minimum sentences prohibit trial court judges from tailoring sentences to fit the crime based on the facts of the individual case. When sentences are extraordinarily long, they can be used as leverage by prosecutors to persuade defendants to forfeit their right to a jury trial in exchange for pleading guilty to lesser charges. Even defendants who are factually and/or legally innocent may be bamboozled to forgo a jury trial in exchange for accepting a lower sentence.

[Senate Bill 81](#), by Nancy Skinner (D-Berkeley), requires trial courts to give great weight to defendants' mitigating evidence in exercising their discretion to dismiss sentencing enhancements. The bill enumerates factors that weigh in favor of dismissing

an enhancement unless the court finds that the dismissal would endanger public safety. SB 81 does not apply to violent felonies and was signed by Gov. Newsom.

Under current law, a person convicted of first-degree murder with the finding of a “special circumstance,” can only be sentenced to death or life without the possibility of parole (LWOP). A first-degree murder conviction normally requires the state to prove that the defendant intended to kill. However, the state’s felony murder rule expands the list of special circumstances to include the participation in numerous felony crimes. Under these felony murder special circumstance provisions, the state is not required to prove intent or that the defendant pulled the trigger. Rather, the state only needs to prove that the defendant participated in the commission of the enumerated felony to receive a mandatory death or life without parole sentence.

Ironically, the enumeration of special circumstances was intended to narrow California’s application of the death penalty to address a U.S. Supreme Court ruling that states had to reserve the death penalty for the proverbial “worst of the worst” offenses. With California’s expansive list of special circumstances that narrowing is conspicuously absent.

In 2018, California began to limit its application of the felony murder rule with the enactment of [SB 1437](#) (Skinner). This year, Gov. Newsom signed [SB 775](#), by Josh Becker (D-San Mateo) to clarify that SB 1437 also applies to attempted murder and lesser charges; however, SB 1437 did not change California’s special circumstances.

This year, Senator Dave Cortese (D-San Jose) introduced [SB 300](#) to restore a judge’s discretion to dismiss special circumstances if the judge determines that a sentence of 25 years-to-life with the chance of parole would better serve the interest of

justice. SB 300 passed the full Assembly and is now in the Senate and can be acted on anytime in 2022. [SB 481](#), by María Elena Durazo (D-Los Angeles), would allow a judge to strike a special circumstance for persons 25-years-old or younger sentence to LWOP. After serving 15 years they would have the chance to earn parole in a Youthful Offender Parole Hearing. Youthful Offender Parole Hearings require the court to give great weight to the hallmark features of youth. The bill is now a two-year bill and will have to pass the full Senate by January 31st to advance to the Assembly. Because these bills amend [Proposition 115](#), passed by California voters in 1990, they both require a two-thirds majority to pass.

Other notable justice reforms signed into law this year include [AB 333](#), by Sydney Kamlager (D-Los Angeles), which enacts some reasonable standards on when prosecutors can charge gang enhancements. [SB 483](#), by Ben Allen (D-Redondo Beach), makes the repeal of specified drug enhancements retroactive. [SB 73](#), by Senator Scott Wiener (D-San Francisco) eliminates mandatory minimum sentences for specified drug offenses and allows judges to grant probation when doing so would further the interests of justice, public safety, or public health. [AB 1540](#), by Phil Ting (D-San Francisco), puts some equitable due process protections in place for prisoners who have been recommended for resentencing by a prosecutor or the Department of Corrections and Rehabilitation.

Policing

California will soon have a statewide, police decertification process for law enforcement officers guilty of certain crimes or serious misconduct thanks to the governor's signing of [SB 2](#), by Stephen Bradford (D-Los Angeles) and Toni Atkins (D-

San Diego). Until now California was one of only four states that lacked a statewide decertification process. A law enforcement officer dismissed for serious misconduct by one agency could be hired by another agency. To improve police accountability Gov. Newsom signed [SB 16](#) (Skinner), which increases public access to police records. The governor also signed [AB 118](#), which creates a pilot program to expand the participation of community-based organizations in emergency response functions for vulnerable populations in those situations where a police response is not called for. The 2021-2022 state budget includes a \$10 million appropriation for the pilot program. [AB 481](#), by David Chiu (D-San Francisco) requires local law enforcement agencies to obtain approval from their local governing body prior to obtaining military equipment and was signed into law.

Fair Treatment of Immigrants

Income-eligible adults ages 50 and over will now qualify for full-scope Medi-CAL regardless of immigration status thanks to a budget agreement between the Legislature and Gov. Newsom. The expansion is expected to impact 235,000 California residents. [AB 4](#), by Joaquin Arambula (D-Fresno), which expands eligibility to all income-eligible persons regardless of age or immigration status, passed the full Assembly and is now a two-year bill and can be acted on next year. The 2021-2022 budget also contained language to end the exclusion of undocumented residents from basic food assistance beginning in 2023-2024.

[AB 937](#), the Vision Act, by Wendy Carrillo (D-Los Angeles), would prohibit state and local corrections facilities from cooperating with Immigrations and Customs Enforcement (ICE) for the purpose of detaining individuals who have been deemed

worthy of release. The bill passed the full Assembly and is now on the Senate Floor to be acted on in 2022. The governor also signed [AB 263](#) (Arambula) to require private detention facilities to comply with all state and local public health orders and occupational safety and health regulations. ICE currently contacts with private detention facilities, which have subjected detainees to serious COVID 19 outbreaks.

Environment and Environmental Justice

The 2021-2022 state budget includes an unprecedented \$15 billion for climate, drought, and wildfire resilience, zero emission vehicles and sustainable agricultural practices. However, in a year when California and much of the planet has been ravaged by wildfires and prolonged drought, and when climatologists are warning that there is a short window of opportunity to mitigate the worst effects of climate changes, several major environmental bills did not advance in the Senate.

[AB 1395](#), by Al Muratsuchi (D-Torrance) and Cristina Garcia (D-Downey), would require the state to achieve carbon neutrality no later than 2045 and maintain net negative greenhouse gas emissions thereafter. The bill met heavy opposition in the Senate from the oil and gas industry, organized labor and the California Chamber of Commerce and received only 14 votes in the Democratic-controlled Senate. Reconsideration was granted, and the bill can be taken up anytime next year. [SB 260](#), the Corporate Accountability Act (Wiener), would require large companies doing business in California to annually report their greenhouse gas emissions and set targets to reduce their carbon footprint was parked in the Senate Appropriations Committee and has until January 31 to pass the full Senate.

Gov. Newsom signed a package of circular economy bills to reduce plastic pollution and move the state away from reliance on disposable products. [AB 1276](#) (Carrillo) provides that single-use dining utensils will be provided to consumers only upon request. [SB 343](#) (Allen) will bring truth in labeling by prohibiting the chasing arrows symbols on products that are not actually recycled. [AB 881](#), by Lorena Gonzalez (D-San Diego) closes a loophole in California law that enables exported plastic waste to count towards state reduction and recycling targets even when it is incinerated or dumped in landfills. [AB 962](#) (Kamlager) will facilitate glass bottle reuse by allowing returnable bottles to flow through the state's Beverage Container Recycling Program. Rather than being crushed for recycling, the bottles can be washed and refilled by beverage producers.

[AB 1201](#) (Ting) provides that products can be labeled as compostable only if they meet certain standards that are verified by a third party and do not include perfluoroalkyl and polyfluoroalkyl substances (PFAS), also known as harmful forever chemicals. The governor also signed a companion bill, [AB 1200](#) (Ting), which bans PFAS chemicals in food packaging beginning in 2024. A bill to prohibit online retailers from utilizing single-use packaging was defeated in the Assembly and will not advance in year two of the session. [AB 1371](#), by Laura Friedman (D-Burbank) was met with heavy industry opposition in the heavily Democratic-controlled Assembly and came up five votes short.

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