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DISTRICT ATTORNEY

Policy Directive
San Francisco District Attorney's Office
Status Sentencing Enhancements

I. INTRODUCTION

Status sentencing enhancements are a legacy of California's "tough on crime" era, an era that fueled mass incarceration and disparately impacted communities of color.

Because the statutory ranges for criminal offenses and relevant conduct enhancements are adequate to hold people accountable and protect public safety, this policy will ensure that the San Francisco District Attorney's Office enhancements policy no longer contributes to over-incarceration, racial disparities and disproportionate punishments.

II. POLICY

Enhancing Adult Sentences

- Any prior-strike status enhancements (Penal Code § § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be charged and pending strike-prior enhancements will be dismissed.
- Any Prop 8 or "nickel-priors" status enhancements (Penal Code §667(a)(1)) will not be charged and pending enhancements will be dismissed.
- STEP Act enhancements ("gang enhancements") (Penal Code § 186.22 et. seq.) will not be charged and pending enhancements will be dismissed.

The presumption is that the sentence for the underlying crime and the ability to charge appropriate conduct enhancements (e.g., personal infliction of great bodily injury, personal use of a firearm) are sufficient to protect public safety. In a case in which there are relevant aggravating factors, including prior convictions, this office will seek the aggravated prison term prescribed for the offense whenever appropriate.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense (i.e., felon in possession of a firearm, driving under the influence etc.), nor does it affect evidence code provisions that allow for introduction of prior conduct (i.e., Evidence Code

sections 1101, 1108, 1109). If there is a question regarding whether this policy affects a specific crime or enhancement, contact your manager.

III. DATA COLLECTION

All Assistant District Attorneys shall assist with the Office's procedures to collect data according to existing data protocol. The data will be analyzed to evaluate the effectiveness of this policy for protecting public safety, and the impact on mass incarceration and racial disparities. This policy will be periodically reevaluated based on these factors.

IV. EXCEPTIONS

In the event extraordinary circumstances present unusual risks of harm to public safety or crime victims, exceptions to this policy may be made with the approval of the District Attorney or his designee. This exception can apply after an initial charging decision, when new facts or circumstances develop as a result of additional investigation or after an evidentiary hearing.

V. APPENDIX

Status Enhancements

The Stanford Computational Policy Lab studied San Francisco's use of sentencing enhancements from 2005 to 2017. They released their report, [*Sentencing Enhancements and Incarceration: San Francisco, 2005-2017*](#) in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California's mass incarceration problem can be tied directly to the extreme sentencing laws passed by voters in the 1990's, including the 1994 Three Strikes Law.

In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. We now have 130,000 people in prison and 70,000 people in our jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about **1 out of 4 years** served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. Worse still, these enhancements exacerbate racial disparities in the justice system: **45% of people serving life sentences in CDCR under the Three Strikes law are black.**

Gang enhancements have been widely criticized as unfairly targeting black and brown populations – particularly young men of color. Recent analyses by the LA Times suggest that the CalGang database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, who has studied the causes and effects of mass incarceration, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have made it clear that what deters violent and anti-social behavior is not the threat of a long sentence imposed at some point in the future, only imposed in those cases that result in an arrest and conviction. What deters far more effectively is the risk of detection and apprehension in the first place. Policing deters; long sentences do little.

Other studies increasingly indicate that spending more time in prison *causes* the risk of later reoffending to rise: as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives that can reduce crime as well if not better while avoiding all the various costs that prisons impose. And such options exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

According to CDCR data from 2019, each year of incarceration in state prison costs approximately \$82,000. By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, public health systems and economic development initiatives, we can reduce crime *and* help people improve their lives.