

Retroactivity and AB 236

Presentation to the Advisory Commission on the
Administration of Justice

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Mechanisms of Retroactivity

- Several ways to apply retroactivity
 - Apply policies to those currently serving a sentence
 - Parole eligibility
 - Revocation terms
 - Authorize petition for sentence modification/reconsideration/reduction
 - Sentence reclassification
 - Mandatory minimums
 - Habitual offender enhancements
 - Authorize the creation of a commutation docket
 - Sentencing and parole changes

Possible Retroactivity in AB 236

- Burglary
- Theft
- Drug Offenses
 - Possession of a Controlled Substance;
 - Opening or Maintaining a Place for Unlawful Sale, Gift or Use of Controlled Substance;
 - Commercial Controlled Substance Offense;
 - Possession for Purpose of Sale;
 - Trafficking in Controlled Substances; and
 - Knowingly Using or Being Under the Influence of Controlled Substances
- Gaming Offenses
- Motor Offenses

Possible Retroactivity in AB 236

- Additional policies that could be made retroactive:
 - Habitual Criminal Enhancement
 - Presumptive Probation
 - Probation Term Lengths
 - Revocation Limitations

Examples of retroactive application of criminal justice policies

First Step Act: 2018

- First Step Act: 2018
 - Retroactively applied the provisions outlined in the Fair Sentencing Act, which reduced sentencing disparities between crack and powdered cocaine
 - Authorized the defendant, the BOP, the attorney for the government, or the court to file a motion for a reduction of sentence
 - The court is not required to reduce a person's sentence under the First Step Act

Oklahoma HB 1269: 2019

- State Question 780 in 2018 reclassified simple drug possession from a felony to a misdemeanor
- HB 1269 made State Question 780 retroactive
 - Required the Pardon and Parole Board to establish an accelerated commutation docket for any person serving a felony possession sentence at time of 780 enactment
 - Required the DOC to certify a list of potentially eligible individuals to the Pardon and Parole Board
 - If Board recommends a commutation it is sent to Governor for final approval

Louisiana SB 139: 2017

- Authorized the application of earned compliance credits to those on supervision or serving a sentence at the time of enactment
- Made changes to probation and parole practices including expanded use of alternative sanctions and reduced periods of incarceration for revocations
 - Applied new policies to those on supervision or serving a sentence at the time of enactment
 - *The policy did not re-calculate sanctions or revocation sentences already ordered, but applied to all individuals on supervision on or after the effective date*

Maryland SB 1005: 2016

- Authorized judges to depart from a mandatory minimum sentence if a case met certain criteria
 - Safety valve applied to individuals serving mandatory minimum sentences for various drug offenses at the time of enactment
 - Presumption in favor of the safety value unless the state can prove that:
 - Maintaining the mandatory minimum sentence would not result in substantial injustice to the defendant; and
 - The mandatory minimum sentence is necessary for the protection of the public

Delaware SB 163: 2016

- Allows individuals sentenced as habitual offenders under prior law to apply for a sentence modification after serving the minimum of the original sentence imposed
- The judge may modify, reduce, or suspend the petitioner's sentence
- The judge is not required to grant a sentence modification

California Proposition 47: 2014

- Reclassified certain felonies as misdemeanors
- Allowed individuals to petition for a resentencing if they are serving a sentence for a felony conviction that was reclassified as a misdemeanor in the Act
- Requires the trial court to resentence the person to the misdemeanor unless the court determines that the individual would pose an unreasonable risk of danger to public safety

Thank you

Questions?

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