SUMMARY

This bill prevents a judge from unilaterally imposing an extended prison sentence based on facts that a jury never sees by requiring that factors of aggravation be found try by a jury or other independent factfinders.

BACKGROUND

In 1976, under Governor Jerry Brown, our current "determinate" sentencing law (DSL) was adopted. The core component of the DSL was the invention of the "triad" sentencing option. Each felony offense was rewritten to include a "low" "mid/middle" and "upper" term. By law, a judge was required to impose the middle term unless the facts in the case justified the "low" or "upper" term. If exceptional facts existed a judge was authorized to impose an "enhanced" sentence; these statutory enhancements have become politically contentious.

As constitutional protections for the criminally accused evolved, California's "triad" approach was eventually subjected to its own constitutional challenge in Cunningham v. California, 59 U.S. 270 (2007). After years of litigation, the United States Supreme Court issued its decision in Cunningham in 2007. The crux of the legal challenge was rooted in a judge's ability to "increase" a sentence beyond the "mid" term. Under the "triad" system such an elevation in sentence was based solely on "aggravating facts" presented to the judge.

However, the majority in Cunningham rightfully noted that the role of a judicial officer is NOT to decide whether an alleged "fact" is true. That is solely the responsibility of a jury. Without presentation to the jury an accused was denied the ability to challenge the facts and cross-examine any witnesses who allege such facts.

In order to cure the constitutional issues held in Cunningham, the California legislature took action through Senate Bill 40 in 2007. SB 40 essential played semantics with our felony sentencing laws. In order to cure the constitutional defect, the bill allowed judges to consider "factors" instead of "facts," which no longer needed to be presented to the jury and proved to be true. By doing so, it allowed the judges to continue considering "factors" in mitigation or aggravation when deciding which term to impose. SB 40 inserted a sunset clause into the bill language; several subsequent bills have extended the sunset, most recently Senate Bill 463 (2013), by Senator Fran Pavley.

SOLUTION

The bill would provide that the court may not impose an upper sentence based on aggravating facts unless the facts were first presented to the factfinder and the factfinder found the facts to
be true. It would also require the court to state
the reasons for its sentence choice on the record
at the time of sentencing, including the specific
facts in aggravation, if any, the court relied upon
to impose an upper term.

STATUS

Senate Committee on Public Safety – Set for
Hearing on April 12, 2016

SUPPORT

• California Attorneys for Criminal Justice
  (sponsor)

OPPOSITION

No registered opposition

Contact:  Heather Hopkins, 916-651-4011
Version: April 4, 2016