

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 801

Date: April 4, 2021

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CLAC members do not favor passage of LD 801, which would repeal section 1609 of the Criminal Code.

The bill would do two things. First, the bill would remove the existing mandatory requirement that a sentence for a crime committed while the perpetrator was in execution of a sentence of imprisonment be nonconcurrent, i.e., consecutive, to the sentence being served. On this point, CLAC members do not seek to maintain this mandatory requirement and support making the determination discretionary for the court whether the sentence should be concurrent or non-concurrent.

Second, however, repeal of section 1609 would remove the power of a judge to interrupt the running of the existing sentence and insert a new, nonconcurrent sentence to be served before the existing sentence commences again. This power is important because current law does not allow a court to impose a sentence that is consecutive to a split sentence, i.e., a sentence of imprisonment followed by a period of probation, and most sentences being served are, in fact, split sentences. As a result, repealing section 1609 would require the court to impose a concurrent sentence in most cases, thereby depriving the court of the ability to impose an additional punishment if the court, in its discretion, determines that an additional penalty is warranted.

CLAC members believe that the power to interrupt an existing sentence and insert an additional penalty for a crime committed while serving the first sentence is important and should be maintained. As stated above, however, CLAC members support leaving it to the judge's discretion whether the new sentence should be concurrent or non-concurrent.