

AMENDED IN SENATE APRIL 6, 2005

SENATE BILL

No. 618

Introduced by Senator Speier

February 22, 2005

An act to ~~amend Section 1170 of, and to add Section 2057 to, add Section 1203.8 to~~ the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Speier. Sentencing: ~~mandatory~~ programs.

Under existing law, the Legislature finds and declares that programs should be available for inmates, including educational programs that are designed to prepare nonviolent felony offenders for successful reintegration into the community. Under existing law, the Legislature encourages the development of policies and programs designed to educate and rehabilitate nonviolent felony offenders. ~~Existing law requires the Director of Corrections to implement in every state prison literacy programs that are designed to ensure that, upon parole, inmates are able to achieve a 9th grade reading level.~~

~~This bill would delete those findings and declarations and instead require a court, prior to sentencing a convicted felon, to order an assessment of the person's treatment, literacy, and vocational needs. Any sentence imposed upon the person would be required to include an order for completion of relevant programs to satisfy those identified needs while in prison, and would include recommendations for aftercare programs during the parole period. The bill would require the Director of Corrections to implement programs in the state prisons and through its parole offices to address the needs identified in those assessments and to assure the appropriate programs are provided to inmates, as required by these provisions~~ *authorize a county to develop a multiagency plan to prepare and enhance nonviolent felony offenders' successful reentry into the community, and would require*

that plan be developed by, and have the concurrence of, the presiding judge, the chief probation officer, the district attorney, the local custodial agency, and the public defender, or their designees, for submission to the board of supervisors for its approval. The bill would further authorize the Department of Corrections to enter into an agreement with that county to implement the above provisions and to provide funding for the purpose of the probation department carrying out its assessments, and would make specified findings and declarations in that regard.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1170 of the Penal Code is amended to~~
2 ~~read:~~

3 *SECTION 1. (a) The Legislature finds and declares that the*
4 *successful reintegration of parolees into society depends upon*
5 *the offender's proper assessment of risks and needs prior to entry*
6 *into the prison system and appropriate direction of offenders into*
7 *facilities and programs that are available to address risks or*
8 *needs.*

9 *(b) The Legislature recognizes that the transfer of the*
10 *assessment function from the Department of Corrections to the*
11 *community in which an offender committed his or her crime and*
12 *to which the offender will likely be paroled may represent an*
13 *effective and efficient means to perform an assessment.*

14 *(c) The Legislature encourages the participation of the*
15 *Department of Corrections and interested counties to develop*
16 *and implement plans to transfer assessment functions to local*
17 *probation departments and courts, with the goal of improving*
18 *public safety in the community and to better enable parolees to*
19 *become contributing members of society.*

20 *SEC. 2. Section 1203.8 is added to the Penal Code, to read:*

21 *1203.8. (a) A county may develop a multiagency plan to*
22 *prepare and enhance nonviolent felony offenders' successful*
23 *reentry into the community. The plan shall be developed by, and*
24 *have the concurrence of, the presiding judge, the chief probation*
25 *officer, the district attorney, the local custodial agency, and the*
26 *public defender, or their designees, and shall be submitted to the*

1 board of supervisors for its approval. The plan shall provide that
2 when a report prepared pursuant to Section 1203.10
3 recommends a state prison commitment, the report shall also
4 include, but not be limited to, the offenders' treatment, literacy,
5 and vocational needs. Any sentence imposed pursuant to this
6 section shall include a recommendation for completion while in
7 state prison, all relevant programs to satisfy those needs
8 identified in the assessment.

9 (b) The Department of Corrections is authorized to enter into
10 an agreement with a county or counties to implement subdivision
11 (a) and to provide funding for the purpose of the probation
12 department carrying out the assessment. The Department of
13 Corrections, to the extent feasible, shall provide to the offender
14 all programs pursuant to the court's recommendation.

15 ~~1170. (a) (1) The Legislature finds and declares that the~~
16 ~~purpose of imprisonment for crime is punishment. This purpose~~
17 ~~is best served by terms proportionate to the seriousness of the~~
18 ~~offense with provision for uniformity in the sentences of~~
19 ~~offenders committing the same offense under similar~~
20 ~~circumstances. The Legislature further finds and declares that the~~
21 ~~elimination of disparity and the provision of uniformity of~~
22 ~~sentences can best be achieved by determinate sentences fixed by~~
23 ~~statute in proportion to the seriousness of the offense as~~
24 ~~determined by the Legislature to be imposed by the court with~~
25 ~~specified discretion.~~

26 ~~(2) Notwithstanding paragraph (1), the Legislature further~~
27 ~~finds and declares that programs should be available for inmates,~~
28 ~~including, but not limited to, educational programs, that are~~
29 ~~designed to prepare felony offenders for successful reentry into~~
30 ~~the community.~~

31 ~~(3) (A) In any case in which the punishment prescribed by~~
32 ~~statute for a person convicted of a public offense is a term of~~
33 ~~imprisonment in the state prison of any specification of three~~
34 ~~time periods, the court shall sentence the defendant to one of the~~
35 ~~terms of imprisonment specified unless the convicted person is~~
36 ~~given any other disposition provided by law, including a fine,~~
37 ~~jail, probation, or the suspension of imposition or execution of~~
38 ~~sentence or is sentenced pursuant to subdivision (b) of Section~~
39 ~~1168 because he or she had committed his or her crime prior to~~
40 ~~July 1, 1977. In sentencing the convicted person, the court shall~~

1 apply the sentencing rules of the Judicial Council. The court,
2 unless it determines that there are circumstances in mitigation of
3 the punishment prescribed, shall also impose any other term that
4 it is required by law to impose as an additional term. Nothing in
5 this article shall affect any provision of law that imposes the
6 death penalty, that authorizes or restricts the granting of
7 probation or suspending the execution or imposition of sentence,
8 or expressly provides for imprisonment in the state prison for
9 life. In any case in which the amount of preimprisonment credit
10 under Section 2900.5 or any other provision of law is equal to or
11 exceeds any sentence imposed pursuant to this chapter, the entire
12 sentence shall be deemed to have been served and the defendant
13 shall not be actually delivered to the custody of the Director of
14 Corrections. The court shall advise the defendant that he or she
15 shall serve a period of parole and order the defendant to report to
16 the parole office closest to the defendant's last legal residence,
17 unless the in-custody credits equal the total sentence, including
18 both confinement time and the period of parole. The sentence
19 shall be deemed a separate prior prison term under Section 667.5,
20 and a copy of the judgment and other necessary documentation
21 shall be forwarded to the Director of Corrections.

22 (B) Prior to sentencing a convicted person pursuant to this
23 section, the court shall order an assessment of the person's
24 treatment, literacy, and vocational needs. Any sentence imposed
25 pursuant to this section shall include an order for completion of
26 relevant programs to satisfy those needs identified in the
27 assessment while in prison, and shall include recommendations
28 for aftercare programs during the parole period.

29 (b) When a judgment of imprisonment is to be imposed and
30 the statute specifies three possible terms, the court shall order
31 imposition of the middle term, unless there are circumstances in
32 aggravation or mitigation of the crime. At least four days prior to
33 the time set for imposition of judgment, either party or the
34 victim, or the family of the victim if the victim is deceased, may
35 submit a statement in aggravation or mitigation to dispute facts in
36 the record or the probation officer's report, or to present
37 additional facts. In determining whether there are circumstances
38 that justify imposition of the upper or lower term, the court may
39 consider the record in the case, the probation officer's report,
40 other reports including reports received pursuant to Section

1 ~~1203.03 and statements in aggravation or mitigation submitted by~~
2 ~~the prosecution, the defendant, or the victim, or the family of the~~
3 ~~victim if the victim is deceased, and any further evidence~~
4 ~~introduced at the sentencing hearing. The court shall set forth on~~
5 ~~the record the facts and reasons for imposing the upper or lower~~
6 ~~term. The court may not impose an upper term by using the fact~~
7 ~~of any enhancement upon which sentence is imposed under any~~
8 ~~provision of law. A term of imprisonment shall not be specified~~
9 ~~if imposition of sentence is suspended.~~

10 ~~(e) The court shall state the reasons for its sentence choice on~~
11 ~~the record at the time of sentencing. The court shall also inform~~
12 ~~the defendant that as part of the sentence after expiration of the~~
13 ~~term he or she may be on parole for a period as provided in~~
14 ~~Section 3000.~~

15 ~~(d) When a defendant subject to this section or subdivision (b)~~
16 ~~of Section 1168 has been sentenced to be imprisoned in the state~~
17 ~~prison and has been committed to the custody of the Director of~~
18 ~~Corrections, the court may, within 120 days of the date of~~
19 ~~commitment on its own motion, or at any time upon the~~
20 ~~recommendation of the Director of Corrections or the Board of~~
21 ~~Prison Terms, recall the sentence and commitment previously~~
22 ~~ordered and resentence the defendant in the same manner as if he~~
23 ~~or she had not previously been sentenced, provided the new~~
24 ~~sentence, if any, is no greater than the initial sentence. The~~
25 ~~resentence under this subdivision shall apply the sentencing rules~~
26 ~~of the Judicial Council so as to eliminate disparity of sentences~~
27 ~~and to promote uniformity of sentencing. Credit shall be given~~
28 ~~for time served.~~

29 ~~(e) (1) Notwithstanding any other law and consistent with~~
30 ~~paragraph (1) of subdivision (a) of Section 1170, if the Director~~
31 ~~of Corrections or the Board of Prison Terms or both determine~~
32 ~~that a prisoner satisfies the criteria set forth in paragraph (2), the~~
33 ~~director or the board may recommend to the court that the~~
34 ~~prisoner's sentence be recalled.~~

35 ~~(2) The court shall have the discretion to resentence or recall if~~
36 ~~the court finds both of the following:~~

37 ~~(A) The prisoner is terminally ill with an incurable condition~~
38 ~~caused by an illness or disease that would produce death within~~
39 ~~six months, as determined by a physician employed by the~~
40 ~~department.~~

1 ~~(B) The conditions under which the prisoner would be~~
2 ~~released or receive treatment do not pose a threat to public safety.~~

3 ~~The Board of Prison Terms shall make findings pursuant to this~~
4 ~~subdivision before making a recommendation for resentencing or~~
5 ~~recall to the court. This subdivision does not apply to a prisoner~~
6 ~~sentenced to death or a term of life without the possibility of~~
7 ~~parole.~~

8 ~~(3) Within 10 days of receipt of a positive recommendation by~~
9 ~~the director or the board, the court shall hold a hearing to~~
10 ~~consider whether the prisoner's sentence should be recalled.~~

11 ~~(4) The prisoner or his or her family member or designee may~~
12 ~~request consideration for recall and resentencing by contacting~~
13 ~~the chief medical officer at the prison or the Director of~~
14 ~~Corrections. Upon receipt of the request, if the director~~
15 ~~determines that the prisoner satisfies the criteria set forth in~~
16 ~~paragraph (2), the director or board may recommend to the court~~
17 ~~that the prisoner's sentence be recalled. The director shall submit~~
18 ~~a recommendation for release within 30 days in the case of~~
19 ~~inmates sentenced to determinate terms and, in the case of~~
20 ~~inmates sentenced to indeterminate terms, the director may make~~
21 ~~a recommendation to the Board of Prison Terms with respect to~~
22 ~~the inmates who have applied under this section. The board shall~~
23 ~~consider this information and make an independent judgment~~
24 ~~pursuant to paragraph (2) and make findings related thereto~~
25 ~~before rejecting the request or making a recommendation to the~~
26 ~~court. This action shall be taken at the next lawfully noticed~~
27 ~~board meeting.~~

28 ~~(5) Any recommendation for recall submitted to the court by~~
29 ~~the Director of Corrections or the Board of Prison Terms shall~~
30 ~~include one or more medical evaluations, a postrelease plan, and~~
31 ~~findings pursuant to paragraph (2).~~

32 ~~(6) If possible, the matter shall be heard before the same judge~~
33 ~~of the court who sentenced the prisoner.~~

34 ~~(f) Any sentence imposed under this article shall be subject to~~
35 ~~the provisions of Sections 3000 and 3057 and any other~~
36 ~~applicable provisions of law.~~

37 ~~(g) A sentence to state prison for a determinate term for which~~
38 ~~only one term is specified, is a sentence to state prison under this~~
39 ~~section.~~

40 ~~SEC. 2. Section 2057 is added to the Penal Code, to read:~~

1 ~~2057. The Director of Corrections shall implement programs~~
2 ~~in the state prisons and through its parole offices to address the~~
3 ~~needs of inmates identified in the assessments performed~~
4 ~~pursuant to subparagraph (B) of paragraph (3) of subdivision (a)~~
5 ~~of Section 1170 and to assure that programs are provided to~~
6 ~~inmates to satisfy the requirements of court orders imposed~~
7 ~~pursuant to subparagraph (B) of paragraph (3) of subdivision (a)~~
8 ~~of Section 1170.~~

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