

Introduced by Senator Cogdill

February 14, 2007

An act to amend Section 1170 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 239, as introduced, Cogdill. Crimes: imprisonment.

Existing law sets forth legislative findings establishing that the purpose of imprisonment for crimes is punishment, and also establishes that programs should be available to help prepare nonviolent felony offenders for successful reentry into the community.

This bill would make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
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 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. This purpose
5 is best served by terms *that are* proportionate to the seriousness
6 of the offense with provision for uniformity in the sentences of
7 offenders committing the same offense under similar
8 circumstances. The Legislature further finds and declares that the
9 elimination of disparity and the provision of uniformity of
10 sentences can best be achieved by determinate sentences fixed by
11 statute in proportion to the seriousness of the offense as determined
12 by the Legislature to be imposed by the court with specified
13 discretion.

1 (2) Notwithstanding paragraph (1), the Legislature further finds
2 and declares that programs should be available for inmates,
3 including, but not limited to, educational programs, that are
4 designed to prepare nonviolent felony offenders for successful
5 reentry into the community. The Legislature encourages the
6 development of policies and programs designed to educate and
7 rehabilitate nonviolent felony offenders. In implementing this
8 section, the Department of Corrections *and Rehabilitation* is
9 encouraged to give priority enrollment in programs to promote
10 successful return to the community to an inmate with a short
11 remaining term of commitment and a release date that would allow
12 him or her adequate time to complete the program.

13 (3) In any case in which the punishment prescribed by statute
14 for a person convicted of a public offense is a term of imprisonment
15 in the state prison of any specification of three time periods, the
16 court shall sentence the defendant to one of the terms of
17 imprisonment specified unless the convicted person is given any
18 other disposition provided by law, including a fine, jail, probation,
19 or the suspension of imposition or execution of sentence or is
20 sentenced pursuant to subdivision (b) of Section 1168 because he
21 or she had committed his or her crime prior to July 1, 1977. In
22 sentencing the convicted person, the court shall apply the
23 sentencing rules of the Judicial Council. The court, unless it
24 determines that there are circumstances in mitigation of the
25 punishment prescribed, shall also impose any other term that it is
26 required by law to impose as an additional term. Nothing in this
27 article shall affect any provision of law that imposes the death
28 penalty, that authorizes or restricts the granting of probation or
29 suspending the execution or imposition of sentence, or expressly
30 provides for imprisonment in the state prison for life. In any case
31 in which the amount of preimprisonment credit under Section
32 2900.5 or any other provision of law is equal to or exceeds any
33 sentence imposed pursuant to this chapter, the entire sentence shall
34 be deemed to have been served and the defendant shall not be
35 actually delivered to the custody of the ~~Director of Corrections~~
36 *Secretary of the Department of Corrections and Rehabilitation*.
37 The court shall advise the defendant that he or she shall serve a
38 period of parole and order the defendant to report to the parole
39 office closest to the defendant's last legal residence, unless the
40 in-custody credits equal the total sentence, including both

1 confinement time and the period of parole. The sentence shall be
2 deemed a separate prior prison term under Section 667.5, and a
3 copy of the judgment and other necessary documentation shall be
4 forwarded to the ~~Director of Corrections~~ *Secretary of the*
5 *Department of Corrections and Rehabilitation*.

6 (b) When a judgment of imprisonment is to be imposed and the
7 statute specifies three possible terms, the court shall order
8 imposition of the middle term, unless there are circumstances in
9 aggravation or mitigation of the crime. At least four days prior to
10 the time set for imposition of judgment, either party or the victim,
11 or the family of the victim if the victim is deceased, may submit
12 a statement in aggravation or mitigation to dispute facts in the
13 record or the probation officer's report, or to present additional
14 facts. In determining whether there are circumstances that justify
15 imposition of the upper or lower term, the court may consider the
16 record in the case, the probation officer's report, other reports
17 including reports received pursuant to Section 1203.03 and
18 statements in aggravation or mitigation submitted by the
19 prosecution, the defendant, or the victim, or the family of the victim
20 if the victim is deceased, and any further evidence introduced at
21 the sentencing hearing. The court shall set forth on the record the
22 facts and reasons for imposing the upper or lower term. The court
23 may not impose an upper term by using the fact of any
24 enhancement upon which sentence is imposed under any provision
25 of law. A term of imprisonment shall not be specified if imposition
26 of sentence is suspended.

27 (c) The court shall state the reasons for its sentence choice on
28 the record at the time of sentencing. The court shall also inform
29 the defendant that as part of the sentence after expiration of the
30 term he or she may be on parole for a period as provided in Section
31 3000.

32 (d) When a defendant subject to this section or subdivision (b)
33 of Section 1168 has been sentenced to be imprisoned in the state
34 prison and has been committed to the custody of the ~~Director of~~
35 ~~Corrections~~ *Secretary of the Department of Corrections and*
36 *Rehabilitation*, the court may, within 120 days of the date of
37 commitment on its own motion, or at any time upon the
38 recommendation of the ~~Director of Corrections~~ *Secretary of the*
39 *Department of Corrections and Rehabilitation* or the Board of
40 Prison Terms, recall the sentence and commitment previously

1 ordered and resentence the defendant in the same manner as if he
2 or she had not previously been sentenced, provided the new
3 sentence, if any, is no greater than the initial sentence. The
4 resentence under this subdivision shall apply the sentencing rules
5 of the Judicial Council so as to eliminate disparity of sentences
6 and to promote uniformity of sentencing. Credit shall be given for
7 time served.

8 (e) (1) Notwithstanding any other law and consistent with
9 paragraph (1) of subdivision (a) of Section 1170, if the ~~Director~~
10 ~~of Corrections~~ *Secretary of the Department of Corrections and*
11 *Rehabilitation* or the Board of Prison Terms or both determine
12 that a prisoner satisfies the criteria set forth in paragraph (2), the
13 director or the board may recommend to the court that the
14 prisoner's sentence be recalled.

15 (2) The court shall have the discretion to resentence or recall if
16 the court finds both of the following:

17 (A) The prisoner is terminally ill with an incurable condition
18 caused by an illness or disease that would produce death within
19 six months, as determined by a physician employed by the
20 department.

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

23 The Board of Prison Terms shall make findings pursuant to this
24 subdivision before making a recommendation for resentence or
25 recall to the court. This subdivision does not apply to a prisoner
26 sentenced to death or a term of life without the possibility of parole.

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

30 (4) The prisoner or his or her family member or designee may
31 request consideration for recall and resentencing by contacting the
32 chief medical officer at the prison or the ~~Director of Corrections~~
33 *Secretary of the Department of Corrections and Rehabilitation*.
34 Upon receipt of the request, if the director determines that the
35 prisoner satisfies the criteria set forth in paragraph (2), the director
36 or board may recommend to the court that the prisoner's sentence
37 be recalled. The director shall submit a recommendation for release
38 within 30 days in the case of inmates sentenced to determinate
39 terms and, in the case of inmates sentenced to indeterminate terms,
40 the director may make a recommendation to the Board of Prison

1 Terms with respect to the inmates who have applied under this
2 section. The board shall consider this information and make an
3 independent judgment pursuant to paragraph (2) and make findings
4 related thereto before rejecting the request or making a
5 recommendation to the court. This action shall be taken at the next
6 lawfully noticed board meeting.

7 (5) Any recommendation for recall submitted to the court by
8 ~~the Director of Corrections~~ *Secretary of the Department of*
9 *Corrections and Rehabilitation* or the Board of Prison Terms shall
10 include one or more medical evaluations, a postrelease plan, and
11 findings pursuant to paragraph (2).

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

14 (f) Any sentence imposed under this article shall be subject to
15 the provisions of Sections 3000 and 3057 and any other applicable
16 provisions of law.

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.