

Introduced by Senator DenhamFebruary 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 440, as introduced, Denham. Sentencing.

Existing law sets forth legislative findings establishing that the purpose of imprisonment for crimes is punishment and that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

This bill would make a technical, nonsubstantive change 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, as amended by
- 2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
- 3 read:
- 4 1170. (a) (1) The Legislature finds and declares that the
- 5 purpose of imprisonment for crime is punishment. This purpose
- 6 is best served by terms *that are* proportionate to the seriousness
- 7 of the offense with provision for uniformity in the sentences of
- 8 offenders committing the same offense under similar
- 9 circumstances. The Legislature further finds and declares that the
- 10 elimination of disparity and the provision of uniformity of

1 sentences can best be achieved by determinate sentences fixed by
2 statute in proportion to the seriousness of the offense as determined
3 by the Legislature to be imposed by the court with specified
4 discretion.

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

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

1 and order the defendant to report to the parole office closest to the
2 defendant's last legal residence, unless the in-custody credits equal
3 the total sentence, including both confinement time and the period
4 of parole. The sentence shall be deemed a separate prior prison
5 term under Section 667.5, and a copy of the judgment and other
6 necessary documentation shall be forwarded to the secretary.

7 (b) When a judgment of imprisonment is to be imposed and the
8 statute specifies three possible terms, the choice of the appropriate
9 term shall rest within the sound discretion of the court. At least
10 four days prior to the time set for imposition of judgment, either
11 party or the victim, or the family of the victim if the victim is
12 deceased, may submit a statement in aggravation or mitigation. In
13 determining the appropriate term, the court may consider the record
14 in the case, the probation officer's report, other reports including
15 reports received pursuant to Section 1203.03 and statements in
16 aggravation or mitigation submitted by the prosecution, the
17 defendant, or the victim, or the family of the victim if the victim
18 is deceased, and any further evidence introduced at the sentencing
19 hearing. The court shall select the term which, in the court's
20 discretion, best serves the interests of justice. The court shall set
21 forth on the record the reasons for imposing the term selected and
22 the court may not impose an upper term by using the fact of any
23 enhancement upon which sentence is imposed under any provision
24 of law. A term of imprisonment shall not be specified if imposition
25 of sentence is suspended.

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

31 (d) When a defendant subject to this section or subdivision (b)
32 of Section 1168 has been sentenced to be imprisoned in the state
33 prison and has been committed to the custody of the secretary, the
34 court may, within 120 days of the date of commitment on its own
35 motion, or at any time upon the recommendation of the secretary
36 or the Board of Parole Hearings, recall the sentence and
37 commitment previously ordered and resentence the defendant in
38 the same manner as if he or she had not previously been sentenced,
39 provided the new sentence, if any, is no greater than the initial
40 sentence. The resentence under this subdivision shall apply the

1 sentencing rules of the Judicial Council so as to eliminate disparity
2 of sentences and to promote uniformity of sentencing. Credit shall
3 be given for time served.

4 (e) (1) Notwithstanding any other law and consistent with
5 paragraph (1) of subdivision (a), if the secretary or the Board of
6 Parole Hearings or both determine that a prisoner satisfies the
7 criteria set forth in paragraph (2), the secretary or the board may
8 recommend to the court that the prisoner's sentence be recalled.

9 (2) The court shall have the discretion to resentence or recall if
10 the court finds that the facts described in subparagraph (A) and
11 (B) or subparagraphs (B) and (C) exist:

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

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

18 (C) The prisoner is permanently medically incapacitated with
19 a medical condition that renders him or her permanently unable
20 to perform activities of basic daily living, and results in the prisoner
21 requiring 24-hour total care, including, but not limited to, coma,
22 persistent vegetative state, brain death, ventilator-dependency, loss
23 of control of muscular or neurological function, and that
24 incapacitation did not exist at the time of the original sentencing.

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

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

32 (4) Any physician employed by the department who determines
33 that a prisoner has six months or less to live shall notify the chief
34 medical officer of the prognosis. If the chief medical officer
35 concurs with the prognosis, he or she shall notify the warden.
36 Within 48 hours of receiving notification, the warden or the
37 warden's representative shall notify the prisoner of the recall and
38 resentencing procedures, and shall arrange for the prisoner to
39 designate a family member or other outside agent to be notified
40 as to the prisoner's medical condition and prognosis, and as to the

1 recall and resentencing procedures. If the inmate is deemed
2 mentally unfit, the warden or the warden's representative shall
3 contact the inmate's emergency contact and provide the information
4 described in paragraph (2).

5 (5) The warden or the warden's representative shall provide the
6 prisoner and his or her family member, agent, or emergency
7 contact, as described in paragraph (4), updated information
8 throughout the recall and resentencing process with regard to the
9 prisoner's medical condition and the status of the prisoner's recall
10 and resentencing proceedings.

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

30 (7) Any recommendation for recall submitted to the court by
31 the secretary or the Board of Parole Hearings shall include one or
32 more medical evaluations, a postrelease plan, and findings pursuant
33 to paragraph (2).

34 (8) If possible, the matter shall be heard before the same judge
35 of the court who sentenced the prisoner.

36 (9) If the court grants the recall and resentencing application,
37 the prisoner shall be released by the department within 48 hours
38 of receipt of the court's order, unless a longer time period is agreed
39 to by the inmate. At the time of release, the warden or the warden's
40 representative shall ensure that the prisoner has each of the

1 following in his or her possession: a discharge medical summary,
2 full medical records, state identification, parole medications, and
3 all property belonging to the prisoner. After discharge, any
4 additional records shall be sent to the prisoner's forwarding
5 address.

6 (10) The secretary shall issue a directive to medical and
7 correctional staff employed by the department that details the
8 guidelines and procedures for initiating a recall and resentencing
9 procedure. The directive shall clearly state that any prisoner who
10 is given a prognosis of six months or less to live is eligible for
11 recall and resentencing consideration, and that recall and
12 resentencing procedures shall be initiated upon that prognosis.

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

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

19 (h) This section shall remain in effect only until January 1, 2011,
20 and as of that date is repealed, unless a later enacted statute, that
21 is enacted before that date, deletes or extends that date.