

AMENDED IN ASSEMBLY MARCH 7, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 560

Introduced by Assembly Member Ammiano

February 20, 2013

An act to amend ~~Section 422.55 of the Penal Code, relating to hate crimes~~ *Section 1170 of the Penal Code, relating to crime.*

LEGISLATIVE COUNSEL'S DIGEST

AB 560, as amended, Ammiano. ~~Hate crimes: political affiliation. Sentencing: mandatory supervision.~~

Existing law authorizes a court, when sentencing a person to county jail for a felony, to commit the person to county jail for either the full term in custody, as specified, or to suspend the execution of a concluding portion of the term selected at the court's discretion. Under existing law, this period of suspended execution is supervised by the county probation officer and is known as mandatory supervision.

This bill would instead require the court to suspend execution of the concluding portion of the term in county jail for at least six months, during which time the person would be subject to mandatory supervision. By increasing the duties of county probation officers, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law establishes the offense of a “hate crime” to mean a criminal act committed, in whole or in part, because of one or more actual or perceived characteristics, as specified, of the victim. Existing law prohibits a person from willfully injuring, intimidating, interfering with, oppressing, or threatening any other person in the free exercise or enjoyment of any legal right because the victim has, or is perceived to have, one of those specified characteristics. Existing law also prohibits a person from knowingly defacing, damaging, or destroying the real or personal property of any other person for the purpose of intimidating or interfering with the free exercise or enjoyment of any legal right because the victim has, or is perceived to have, one of those characteristics.~~

~~This bill would add political affiliation to the list of actual or perceived characteristics necessary to determine whether a criminal act qualifies as a hate crime.~~

~~By expanding the scope of an existing crime, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *The vast majority of misdemeanor and felony offenders*
- 4 *receive a sanction of probation for either all or part of their terms.*
- 5 *Research on best practices to reduce recidivism demonstrates that*
- 6 *a combination of probation and effective rehabilitation treatment*
- 7 *is the best sanction to reduce recidivism for the majority of*
- 8 *medium- to high-risk offenders.*
- 9 (b) *Based on these facts, it is clear that probation plays a central*
- 10 *role in the effective administration of California’s criminal justice*

1 system, and it is essential in reducing the high recidivism rates in
2 California's prisons and jails.

3 (c) Effective probation has become even more important with
4 the implementation of the 2011 Realignment Legislation addressing
5 public safety.

6 (d) Across the country, states and counties are using research
7 to enhance community supervision practices and strengthen
8 probation departments.

9 (e) Research conducted by the National Institute of Justice shows
10 that reducing probation caseloads, when accompanied by
11 evidence-based probation practices, effectively reduces criminal
12 recidivism.

13 (f) Research has shown that placing low-risk offenders in
14 intensive programs can actually increase criminal recidivism and
15 that focusing probation supervision resources on higher-risk
16 probationers achieves better outcomes for those probationers.

17 SEC. 2. Section 1170 of the Penal Code, as amended by Section
18 2 of Chapter 828 of the Statutes of 2012, is amended to read:

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

29 (2) Notwithstanding paragraph (1), the Legislature further finds
30 and declares that programs should be available for inmates,
31 including, but not limited to, educational programs, that are
32 designed to prepare nonviolent felony offenders for successful
33 reentry into the community. The Legislature encourages the
34 development of policies and programs designed to educate and
35 rehabilitate nonviolent felony offenders. In implementing this
36 section, the Department of Corrections and Rehabilitation is
37 encouraged to give priority enrollment in programs to promote
38 successful return to the community to an inmate with a short
39 remaining term of commitment and a release date that would allow
40 him or her adequate time to complete the program.

1 (3) In any case in which the punishment prescribed by statute
2 for a person convicted of a public offense is a term of imprisonment
3 in the state prison of any specification of three time periods, the
4 court shall sentence the defendant to one of the terms of
5 imprisonment specified unless the convicted person is given any
6 other disposition provided by law, including a fine, jail, probation,
7 or the suspension of imposition or execution of sentence or is
8 sentenced pursuant to subdivision (b) of Section 1168 because he
9 or she had committed his or her crime prior to July 1, 1977. In
10 sentencing the convicted person, the court shall apply the
11 sentencing rules of the Judicial Council. The court, unless it
12 determines that there are circumstances in mitigation of the
13 punishment prescribed, shall also impose any other term that it is
14 required by law to impose as an additional term. Nothing in this
15 article shall affect any provision of law that imposes the death
16 penalty, that authorizes or restricts the granting of probation or
17 suspending the execution or imposition of sentence, or expressly
18 provides for imprisonment in the state prison for life, except as
19 provided in paragraph (2) of subdivision (d). In any case in which
20 the amount of preimprisonment credit under Section 2900.5 or any
21 other provision of law is equal to or exceeds any sentence imposed
22 pursuant to this chapter, the entire sentence shall be deemed to
23 have been served and the defendant shall not be actually delivered
24 to the custody of the secretary. The court shall advise the defendant
25 that he or she shall serve a period of parole and order the defendant
26 to report to the parole office closest to the defendant's last legal
27 residence, unless the in-custody credits equal the total sentence,
28 including both confinement time and the period of parole. The
29 sentence shall be deemed a separate prior prison term under Section
30 667.5, and a copy of the judgment and other necessary
31 documentation shall be forwarded to the secretary.

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

1 imposition of the upper or lower term, the court may consider the
2 record in the case, the probation officer's report, other reports,
3 including reports received pursuant to Section 1203.03, and
4 statements in aggravation or mitigation submitted by the
5 prosecution, the defendant, or the victim, or the family of the victim
6 if the victim is deceased, and any further evidence introduced at
7 the sentencing hearing. The court shall set forth on the record the
8 facts and reasons for imposing the upper or lower term. The court
9 may not impose an upper term by using the fact of any
10 enhancement upon which sentence is imposed under any provision
11 of law. A term of imprisonment shall not be specified if imposition
12 of sentence is suspended.

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000.

18 (d) (1) When a defendant subject to this section or subdivision
19 (b) of Section 1168 has been sentenced to be imprisoned in the
20 state prison and has been committed to the custody of the secretary,
21 the court may, within 120 days of the date of commitment on its
22 own motion, or at any time upon the recommendation of the
23 secretary or the Board of Parole Hearings, recall the sentence and
24 commitment previously ordered and resentence the defendant in
25 the same manner as if he or she had not previously been sentenced,
26 provided the new sentence, if any, is no greater than the initial
27 sentence. The court resentencing under this subdivision shall apply
28 the sentencing rules of the Judicial Council so as to eliminate
29 disparity of sentences and to promote uniformity of sentencing.
30 Credit shall be given for time served.

31 (2) (A) (i) When a defendant who was under 18 years of age
32 at the time of the commission of the offense for which the
33 defendant was sentenced to imprisonment for life without the
34 possibility of parole has served at least 15 years of that sentence,
35 the defendant may submit to the sentencing court a petition for
36 recall and resentencing.

37 (ii) Notwithstanding clause (i), this paragraph shall not apply
38 to defendants sentenced to life without parole for an offense where
39 the defendant tortured, as described in Section 206, his or her
40 victim or the victim was a public safety official, including any law

1 enforcement personnel mentioned in Chapter 4.5 (commencing
2 with Section 830) of Title 3, or any firefighter as described in
3 Section 245.1, as well as any other officer in any segment of law
4 enforcement who is employed by the federal government, the state,
5 or any of its political subdivisions.

6 (B) The defendant shall file the original petition with the
7 sentencing court. A copy of the petition shall be served on the
8 agency that prosecuted the case. The petition shall include the
9 defendant's statement that he or she was under 18 years of age at
10 the time of the crime and was sentenced to life in prison without
11 the possibility of parole, the defendant's statement describing his
12 or her remorse and work towards rehabilitation, and the defendant's
13 statement that one of the following is true:

14 (i) The defendant was convicted pursuant to felony murder or
15 aiding and abetting murder provisions of law.

16 (ii) The defendant does not have juvenile felony adjudications
17 for assault or other felony crimes with a significant potential for
18 personal harm to victims prior to the offense for which the sentence
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult
21 codefendant.

22 (iv) The defendant has performed acts that tend to indicate
23 rehabilitation or the potential for rehabilitation, including, but not
24 limited to, availing himself or herself of rehabilitative, educational,
25 or vocational programs, if those programs have been available at
26 his or her classification level and facility, using self-study for
27 self-improvement, or showing evidence of remorse.

28 (C) If any of the information required in subparagraph (B) is
29 missing from the petition, or if proof of service on the prosecuting
30 agency is not provided, the court shall return the petition to the
31 defendant and advise the defendant that the matter cannot be
32 considered without the missing information.

33 (D) A reply to the petition, if any, shall be filed with the court
34 within 60 days of the date on which the prosecuting agency was
35 served with the petition, unless a continuance is granted for good
36 cause.

37 (E) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a hearing
39 to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,
2 provided that the new sentence, if any, is not greater than the initial
3 sentence. Victims, or victim family members if the victim is
4 deceased, shall retain the rights to participate in the hearing.

5 (F) The factors that the court may consider when determining
6 whether to recall and resentence include, but are not limited to,
7 the following:

8 (i) The defendant was convicted pursuant to felony murder or
9 aiding and abetting murder provisions of law.

10 (ii) The defendant does not have juvenile felony adjudications
11 for assault or other felony crimes with a significant potential for
12 personal harm to victims prior to the offense for which the sentence
13 is being considered for recall.

14 (iii) The defendant committed the offense with at least one adult
15 codefendant.

16 (iv) Prior to the offense for which the sentence is being
17 considered for recall, the defendant had insufficient adult support
18 or supervision and had suffered from psychological or physical
19 trauma, or significant stress.

20 (v) The defendant suffers from cognitive limitations due to
21 mental illness, developmental disabilities, or other factors that did
22 not constitute a defense, but influenced the defendant's
23 involvement in the offense.

24 (vi) The defendant has performed acts that tend to indicate
25 rehabilitation or the potential for rehabilitation, including, but not
26 limited to, availing himself or herself of rehabilitative, educational,
27 or vocational programs, if those programs have been available at
28 his or her classification level and facility, using self-study for
29 self-improvement, or showing evidence of remorse.

30 (vii) The defendant has maintained family ties or connections
31 with others through letter writing, calls, or visits, or has eliminated
32 contact with individuals outside of prison who are currently
33 involved with crime.

34 (viii) The defendant has had no disciplinary actions for violent
35 activities in the last five years in which the defendant was
36 determined to be the aggressor.

37 (G) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant in the same manner as if the defendant had not
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court
2 shall be exercised in consideration of the criteria in subparagraph
3 (B). Victims, or victim family members if the victim is deceased,
4 shall be notified of the resentencing hearing and shall retain their
5 rights to participate in the hearing.

6 (H) If the sentence is not recalled, the defendant may submit
7 another petition for recall and resentencing to the sentencing court
8 when the defendant has been committed to the custody of the
9 department for at least 20 years. If recall and resentencing is not
10 granted under that petition, the defendant may file another petition
11 after having served 24 years. The final petition may be submitted,
12 and the response to that petition shall be determined, during the
13 25th year of the defendant's sentence.

14 (I) In addition to the criteria in subparagraph (F), the court may
15 consider any other criteria that the court deems relevant to its
16 decision, so long as the court identifies them on the record,
17 provides a statement of reasons for adopting them, and states why
18 the defendant does or does not satisfy the criteria.

19 (J) This subdivision shall have retroactive application.

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

25 (2) The court shall have the discretion to resentence or recall if
26 the court finds that the facts described in subparagraphs (A) and
27 (B) or subparagraphs (B) and (C) exist:

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

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

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

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

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

8 (4) Any physician employed by the department who determines
9 that a prisoner has six months or less to live shall notify the chief
10 medical officer of the prognosis. If the chief medical officer
11 concurs with the prognosis, he or she shall notify the warden.
12 Within 48 hours of receiving notification, the warden or the
13 warden's representative shall notify the prisoner of the recall and
14 resentencing procedures, and shall arrange for the prisoner to
15 designate a family member or other outside agent to be notified
16 as to the prisoner's medical condition and prognosis, and as to the
17 recall and resentencing procedures. If the inmate is deemed
18 mentally unfit, the warden or the warden's representative shall
19 contact the inmate's emergency contact and provide the information
20 described in paragraph (2).

21 (5) The warden or the warden's representative shall provide the
22 prisoner and his or her family member, agent, or emergency
23 contact, as described in paragraph (4), updated information
24 throughout the recall and resentencing process with regard to the
25 prisoner's medical condition and the status of the prisoner's recall
26 and resentencing proceedings.

27 (6) Notwithstanding any other provisions of this section, the
28 prisoner or his or her family member or designee may
29 independently request consideration for recall and resentencing
30 by contacting the chief medical officer at the prison or the
31 secretary. Upon receipt of the request, the chief medical officer
32 and the warden or the warden's representative shall follow the
33 procedures described in paragraph (4). If the secretary determines
34 that the prisoner satisfies the criteria set forth in paragraph (2), the
35 secretary or board may recommend to the court that the prisoner's
36 sentence be recalled. The secretary shall submit a recommendation
37 for release within 30 days in the case of inmates sentenced to
38 determinate terms and, in the case of inmates sentenced to
39 indeterminate terms, the secretary shall make a recommendation
40 to the Board of Parole Hearings with respect to the inmates who

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

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

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

12 (9) If the court grants the recall and resentencing application,
13 the prisoner shall be released by the department within 48 hours
14 of receipt of the court's order, unless a longer time period is agreed
15 to by the inmate. At the time of release, the warden or the warden's
16 representative shall ensure that the prisoner has each of the
17 following in his or her possession: a discharge medical summary,
18 full medical records, state identification, parole medications, and
19 all property belonging to the prisoner. After discharge, any
20 additional records shall be sent to the prisoner's forwarding
21 address.

22 (10) The secretary shall issue a directive to medical and
23 correctional staff employed by the department that details the
24 guidelines and procedures for initiating a recall and resentencing
25 procedure. The directive shall clearly state that any prisoner who
26 is given a prognosis of six months or less to live is eligible for
27 recall and resentencing consideration, and that recall and
28 resentencing procedures shall be initiated upon that prognosis.

29 (f) Notwithstanding any other provision of this section, for
30 purposes of paragraph (3) of subdivision (h), any allegation that
31 a defendant is eligible for state prison due to a prior or current
32 conviction, sentence enhancement, or because he or she is required
33 to register as a sex offender shall not be subject to dismissal
34 pursuant to Section 1385.

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

38 (h) (1) Except as provided in paragraph (3), a felony punishable
39 pursuant to this subdivision where the term is not specified in the

1 underlying offense shall be punishable by a term of imprisonment
2 in a county jail for 16 months, or two or three years.

3 (2) Except as provided in paragraph (3), a felony punishable
4 pursuant to this subdivision shall be punishable by imprisonment
5 in a county jail for the term described in the underlying offense.

6 (3) Notwithstanding paragraphs (1) and (2), where the defendant
7 (A) has a prior or current felony conviction for a serious felony
8 described in subdivision (c) of Section 1192.7 or a prior or current
9 conviction for a violent felony described in subdivision (c) of
10 Section 667.5, (B) has a prior felony conviction in another
11 jurisdiction for an offense that has all the elements of a serious
12 felony described in subdivision (c) of Section 1192.7 or a violent
13 felony described in subdivision (c) of Section 667.5, (C) is required
14 to register as a sex offender pursuant to Chapter 5.5 (commencing
15 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
16 and as part of the sentence an enhancement pursuant to Section
17 186.11 is imposed, an executed sentence for a felony punishable
18 pursuant to this subdivision shall be served in state prison.

19 (4) Nothing in this subdivision shall be construed to prevent
20 other dispositions authorized by law, including pretrial diversion,
21 deferred entry of judgment, or an order granting probation pursuant
22 to Section 1203.1.

23 (5) (A) The court, when imposing a sentence pursuant to
24 paragraph (1) or (2) ~~of this subdivision, may~~ *shall* commit the
25 defendant to county jail as follows:

26 ~~(A) For a full term in custody as determined in accordance with~~
27 ~~the applicable sentencing law.~~

28 ~~(B) (i) For~~ *for* a term as determined in accordance with the
29 applicable sentencing law, but *shall* suspend execution of ~~a~~ *the*
30 ~~concluding portion of the term selected in the court's discretion~~
31 *for a minimum of six months*, during which time the defendant
32 shall be supervised by the county probation officer in accordance
33 with the terms, conditions, and procedures generally applicable to
34 persons placed on probation, for the remaining unserved portion
35 of the sentence imposed by the court. The period of supervision
36 shall be mandatory, and may not be earlier terminated except by
37 court order. Any proceeding to revoke or modify mandatory
38 supervision under this subparagraph shall be conducted pursuant
39 to either subdivisions (a) and (b) of Section 1203.2 or Section
40 1203.3. During the period when the defendant is under such

1 supervision, unless in actual custody related to the sentence
 2 imposed by the court, the defendant shall be entitled to only actual
 3 time credit against the term of imprisonment imposed by the court.
 4 Any time period which is suspended because a person has
 5 absconded shall not be credited toward the period of supervision.

6 ~~(ii)~~
 7 (B) The portion of a defendant’s sentenced term during which
 8 time he or she is supervised by the county probation officer
 9 pursuant to this ~~subparagraph~~ *paragraph* shall be known as
 10 mandatory supervision.

11 (6) The sentencing changes made by the act that added this
 12 subdivision shall be applied prospectively to any person sentenced
 13 on or after October 1, 2011.

14 (i) This section shall become operative on January 1, 2014.

15 *SEC. 3. If the Commission on State Mandates determines that*
 16 *this act contains costs mandated by the state, reimbursement to*
 17 *local agencies and school districts for those costs shall be made*
 18 *pursuant to Part 7 (commencing with Section 17500) of Division*
 19 *4 of Title 2 of the Government Code.*

20 ~~SECTION 1. Section 422.55 of the Penal Code is amended to~~
 21 ~~read:~~

22 ~~422.55. For purposes of this title, and for purposes of all other~~
 23 ~~state law unless an explicit provision of law or the context clearly~~
 24 ~~requires a different meaning, the following shall apply:~~

25 (a) ~~“Hate crime” means a criminal act committed, in whole or~~
 26 ~~in part, because of one or more of the following actual or perceived~~
 27 ~~characteristics of the victim:~~

- 28 ~~(1) Disability.~~
- 29 ~~(2) Gender.~~
- 30 ~~(3) Nationality.~~
- 31 ~~(4) Race or ethnicity.~~
- 32 ~~(5) Religion.~~
- 33 ~~(6) Sexual orientation.~~
- 34 ~~(7) Political affiliation.~~
- 35 ~~(8) Association with a person or group with one or more of these~~
 36 ~~actual or perceived characteristics.~~

37 (b) ~~“Hate crime” includes, but is not limited to, a violation of~~
 38 ~~Section 422.6.~~

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
 40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~
5 ~~the Government Code, or changes the definition of a crime within~~
6 ~~the meaning of Section 6 of Article XIII B of the California~~
7 ~~Constitution.~~

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