

AMENDED IN ASSEMBLY MARCH 21, 2013

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 1170 of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 560, as amended, Ammiano. Sentencing: *recall and* mandatory supervision.

Existing law authorizes a court to recall a sentence of imprisonment in the state prison and to resentence a defendant in the same manner as if he or she had not previously been sentenced, upon the court's own motion or the recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings. Existing law prohibits the new sentence from being greater than the initial sentence and requires that credit be given to time served.

This bill would similarly authorize the court to recall a sentence of imprisonment in the county jail for a felony, upon the court's own motion or the recommendation of the sheriff who administers the county jail facility, as specified.

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.

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
11 system, and it is essential in reducing the high recidivism rates in
12 California's prisons and jails.
- 13 (c) Effective probation has become even more important with
14 the implementation of the 2011 Realignment Legislation addressing
15 public safety.
- 16 (d) Across the country, states and counties are using research
17 to enhance community supervision practices and strengthen
18 probation departments.
- 19 (e) Research conducted by the National Institute of Justice shows
20 that reducing probation caseloads, when accompanied by
21 evidence-based probation practices, effectively reduces criminal
22 recidivism.

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

5 SEC. 2. Section 1170 of the Penal Code, as amended by Section
6 2 of Chapter 828 of the Statutes of 2012, is amended to read:

7 1170. (a) (1) The Legislature finds and declares that the
8 purpose of imprisonment for crime is punishment. This purpose
9 is best served by terms proportionate to the seriousness of the
10 offense with provision for uniformity in the sentences of offenders
11 committing the same offense under similar circumstances. The
12 Legislature further finds and declares that the elimination of
13 disparity and the provision of uniformity of sentences can best be
14 achieved by determinate sentences fixed by statute in proportion
15 to the seriousness of the offense as determined by the Legislature
16 to be imposed by the court with specified discretion.

17 (2) Notwithstanding paragraph (1), the Legislature further finds
18 and declares that programs should be available for inmates,
19 including, but not limited to, educational programs, that are
20 designed to prepare nonviolent felony offenders for successful
21 reentry into the community. The Legislature encourages the
22 development of policies and programs designed to educate and
23 rehabilitate nonviolent felony offenders. In implementing this
24 section, the Department of Corrections and Rehabilitation is
25 encouraged to give priority enrollment in programs to promote
26 successful return to the community to an inmate with a short
27 remaining term of commitment and a release date that would allow
28 him or her adequate time to complete the program.

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

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

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

1 (c) The court shall state the reasons for its sentence choice on
2 the record at the time of sentencing. The court shall also inform
3 the defendant that as part of the sentence after expiration of the
4 term he or she may be on parole for a period as provided in Section
5 3000.

6 (d) (1) When a defendant subject to this section or subdivision
7 (b) of Section 1168 has been sentenced to be imprisoned in the
8 state prison and has been committed to the custody of the secretary,
9 the court may, within 120 days of the date of commitment on its
10 own motion, or at any time upon the recommendation of the
11 secretary or the Board of Parole Hearings, recall the sentence and
12 commitment previously ordered and resentence the defendant in
13 the same manner as if he or she had not previously been sentenced,
14 provided the new sentence, if any, is no greater than the initial
15 sentence. The court resentencing under this subdivision shall apply
16 the sentencing rules of the Judicial Council so as to eliminate
17 disparity of sentences and to promote uniformity of sentencing.
18 Credit shall be given for time served.

19 (2) *When a defendant is sentenced to the county jail pursuant*
20 *to subdivision (h), the court may, at any time, upon its own motion*
21 *or upon the recommendation of the sheriff who administers the*
22 *county jail facility, recall the sentence and commitment previously*
23 *ordered and resentence the defendant in the same manner as if he*
24 *or she had not previously been sentenced, provided the new*
25 *sentence is no greater than the initial sentence. Credit shall be*
26 *given for time served.*

27 ~~(2)~~

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

34 (ii) Notwithstanding clause (i), this paragraph shall not apply
35 to defendants sentenced to life without parole for an offense where
36 the defendant tortured, as described in Section 206, his or her
37 victim or the victim was a public safety official, including any law
38 enforcement personnel mentioned in Chapter 4.5 (commencing
39 with Section 830) of Title 3, or any firefighter as described in
40 Section 245.1, as well as any other officer in any segment of law

1 enforcement who is employed by the federal government, the state,
2 or any of its political subdivisions.

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

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

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

17 (iii) The defendant committed the offense with at least one adult
18 codefendant.

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

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

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

34 (E) If the court finds by a preponderance of the evidence that
35 the statements in the petition are true, the court shall hold a hearing
36 to consider whether to recall the sentence and commitment
37 previously ordered and to resentence the defendant in the same
38 manner as if the defendant had not previously been sentenced,
39 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

12 (iii) The defendant committed the offense with at least one adult
13 codefendant.

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

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

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

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

35 (G) The court shall have the discretion to recall the sentence
36 and commitment previously ordered and to resentence the
37 defendant in the same manner as if the defendant had not
38 previously been sentenced, provided that the new sentence, if any,
39 is not greater than the initial sentence. The discretion of the court
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,
2 shall be notified of the resentencing hearing and shall retain their
3 rights to participate in the hearing.

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

39 The Board of Parole Hearings shall make findings pursuant to
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner
2 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

1 paragraph (2) and make findings related thereto before rejecting
2 the request or making a recommendation to the court. This action
3 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

36 (h) (1) Except as provided in paragraph (3), a felony punishable
37 pursuant to this subdivision where the term is not specified in the
38 underlying offense shall be punishable by a term of imprisonment
39 in a county jail for 16 months, or two or three years.

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

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

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

21 (5) (A) The court, when imposing a sentence pursuant to
22 paragraph (1) or (2) shall commit the defendant to county jail for
23 a term as determined in accordance with the applicable sentencing
24 law, but shall suspend execution of the concluding portion of the
25 term for a minimum of six months, during which time the defendant
26 shall be supervised by the county probation officer in accordance
27 with the terms, conditions, and procedures generally applicable to
28 persons placed on probation, for the remaining unserved portion
29 of the sentence imposed by the court. The period of supervision
30 shall be mandatory, and may not be earlier terminated except by
31 court order. Any proceeding to revoke or modify mandatory
32 supervision under this subparagraph shall be conducted pursuant
33 to either subdivisions (a) and (b) of Section 1203.2 or Section
34 1203.3. During the period when the defendant is under such
35 supervision, unless in actual custody related to the sentence
36 imposed by the court, the defendant shall be entitled to only actual
37 time credit against the term of imprisonment imposed by the court.
38 Any time period which is suspended because a person has
39 absconded shall not be credited toward the period of supervision.

1 (B) The portion of a defendant’s sentenced term during which
2 time he or she is supervised by the county probation officer
3 pursuant to this paragraph shall be known as mandatory
4 supervision.

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

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

9 SEC. 3. If the Commission on State Mandates determines
10 that this act contains costs mandated by the state, reimbursement
11 to local agencies and school districts for those costs shall be made
12 pursuant to Part 7 (commencing with Section 17500) of Division
13 4 of Title 2 of the Government Code.