

Introduced by Senator Hancock

February 13, 2013

An act to add Section 1170.195 to the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 260, as amended, Hancock. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings, or both, may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence. When a defendant who was under 18 years of age at the time of the commission of a crime has served at least 15 years of his or her sentence, existing law allows the defendant to submit a petition for recall and resentencing, and authorizes the court, in its discretion, to recall the sentence and to resentence the defendant, provided that the new sentence is not greater than the initial sentence.

This bill would state legislative intent regarding the above provisions, and would, except as specified, require a sentencing court to hold a hearing to review the sentence of a person who was under 18 years of age at the time of an offense and was prosecuted as an adult after the person has served 10 years in prison. After the review, the bill would allow the judge to suspend or stay all or a portion of the sentence, reduce the sentence to any sentence that could lawfully have been ordered at the time of the original judgment, or both reduce and suspend or stay all or a portion of the sentence. The bill would authorize the court to consider specified evidence, in conjunction with any other

evidence the court considers relevant, in making this determination. The bill would also permit additional review only in the event of a change in circumstances that is proven by a preponderance of the evidence in a petition filed with the sentencing court. The bill would not apply to a person sentenced under specified provisions or sentenced to life imprisonment without the possibility of parole.

~~Existing law provides that, subject to specified exceptions, a defendant who was under 18 years old at the time he or she committed his or her offense for which the defendant was sentenced to imprisonment for life without the possibility of parole and who has served at least 15 years of his or her sentence may petition the court to recall and resentence him or her, provided that he or she satisfies certain criteria and follows applicable procedural requirements. If the court finds by a preponderance of the evidence that the statements in the defendant's petition are true, existing law requires the court to hold a hearing to determine whether to recall and resentence the defendant, and, after considering certain factors, the court may recall and resentence the defendant, as specified.~~

~~This bill would state the intent of the Legislature to enact legislation creating an alternate judicial mechanism for reconsidering the sentences of individuals, who were convicted of crimes that they committed as children, after they have become adults and served a significant amount of time in state prison.~~

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

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

- 1 *SECTION 1. It is the intent of the Legislature to provide a*
- 2 *judicial mechanism for reconsidering the sentences of persons*
- 3 *who were convicted of crimes they committed as children after*
- 4 *these persons have become adults and served a significant amount*
- 5 *of time in state prison.*
- 6 *SEC. 2. Section 1170.195 is added to the Penal Code, to read:*
- 7 *1170.195. (a) Notwithstanding any other law, upon motion*
- 8 *and after 60 days' notice to the prosecution, the sentencing court*
- 9 *shall hold a hearing to review the sentence of a person who was*
- 10 *under 18 years of age at the time of the offense and was prosecuted*
- 11 *as an adult, after the person has served 10 years in prison.*
- 12 *(b) After reviewing the sentence, the judge may suspend or stay*
- 13 *all or a portion of the sentence, reduce the sentence to any sentence*

1 *that could lawfully have been ordered at the time of the original*
2 *judgment, or both reduce and suspend or stay all or a portion of*
3 *the sentence, provided that the person at the time of the hearing*
4 *meets the eligibility criteria of the alternative disposition.*

5 *(c) For purposes of this determination, the court may consider,*
6 *in conjunction with any other evidence the court considers relevant,*
7 *the person's disciplinary record, whether the person has performed*
8 *acts that tend to indicate rehabilitation or the potential for*
9 *rehabilitation, including, but not limited to, availing himself or*
10 *herself of rehabilitative, educational, or vocational programs, if*
11 *those programs have been available at his or her classification*
12 *level and facility, the defendant's use of self-study for*
13 *self-improvement, the defendant's statement describing his or her*
14 *remorse and work towards rehabilitation, and the person's youth*
15 *at the time of the crime, including his or her immaturity,*
16 *impetuosity, failure to appreciate risks and consequences, family*
17 *and home environment, the circumstances of the offense, including*
18 *the extent of participation in the offense and the way familial and*
19 *peer pressures may have affected him or her, and whether the*
20 *person might have been charged and convicted of a lesser offense*
21 *if not for the lesser abilities of youth, including, but not limited to,*
22 *an inability to effectively deal with police officers or prosecutors,*
23 *or an incapacity to assist his or her attorney.*

24 *(d) The court shall identify on the record the criteria relied on,*
25 *and shall provide a statement of reasons for adopting those*
26 *criteria. The court shall state why the defendant does or does not*
27 *satisfy the criteria.*

28 *(e) Victims, or victim family members if the victim is deceased,*
29 *shall be notified of the resentencing hearing and shall retain their*
30 *rights to participate in the hearing.*

31 *(f) Each person granted review pursuant to this section shall*
32 *only be entitled to an additional review in the event of a change*
33 *in circumstances that is proven by a preponderance of the evidence*
34 *in a petition filed with the sentencing court.*

35 *(g) This section does not apply to a person who was sentenced*
36 *pursuant to Section 190.4 or 190.5, subdivisions (b) to (i),*
37 *inclusive, of Section 667, or Section 1170.12, or to life*
38 *imprisonment without the possibility of parole.*

39 ~~SECTION 1. It is the intent of the Legislature to enact~~
40 ~~legislation to create an alternate judicial mechanism for~~

- 1 ~~reconsidering the sentences of individuals, who were convicted of~~
- 2 ~~crimes that they committed as children, after they have become~~
- 3 ~~adults and served a significant amount of time in state prison.~~