

AMENDED IN SENATE APRIL 4, 2013

AMENDED IN SENATE MARCH 18, 2013

SENATE BILL

No. 260

Introduced by Senator Hancock
(Coauthors: Senators De León and Steinberg)

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~~ *following* 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~~ *deems* 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.

Vote: majority. Appropriation: no. Fiscal committee: 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 who~~
3 ~~were convicted~~ *adults who have served a significant amount of*
4 *time in state prison for the conviction* of crimes they committed
5 as children—~~after these persons have become adults and served a~~
6 ~~significant amount of time in state prison.~~

7 SEC. 2. Section 1170.195 is added to the Penal Code, to read:

8 1170.195. (a) Notwithstanding any other law, upon motion
9 and after 60 days' notice to the prosecution, the sentencing court
10 shall hold a hearing to review the sentence of a person who was
11 under 18 years of age at the time of the offense and was prosecuted
12 as an adult, after the person has served 10 years in prison.

13 (b) After reviewing the sentence, the judge may suspend or stay
14 all or a portion of the sentence, reduce the sentence to any sentence
15 that could lawfully have been ordered at the time of the original
16 judgment, or both reduce and suspend or stay all or a portion of
17 the sentence, provided that the person at the time of the hearing
18 meets the eligibility criteria of the alternative disposition.

19 (c) For purposes of this determination, the court may consider,
20 in conjunction with any other evidence the court—~~considers~~ *deems*
21 relevant, the person's *record of serious* disciplinary—~~record~~
22 *violations*, whether the person has performed acts that tend to
23 indicate rehabilitation or the ~~potential~~ *capacity* for rehabilitation,
24 including, but not limited to, availing himself or herself of *any*
25 rehabilitative, educational, or vocational programs—~~if those~~
26 ~~programs have been~~ available at his or her classification level and
27 facility, the—~~defendant's~~ *person's* use of self-study for

1 self-improvement, the ~~defendant's~~ *person's* statement describing
2 his or her remorse and work towards rehabilitation, ~~and~~ the
3 person's youth at the time of the crime, including his or her
4 immaturity, ~~impetuosity~~ *impulsiveness*, failure to appreciate risks
5 and consequences, family and home environment, *intellectual*
6 *functioning, mental disorder, or disabilities*, the circumstances of
7 the offense, including the extent of participation in the offense and
8 the way familial and peer pressures may have affected him or her,
9 and whether the person might have been charged and convicted
10 of a lesser offense if not for the lesser abilities of youth, including,
11 but not limited to, an inability to effectively deal with police
12 officers or prosecutors, ~~or an incapacity~~ *a limited capacity to fully*
13 *understand the proceedings or to assist his or her attorney.*

14 (d) The court shall identify on the record the criteria relied on,
15 and shall provide a statement of reasons for adopting those criteria.
16 The court shall state why the defendant does or does not satisfy
17 the criteria.

18 (e) Victims, or victim family members if the victim is deceased,
19 shall be notified of the resentencing hearing and shall retain their
20 rights to participate in the hearing.

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

25 (g) This section does not apply to a person who was sentenced
26 pursuant to Section 190.4 or 190.5, subdivisions (b) to (i),
27 inclusive, of Section 667, or Section 1170.12, or to life
28 imprisonment without the possibility of parole.