

AMENDED IN SENATE MAY 24, 2013
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 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 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~~ *permit each person granted review whose sentence is not suspended, stayed, or reduced, to file a petition 3 or more years after any review hearing, and would require the review hearing to be granted if the petition demonstrates a change in the circumstances, as specified, by a preponderance of the evidence.* 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 adults who
- 3 have served a significant amount of time in state prison for the
- 4 conviction of crimes they committed as children.
- 5 SEC. 2. Section 1170.195 is added to the Penal Code, to read:
- 6 1170.195. (a) Notwithstanding any other law, upon motion
- 7 and after 60 days' notice to the prosecution, the sentencing court
- 8 shall hold a hearing to review the sentence of a person who was
- 9 under 18 years of age at the time of the offense and was prosecuted
- 10 as an adult, after the person has served 10 years in prison.
- 11 (b) After reviewing the sentence, the judge may suspend or stay
- 12 all or a portion of the sentence, reduce the sentence to any sentence
- 13 that could lawfully have been ordered at the time of the original
- 14 judgment, or both reduce and suspend or stay all or a portion of
- 15 the sentence, provided that the person at the time of the hearing
- 16 meets the eligibility criteria of the alternative disposition.
- 17 (c) For purposes of this determination, the court may consider,
- 18 in conjunction with any other evidence the court deems relevant,
- 19 the person's record of serious disciplinary violations, whether the
- 20 person has performed acts that tend to indicate rehabilitation or

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

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

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

24 (f) Each person granted review pursuant to this section ~~shall~~
25 ~~only be entitled to an additional review in the event of whose~~
26 ~~sentence is not suspended, stayed, or reduced, may file a petition~~
27 ~~with the sentencing court three or more years after any review~~
28 ~~hearing. A review hearing on any subsequent petition shall be~~
29 ~~granted if the petition demonstrates, by a preponderance of the~~
30 ~~evidence, a change in the circumstances that is proven by a~~
31 ~~preponderance of the evidence in a petition filed with the~~
32 ~~sentencing court specified in subdivision (c).~~

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

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