

AMENDED IN ASSEMBLY JUNE 27, 2013

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, Lara, and Steinberg)
(Coauthor: Assembly Member Hall)

February 13, 2013

An act to add ~~Section 1170.195~~ *Sections 3051 and 3051.1* to the Penal Code, relating to ~~sentencing~~ *parole*.

LEGISLATIVE COUNSEL'S DIGEST

SB 260, as amended, Hancock. ~~Sentencing~~-*Youth opportunity review hearings*.

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 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.~~

This bill would require the Board of Parole Hearings to conduct a youth opportunity review hearing to consider release of offenders who committed specified crimes prior to being 18 years of age and who were sentenced to state prison and would require the board to give great weight to specified mitigating factors, including fundamental differences between juveniles and adults, and a juvenile's diminished culpability as compared to that of an adult. The bill would require that, in assessing growth and maturity, psychological evaluations and risk assessment instruments, if used by the board, be administered by qualified professionals and provide reliable assessment of growth and maturity, and would require that family members, school personnel, faith leaders, and representatives from community-based programs with knowledge about the young person at the time of the crime or his or hers growth and maturity in prison to be permitted to attend and testify at the youth opportunity review hearing.

Existing law, also added by Proposition 8, adopted June 8, 1982, and amended by Proposition 36, adopted November 6, 2012, commonly known as the Three Strikes Law, requires increased penalties for certain recidivist offenders in addition to any other enhancement or penalty provisions that may apply, including individuals with current and prior convictions of a serious felony, as specified.

This bill would exempt from its provisions inmates who were sentenced pursuant to the Three Strikes Law.

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. The Legislature finds and declares that, as stated*
2 *by the United States Supreme Court in Miller v. Alabama, “only*
3 *a relatively small proportion of adolescents” who engage in illegal*
4 *activity “develop entrenched patterns of problem behavior,” and*
5 *that “developments in psychology and brain science continue to*
6 *show fundamental differences between juvenile and adult minds,”*
7 *including “parts of the brain involved in behavior control.” The*
8 *Legislature recognizes that youthfulness both lessens a juvenile’s*
9 *moral culpability and enhances the prospect that, as a youth*
10 *matures into an adult and neurological development occurs, these*
11 *individuals can become contributing members of society. It is the*
12 *intent of the Legislature to create a process by which growth and*
13 *maturity of youthful offenders can be assessed and a meaningful*
14 *opportunity for release established.*

15 *SEC. 2. Section 3051 is added to the Penal Code, to read:*

16 3051. (a) *A person who was convicted of a nonhomicide*
17 *offense, attempted murder, conspiracy to commit murder, or*
18 *manslaughter that was committed before the person had attained*
19 *18 years of age and was sentenced to state prison for a determinate*
20 *term of 40 years or less, or an indeterminate term with a base term*
21 *of 40 years or less, shall be considered for release on parole during*
22 *his or her 15th year of incarceration at a youth opportunity review*
23 *hearing.*

24 (b) *A person who was convicted of a nonhomicide offense,*
25 *attempted murder, conspiracy to commit murder, or manslaughter*
26 *that was committed before the person had attained 18 years of age*
27 *and was sentenced to state prison for a determinate term of more*
28 *than 40 years, or an indeterminate term with a base term of more*
29 *than 40 years, shall be considered for release on parole during*
30 *his or her 20th year of incarceration at a youth opportunity review*
31 *hearing.*

32 (c) *Five years prior to eligibility for release, an individual*
33 *subject to this section shall meet with a commissioner of the Board*
34 *of Parole Hearings for consultation and direction on his or her*
35 *progress toward parole suitability. During the meeting, the Board*
36 *of Parole Hearings shall provide the individual with information*
37 *on the parole process and the factors relevant to a suitability*
38 *determination in a youth opportunity review hearing. Within 30*

1 *days of the meeting, the Board of Parole Hearings shall issue*
2 *written recommendations to the individual identifying any issues*
3 *that the individual will need to address prior to being found*
4 *suitable for release through a youth opportunity review hearing*
5 *and guidance on how to successfully address those issues.*

6 *(d) The Board of Parole Hearings shall conduct a youth*
7 *opportunity review hearing to consider release. At the youth*
8 *opportunity review hearing, the board shall normally release the*
9 *individual on parole as provided in Section 3041, except that the*
10 *individual shall be released on parole based on the individual's*
11 *eligibility for parole as set forth in subdivision (a) or (b). The*
12 *board shall give great weight to the mitigating factors set forth in*
13 *subdivision (e), shall not rely on Section 2282 or 2403 of Title 15*
14 *of the California Code of Regulations, and to the extent that any*
15 *existing suitability or unsuitability criteria are in conflict with*
16 *those mitigating factors, the mitigating factors shall prevail. Parole*
17 *shall be for a period to be determined by the Board of Parole*
18 *Hearings, but not to exceed 10 years unless a longer parole period*
19 *is otherwise provided for by law.*

20 *(e) The youth opportunity review hearing to consider release*
21 *shall provide for a meaningful opportunity to obtain release based*
22 *on demonstrated growth and maturity. The review process shall*
23 *consider all mitigating circumstances attendant in the juveniles*
24 *crime and life, including, but not limited to, all of the following:*

25 *(1) The fundamental differences between juveniles and adults,*
26 *and a juvenile's diminished culpability as compared to that of an*
27 *adult.*

28 *(2) The hallmark features of youthfulness, including, but not*
29 *limited to, immaturity, impetuosity, susceptibility to peer pressure*
30 *or the negative influence of older individuals, and the failure to*
31 *appreciate risks and consequences.*

32 *(3) Childhood trauma, including, but not limited to, extended*
33 *exposure to violence, dysfunctional or chaotic family or home*
34 *environment, and physical, sexual, or emotional abuse.*

35 *(4) The juvenile's physical and mental development at the time*
36 *of the offense and the impact of physical or mental impairments*
37 *in combination with youthfulness.*

38 *(5) Growth, maturity, and rehabilitation during incarceration*
39 *and relative to the individual's age at the time of the offense, age*

1 *when he or she entered prison, and his or her age at the time of*
2 *the parole consideration hearing.*

3 *(f) In assessing growth and maturity, psychological evaluations*
4 *and risk assessment instruments, if used by the board, shall be*
5 *administered by qualified professionals, provide reliable*
6 *assessment of the growth and maturity of individuals who*
7 *committed a crime when they were under 18 years of age, and*
8 *include dynamic variables associated with growth and maturity.*
9 *Family members, school personnel, faith leaders, and*
10 *representatives from community-based programs with knowledge*
11 *about the individual at the time of the crime or his or her growth*
12 *and maturity in prison shall be permitted to attend and testify at*
13 *the youth opportunity review hearing.*

14 *(g) If parole is not granted, the board shall set the time for a*
15 *subsequent youth opportunity review hearing not more than three*
16 *years later, in accordance with Section 3041.5, and shall use the*
17 *factors in subdivisions (e) to (g), inclusive.*

18 *(h) Crimes covered by this statute include all nonhomicide*
19 *convictions, attempted murder, conspiracy to commit murder, and*
20 *manslaughter. This section shall not apply to cases where*
21 *sentencing occurs pursuant to the Three Strikes law. Years of*
22 *incarceration are subject to applicable credit reductions in existing*
23 *law.*

24 *SEC. 3. Section 3051.1 is added to the Penal Code, to read:*

25 *3051.1. (a) A person who was sentenced to state prison upon*
26 *conviction for a homicide offense that was committed before the*
27 *person had attained 18 years of age shall be eligible for review*
28 *and release at a youth opportunity review hearing during his or*
29 *her 15th year of incarceration if his or her primary offense was*
30 *murder in the second degree, pursuant to Section 189.*

31 *(b) A person who was sentenced to state prison upon conviction*
32 *for a homicide offense that was committed before the person had*
33 *attained 18 years of age shall be eligible for review at a youth*
34 *opportunity review hearing during his or her 25th year of*
35 *incarceration if his or her primary offense was murder in the first*
36 *degree, pursuant to Section 189.*

37 *(c) Five years prior to eligibility for release, an individual who*
38 *is subject to this section shall meet with a commissioner of the*
39 *Board of Parole Hearings for consultation and direction on his*
40 *or her progress toward parole suitability. During the meeting, the*

1 *Board of Parole Hearings shall provide the individual with*
2 *information on the parole process and the factors relevant to a*
3 *suitability determination in a youth opportunity review hearing.*
4 *Within 30 days of the meeting, the Board of Parole Hearings shall*
5 *issue written recommendations to the individual identifying any*
6 *issues that the individual will need to address prior to being found*
7 *suitable for release through a youth opportunity review hearing*
8 *guidance on how to successfully address those issues.*

9 *(d) The Board of Parole Hearings shall conduct a youth*
10 *opportunity review hearing to consider release. At the youth*
11 *opportunity review hearing, the board shall normally release the*
12 *individual on parole as provided in Section 3041, except that the*
13 *individual shall be released on parole based on the individual's*
14 *eligibility for parole as set forth in subdivisions (a) and (b). The*
15 *board shall give great weight to the mitigating factors set forth in*
16 *subdivision (e), shall not rely on Section 2282 or 2403 of Title 15*
17 *of the California Code of Regulations, and to the extent that any*
18 *existing suitability or unsuitability criteria are in conflict with*
19 *those mitigating factors, the mitigating factors shall prevail. Parole*
20 *shall be for a period to be determined by the Board of Parole*
21 *Hearings, but not to exceed 10 years unless a longer parole period*
22 *is otherwise provided for by law subject to Section 3000.1.*

23 *(e) The youth opportunity review hearing to consider release*
24 *will provide for a meaningful opportunity to obtain release based*
25 *on demonstrated growth and maturity. The review process must*
26 *consider all mitigating circumstances attendant in the juveniles*
27 *crime and life, including, but not limited to, all of the following:*

28 *(1) The fundamental differences between juveniles and adults,*
29 *and a juvenile's diminished culpability as compared to that of an*
30 *adult.*

31 *(2) The hallmark features of youthfulness, including, but not*
32 *limited to, immaturity, impetuosity, susceptibility to peer pressure*
33 *or the negative influence of older individuals, and the failure to*
34 *appreciate risks and consequences.*

35 *(3) Childhood trauma, including, but not limited to, extended*
36 *exposure to violence, dysfunctional or chaotic family or home*
37 *environment, and physical, sexual, or emotional abuse.*

38 *(4) The juvenile's physical and mental development at the time*
39 *of the offense and the impact of physical or mental impairments*
40 *in combination with youthfulness.*

1 (5) *Growth, maturity, and rehabilitation during incarceration*
2 *and relative to the individual's age at the time of the offense, age*
3 *when he or she entered prison, and his or her age at the time of*
4 *the parole consideration hearing.*

5 (f) *In assessing growth and maturity, psychological evaluations*
6 *and risk assessment instruments, if used by the board, shall be*
7 *administered by qualified professionals, provide reliable*
8 *assessment of the growth and maturity of individuals who*
9 *committed a crime when they were under 18 years of age, and*
10 *include dynamic variables associated with growth and maturity.*
11 *Family members, school personnel, faith leaders, and*
12 *representatives from community-based programs with knowledge*
13 *about the young person at the time of the crime or his or her growth*
14 *and maturity in prison shall be permitted to attend and testify at*
15 *the youth opportunity review hearing.*

16 (g) *If parole is not granted, the board shall set the time for a*
17 *subsequent youth opportunity review hearing not more than three*
18 *years later, in accordance with Section 3041.5, and shall use the*
19 *factors in subdivisions (d) to (f), inclusive.*

20 (h) *Persons serving sentences under the Three Strikes law or*
21 *for murder in the first degree with special circumstances cases*
22 *under Section 190.5 are excluded. Years of incarceration are*
23 *subject to applicable credit reductions in existing law.*

24 ~~SECTION 1.—It is the intent of the Legislature to provide a~~
25 ~~judicial mechanism for reconsidering the sentences of adults who~~
26 ~~have served a significant amount of time in state prison for the~~
27 ~~conviction of crimes they committed as children.~~

28 ~~SEC. 2.—Section 1170.195 is added to the Penal Code, to read:~~

29 ~~1170.195.—(a) Notwithstanding any other law, upon motion~~
30 ~~and after 60 days' notice to the prosecution, the sentencing court~~
31 ~~shall hold a hearing to review the sentence of a person who was~~
32 ~~under 18 years of age at the time of the offense and was prosecuted~~
33 ~~as an adult, after the person has served 10 years in prison.~~

34 ~~(b) After reviewing the sentence, the judge may suspend or stay~~
35 ~~all or a portion of the sentence, reduce the sentence to any sentence~~
36 ~~that could lawfully have been ordered at the time of the original~~
37 ~~judgment, or both reduce and suspend or stay all or a portion of~~
38 ~~the sentence, provided that the person at the time of the hearing~~
39 ~~meets the eligibility criteria of the alternative disposition.~~

1 ~~(e) For purposes of this determination, the court may consider,~~
2 ~~in conjunction with any other evidence the court deems relevant,~~
3 ~~the person's record of serious disciplinary violations, whether the~~
4 ~~person has performed acts that tend to indicate rehabilitation or~~
5 ~~the capacity for rehabilitation, including, but not limited to, availing~~
6 ~~himself or herself of any rehabilitative, educational, or vocational~~
7 ~~programs available at his or her classification level and facility;~~
8 ~~the person's use of self-study for self-improvement, the person's~~
9 ~~statement describing his or her remorse and work towards~~
10 ~~rehabilitation, the person's youth at the time of the crime, including~~
11 ~~his or her immaturity, impulsiveness, failure to appreciate risks~~
12 ~~and consequences, family and home environment, intellectual~~
13 ~~functioning, mental disorder, or disabilities, the circumstances of~~
14 ~~the offense, including the extent of participation in the offense and~~
15 ~~the way familial and peer pressures may have affected him or her,~~
16 ~~and whether the person might have been charged and convicted~~
17 ~~of a lesser offense if not for the lesser abilities of youth, including,~~
18 ~~but not limited to, an inability to effectively deal with police~~
19 ~~officers or prosecutors, or a limited capacity to fully understand~~
20 ~~the proceedings or to assist his or her attorney.~~

21 ~~(d) The court shall identify on the record the criteria relied on,~~
22 ~~and shall provide a statement of reasons for adopting those criteria.~~
23 ~~The court shall state why the defendant does or does not satisfy~~
24 ~~the criteria.~~

25 ~~(e) Victims, or victim family members if the victim is deceased,~~
26 ~~shall be notified of the resentencing hearing and shall retain their~~
27 ~~rights to participate in the hearing.~~

28 ~~(f) Each person granted review pursuant to this section whose~~
29 ~~sentence is not suspended, stayed, or reduced, may file a petition~~
30 ~~with the sentencing court three or more years after any review~~
31 ~~hearing. A review hearing on any subsequent petition shall be~~
32 ~~granted if the petition demonstrates, by a preponderance of the~~
33 ~~evidence, a change in the circumstances specified in subdivision~~
34 ~~(e).~~

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.~~

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