

ASSEMBLY BILL

No. 1456

Introduced by Assembly Member Thurmond

February 27, 2015

An act to amend Section 1170 of the Penal Code, relating to criminal punishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1456, as introduced, Thurmond. Crimes: sentencing.

Existing law generally requires that felonies punishable by imprisonment in a county jail be punished either by the term described in the underlying offense or by a term of 16 months, or 2 or 3 years if the term is not specified. Existing law requires an executed sentence for these felonies to be punished in state prison if the defendant has a prior or current felony conviction for a serious or violent felony, is required to register as a sex offender, or is convicted of a crime for which the white collar crime enhancement is imposed as part of the sentence.

This bill would make technical, nonsubstantive changes to that provision.

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

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

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 612 of the Statutes of 2014, is amended to
3 read:

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

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

23 (3) In any case in which the punishment prescribed by statute
24 for a person convicted of a public offense is a term of imprisonment
25 in the state prison of any specification of three time periods, the
26 court shall sentence the defendant to one of the terms of
27 imprisonment specified unless the convicted person is given any
28 other disposition provided by law, including a fine, jail, probation,
29 or the suspension of imposition or execution of sentence or is
30 sentenced pursuant to subdivision (b) of Section 1168 because he
31 or she had committed his or her crime prior to July 1, 1977. In
32 sentencing the convicted person, the court shall apply the
33 sentencing rules of the Judicial Council. The court, unless it
34 determines that there are circumstances in mitigation of the
35 punishment prescribed, shall also impose any other term that it is
36 required by law to impose as an additional term. Nothing in this
37 article shall affect any ~~provision~~ of law that imposes the death
38 penalty, that authorizes or restricts the granting of probation or
39 suspending the execution or imposition of sentence, or expressly
40 provides for imprisonment in the state prison for life, except as

1 provided in paragraph (2) of subdivision (d). In any case in which
2 the amount of preimprisonment credit under Section 2900.5 or any
3 other ~~provision of law~~ is equal to or exceeds ~~any~~ a sentence
4 imposed pursuant to this chapter, the entire sentence shall be
5 deemed to have been served and the defendant shall not be actually
6 delivered to the custody of the secretary. The court shall advise
7 the defendant that he or she shall serve a period of parole and order
8 the defendant to report to the parole office closest to the defendant's
9 last legal residence, unless the in-custody credits equal the total
10 sentence, including both confinement time and the period of parole.
11 The sentence shall be deemed a separate prior prison term under
12 Section 667.5, and a copy of the judgment and other necessary
13 documentation shall be forwarded to the secretary.

14 (b) ~~When~~ *If* a judgment of imprisonment is to be imposed and
15 the statute specifies three possible terms, the choice of the
16 appropriate term ~~shall rest~~ *rests* within the sound discretion of the
17 court. At least four days prior to the time set for imposition of
18 judgment, either party or the victim, or the family of the victim if
19 the victim is deceased, may submit a statement in aggravation or
20 mitigation. In determining the appropriate term, the court may
21 consider the record in the case, the probation officer's report, other
22 reports, including reports received pursuant to Section 1203.03,
23 and statements in aggravation or mitigation submitted by the
24 prosecution, the defendant, or the victim, or the family of the victim
25 if the victim is deceased, and any further evidence introduced at
26 the sentencing hearing. The court shall select the term which, in
27 the court's discretion, best serves the interests of justice. The court
28 shall set forth on the record the reasons for imposing the term
29 selected and the court may not impose an upper term by using the
30 fact of any enhancement upon which sentence is imposed under
31 any ~~provision of law~~. A term of imprisonment shall not be specified
32 if imposition of sentence is suspended.

33 (c) The court shall state the reasons for its sentence choice on
34 the record at the time of sentencing. The court shall also inform
35 the defendant that as part of the sentence after expiration of the
36 term he or she may be on parole for a period as provided in Section
37 3000.

38 (d) (1) ~~When~~ *If* a defendant subject to this section or subdivision
39 (b) of Section 1168 has been sentenced to be imprisoned in the
40 state prison and has been committed to the custody of the secretary,

1 the court may, within 120 days of the date of commitment on its
2 own motion, or at any time upon the recommendation of the
3 secretary or the Board of Parole Hearings, recall the sentence and
4 commitment previously ordered and resentence the defendant in
5 the same manner as if he or she had not previously been sentenced,
6 provided the new sentence, if any, is no greater than the initial
7 sentence. The court resentencing under this subdivision shall apply
8 the sentencing rules of the Judicial Council so as to eliminate
9 disparity of sentences and to promote uniformity of sentencing.
10 Credit shall be given for time served.

11 (2) (A) (i) When a defendant who was under 18 years of age
12 at the time of the commission of the offense for which the
13 defendant was sentenced to imprisonment for life without the
14 possibility of parole has served at least 15 years of that sentence,
15 the defendant may submit to the sentencing court a petition for
16 recall and resentencing.

17 (ii) Notwithstanding clause (i), this paragraph shall not apply
18 to defendants sentenced to life without parole for an offense where
19 the defendant tortured, as described in Section 206, his or her
20 victim or the victim was a public safety official, including any law
21 enforcement personnel mentioned in Chapter 4.5 (commencing
22 with Section 830) of Title 3, or any firefighter as described in
23 Section 245.1, as well as any other officer in any segment of law
24 enforcement who is employed by the federal government, the state,
25 or any of its political subdivisions.

26 (B) The defendant shall file the original petition with the
27 sentencing court. A copy of the petition shall be served on the
28 agency that prosecuted the case. The petition shall include the
29 defendant's statement that he or she was under 18 years of age at
30 the time of the crime and was sentenced to life in prison without
31 the possibility of parole, the defendant's statement describing his
32 or her remorse and work towards rehabilitation, and the defendant's
33 statement that one of the following is true:

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

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

1 (iii) The defendant committed the offense with at least one adult
2 codefendant.

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

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

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

18 (E) If the court finds by a preponderance of the evidence that
19 the statements in the petition are true, the court shall hold a hearing
20 to consider whether to recall the sentence and commitment
21 previously ordered and to resentence the defendant in the same
22 manner as if the defendant had not previously been sentenced,
23 provided that the new sentence, if any, is not greater than the initial
24 sentence. Victims, or victim family members if the victim is
25 deceased, shall retain the rights to participate in the hearing.

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

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

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

35 (iii) The defendant committed the offense with at least one adult
36 codefendant.

37 (iv) Prior to the offense for which the sentence is being
38 considered for recall, the defendant had insufficient adult support
39 or supervision and had suffered from psychological or physical
40 trauma, or significant stress.

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

5 (vi) The defendant has performed acts that tend to indicate
6 rehabilitation or the potential for rehabilitation, including, but not
7 limited to, availing himself or herself of rehabilitative, educational,
8 or vocational programs, if those programs have been available at
9 his or her classification level and facility, using self-study for
10 self-improvement, or showing evidence of remorse.

11 (vii) The defendant has maintained family ties or connections
12 with others through letter writing, calls, or visits, or has eliminated
13 contact with individuals outside of prison who are currently
14 involved with crime.

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

18 (G) The court shall have the discretion to recall the sentence
19 and commitment previously ordered and to resentence the
20 defendant in the same manner as if the defendant had not
21 previously been sentenced, provided that the new sentence, if any,
22 is not greater than the initial sentence. The discretion of the court
23 shall be exercised in consideration of the criteria in subparagraph
24 (B). Victims, or victim family members if the victim is deceased,
25 shall be notified of the resentencing hearing and shall retain their
26 rights to participate in the hearing.

27 (H) If the sentence is not recalled, the defendant may submit
28 another petition for recall and resentencing to the sentencing court
29 when the defendant has been committed to the custody of the
30 department for at least 20 years. If recall and resentencing is not
31 granted under that petition, the defendant may file another petition
32 after having served 24 years. The final petition may be submitted,
33 and the response to that petition shall be determined, during the
34 25th year of the defendant's sentence.

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

40 (J) This subdivision shall have retroactive application.

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

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

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

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

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

22 The Board of Parole Hearings shall make findings pursuant to
23 this subdivision before making a recommendation for resentence
24 or recall to the court. This subdivision does not apply to a prisoner
25 sentenced to death or a term of life without the possibility of parole.

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

29 (4) ~~Any~~A physician employed by the department who
30 determines that a prisoner has six months or less to live shall notify
31 the chief medical officer of the prognosis. If the chief medical
32 officer concurs with the prognosis, he or she shall notify the
33 warden. Within 48 hours of receiving notification, the warden or
34 the warden's representative shall notify the prisoner of the recall
35 and resentencing procedures, and shall arrange for the prisoner to
36 designate a family member or other outside agent to be notified
37 as to the prisoner's medical condition and prognosis, and as to the
38 recall and resentencing procedures. If the inmate is deemed
39 mentally unfit, the warden or the warden's representative shall

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

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

9 (6) Notwithstanding any other provisions of this section, the
10 prisoner or his or her family member or designee may
11 independently request consideration for recall and resentencing
12 by contacting the chief medical officer at the prison or the
13 secretary. Upon receipt of the request, the chief medical officer
14 and the warden or the warden's representative shall follow the
15 procedures described in paragraph (4). If the secretary determines
16 that the prisoner satisfies the criteria set forth in paragraph (2), the
17 secretary or board may recommend to the court that the prisoner's
18 sentence be recalled. The secretary shall submit a recommendation
19 for release within 30 days in the case of inmates sentenced to
20 determinate terms and, in the case of inmates sentenced to
21 indeterminate terms, the secretary shall make a recommendation
22 to the Board of Parole Hearings with respect to the inmates who
23 have applied under this section. The board shall consider this
24 information and make an independent judgment pursuant to
25 paragraph (2) and make findings related thereto before rejecting
26 the request or making a recommendation to the court. This action
27 shall be taken at the next lawfully noticed board meeting.

28 (7) ~~Any~~ A recommendation for recall submitted to the court by
29 the secretary or the Board of Parole Hearings shall include one or
30 more medical evaluations, a postrelease plan, and findings pursuant
31 to paragraph (2).

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

34 (9) If the court grants the recall and resentencing application,
35 the prisoner shall be released by the department within 48 hours
36 of receipt of the court's order, unless a longer time period is agreed
37 to by the inmate. At the time of release, the warden or the warden's
38 representative shall ensure that the prisoner has each of the
39 following in his or her possession: a discharge medical summary,
40 full medical records, state identification, parole medications, and

1 all property belonging to the prisoner. After discharge, any
2 additional records shall be sent to the prisoner's forwarding
3 address.

4 (10) The secretary shall issue a directive to medical and
5 correctional staff employed by the department that details the
6 guidelines and procedures for initiating a recall and resentencing
7 procedure. The directive shall clearly state that any prisoner who
8 is given a prognosis of six months or less to live is eligible for
9 recall and resentencing consideration, and that recall and
10 resentencing procedures shall be initiated upon that prognosis.

11 (f) Notwithstanding any other provision of this section, for
12 purposes of paragraph (3) of subdivision (h), ~~any~~ *an* allegation
13 that a defendant is eligible for state prison due to a prior or current
14 conviction, sentence enhancement, or because he or she is required
15 to register as a sex offender shall not be subject to dismissal
16 pursuant to Section 1385.

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.

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

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

27 (3) Notwithstanding paragraphs (1) and (2), ~~where~~ *if* the
28 defendant (A) has a prior or current felony conviction for a serious
29 felony described in subdivision (c) of Section 1192.7 or a prior or
30 current conviction for a violent felony described in subdivision
31 (c) of Section 667.5, (B) has a prior felony conviction in another
32 jurisdiction for an offense that has all the elements of a serious
33 felony described in subdivision (c) of Section 1192.7 or a violent
34 felony described in subdivision (c) of Section 667.5, (C) is required
35 to register as a sex offender pursuant to Chapter 5.5 (commencing
36 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
37 and as part of the sentence an enhancement pursuant to Section
38 186.11 is imposed, an executed sentence for a felony punishable
39 pursuant to this subdivision shall be served in state prison.

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

5 (5) (A) Unless the court finds that, in the interests of justice, it
6 is not appropriate in a particular case, the court, when imposing a
7 sentence pursuant to paragraph (1) or (2), shall suspend execution
8 of a concluding portion of the term for a period selected at the
9 court's discretion.

10 (B) The portion of a defendant's sentenced term that is
11 suspended pursuant to this paragraph shall be known as mandatory
12 supervision, and, unless otherwise ordered by the court, shall
13 commence upon release from physical custody or an alternative
14 custody program, whichever is later. During the period of
15 mandatory supervision, the defendant shall be supervised by the
16 county probation officer in accordance with the terms, conditions,
17 and procedures generally applicable to persons placed on probation,
18 for the remaining unserved portion of the sentence imposed by the
19 court. The period of supervision shall be mandatory, and may not
20 be earlier terminated except by court order. ~~Any~~ A proceeding to
21 revoke or modify mandatory supervision under this subparagraph
22 shall be conducted pursuant to either subdivisions (a) and (b) of
23 Section 1203.2 or Section 1203.3. During the period when the
24 defendant is under such supervision, unless in actual custody
25 related to the sentence imposed by the court, the defendant shall
26 be entitled to only actual time credit against the term of
27 imprisonment imposed by the court. Any time period which is
28 suspended because a person has absconded shall not be credited
29 toward the period of supervision.

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

33 (7) The sentencing changes made to paragraph (5) by the act
34 that added this paragraph shall become effective and operative on
35 January 1, 2015, and shall be applied prospectively to any person
36 sentenced on or after January 1, 2015.

1 (i) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before that date, deletes or extends that date.

O