

**ASSEMBLY BILL**

**No. 2380**

---

---

**Introduced by Assembly Member Alejo**

February 18, 2016

---

---

An act to add Article 5.8 (commencing with Section 1559.200) to Chapter 3 of Division 2 of the Health and Safety Code, and to amend Section 1170 of the Penal Code, relating to caregivers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2380, as introduced, Alejo. Informal caregivers: background checks.

Existing law requires the State Department of Social Services to license and regulate community care facilities, including foster family homes, certified family homes of licensed foster family agencies, and group homes. Existing law requires that persons providing care or services at these homes or facilities obtain either a criminal record clearance or an exemption from disqualification from the department, as prescribed. Under existing law, a violation of these provisions is a crime.

This bill would additionally require an informal caregiver, as defined, to obtain a criminal records clearance or exemption from the department for each adult residing in, or regularly present in, the home, if the caregiver has been designated by a parent who has been convicted of a felony and sentenced to imprisonment for a period of at least one year. The bill would exempt from these requirements an adult sibling or an informal caregiver who began caring for the child before January 1, 2017. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.

The bill would also require the court, when it sentences a person to a term of imprisonment of one year or more, to inform the person that an informal caregiver designated by the person to care for the person’s minor children may be required to obtain a criminal records clearance or exemption from the department.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Article 5.8 (commencing with Section 1559.200)  
2 is added to Chapter 3 of Division 2 of the Health and Safety Code,  
3 to read:

4  
5 Article 5.8. Informal Caregivers  
6

7 1559.200. (a) An informal caregiver shall obtain a criminal  
8 records clearance or exemption for each adult residing in, or  
9 regularly present in, the home, as set forth in Section 1522 of the  
10 Health and Safety Code, if the caregiver has been designated as  
11 the caregiver by a parent who has been convicted of a felony and  
12 sentenced to imprisonment for a period of at least one year.

13 (b) This section does not apply to either of the following:  
14 (1) An informal caregiver who is an adult sibling of the child.  
15 (2) An informal caregiver who began caring for the child before  
16 January 1, 2017.

17 (c) For purposes of this section, “informal caregiver” means a  
18 person who has assumed responsibility for the care and custody  
19 of a child, without the involvement of the court, child protective  
20 services agency, or other governmental agency.

21 SEC. 2. Section 1170 of the Penal Code, as amended by Section  
22 2 of Chapter 378 of the Statutes of 2015, is amended to read:

23 1170. (a) (1) The Legislature finds and declares that the  
24 purpose of imprisonment for crime is punishment. This purpose  
25 is best served by terms proportionate to the seriousness of the

1 offense with provision for uniformity in the sentences of offenders  
2 committing the same offense under similar circumstances. The  
3 Legislature further finds and declares that the elimination of  
4 disparity and the provision of uniformity of sentences can best be  
5 achieved by determinate sentences fixed by statute in proportion  
6 to the seriousness of the offense as determined by the Legislature  
7 to be imposed by the court with specified discretion.

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

20 (3) In any case in which the punishment prescribed by statute  
21 for a person convicted of a public offense is a term of imprisonment  
22 in the state prison, or a term pursuant to subdivision (h), of any  
23 specification of three time periods, the court shall sentence the  
24 defendant to one of the terms of imprisonment specified unless  
25 the convicted person is given any other disposition provided by  
26 law, including a fine, jail, probation, or the suspension of  
27 imposition or execution of sentence or is sentenced pursuant to  
28 subdivision (b) of Section 1168 because he or she had committed  
29 his or her crime prior to July 1, 1977. In sentencing the convicted  
30 person, the court shall apply the sentencing rules of the Judicial  
31 Council. The court, unless it determines that there are  
32 circumstances in mitigation of the punishment prescribed, shall  
33 also impose any other term that it is required by law to impose as  
34 an additional term. Nothing in this article shall affect any provision  
35 of law that imposes the death penalty, that authorizes or restricts  
36 the granting of probation or suspending the execution or imposition  
37 of sentence, or expressly provides for imprisonment in the state  
38 prison for life, except as provided in paragraph (2) of subdivision  
39 (d). In any case in which the amount of preimprisonment credit  
40 under Section 2900.5 or any other provision of law is equal to or

1 exceeds any sentence imposed pursuant to this chapter, except for  
2 a remaining portion of mandatory supervision imposed pursuant  
3 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
4 sentence shall be deemed to have been served, except for the  
5 remaining period of mandatory supervision, and the defendant  
6 shall not be actually delivered to the custody of the secretary or  
7 the county correctional administrator. The court shall advise the  
8 defendant that he or she shall serve an applicable period of parole,  
9 postrelease community supervision, or mandatory supervision and  
10 order the defendant to report to the parole or probation office  
11 closest to the defendant's last legal residence, unless the in-custody  
12 credits equal the total sentence, including both confinement time  
13 and the period of parole, postrelease community supervision, or  
14 mandatory supervision. The sentence shall be deemed a separate  
15 prior prison term or a sentence of imprisonment in a county jail  
16 under subdivision (h) for purposes of Section 667.5, and a copy  
17 of the judgment and other necessary documentation shall be  
18 forwarded to the secretary.

19 (b) When a judgment of imprisonment is to be imposed and the  
20 statute specifies three possible terms, the court shall order  
21 imposition of the middle term, unless there are circumstances in  
22 aggravation or mitigation of the crime. At least four days prior to  
23 the time set for imposition of judgment, either party or the victim,  
24 or the family of the victim if the victim is deceased, may submit  
25 a statement in aggravation or mitigation to dispute facts in the  
26 record or the probation officer's report, or to present additional  
27 facts. In determining whether there are circumstances that justify  
28 imposition of the upper or lower term, the court may consider the  
29 record in the case, the probation officer's report, other reports,  
30 including reports received pursuant to Section 1203.03, and  
31 statements in aggravation or mitigation submitted by the  
32 prosecution, the defendant, or the victim, or the family of the victim  
33 if the victim is deceased, and any further evidence introduced at  
34 the sentencing hearing. The court shall set forth on the record the  
35 facts and reasons for imposing the upper or lower term. The court  
36 may not impose an upper term by using the fact of any  
37 enhancement upon which sentence is imposed under any provision  
38 of law. A term of imprisonment shall not be specified if imposition  
39 of sentence is suspended.

1 (c) (1) The court shall state the reasons for its sentence choice  
2 on the record at the time of sentencing. The court shall also inform  
3 the defendant that as part of the sentence after expiration of the  
4 term he or she may be on parole for a period as provided in Section  
5 3000 or 3000.08 or postrelease community supervision for a period  
6 as provided in Section 3451.

7 (2) *When the court sentences a person to a term of imprisonment*  
8 *of one year or more, it shall inform the person that an informal*  
9 *caregiver designated by the person to care for the person's minor*  
10 *child may be subject to the requirements of Section 1559.200 of*  
11 *the Health and Safety Code.*

12 (d) (1) When a defendant subject to this section or subdivision  
13 (b) of Section 1168 has been sentenced to be imprisoned in the  
14 state prison or county jail pursuant to subdivision (h) and has been  
15 committed to the custody of the secretary or the county correctional  
16 administrator, the court may, within 120 days of the date of  
17 commitment on its own motion, or at any time upon the  
18 recommendation of the secretary or the Board of Parole Hearings  
19 in the case of state prison inmates, or the county correctional  
20 administrator in the case of county jail inmates, recall the sentence  
21 and commitment previously ordered and resentence the defendant  
22 in the same manner as if he or she had not previously been  
23 sentenced, provided the new sentence, if any, is no greater than  
24 the initial sentence. The court resentencing under this subdivision  
25 shall apply the sentencing rules of the Judicial Council so as to  
26 eliminate disparity of sentences and to promote uniformity of  
27 sentencing. Credit shall be given for time served.

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

34 (ii) Notwithstanding clause (i), this paragraph shall not apply  
35 to defendants sentenced to life without parole for an offense where  
36 the defendant tortured, as described in Section 206, his or her  
37 victim or the victim was a public safety official, including any law  
38 enforcement personnel mentioned in Chapter 4.5 (commencing  
39 with Section 830) of Title 3, or any firefighter as described in  
40 Section 245.1, as well as any other officer in any segment of law

1 enforcement who is employed by the federal government, the state,  
2 or any of its political subdivisions.

3 (B) The defendant shall file the original petition with the  
4 sentencing court. A copy of the petition shall be served on the  
5 agency that prosecuted the case. The petition shall include the  
6 defendant's statement that he or she was under 18 years of age at  
7 the time of the crime and was sentenced to life in prison without  
8 the possibility of parole, the defendant's statement describing his  
9 or her remorse and work towards rehabilitation, and the defendant's  
10 statement that one of the following is true:

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

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

17 (iii) The defendant committed the offense with at least one adult  
18 codefendant.

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

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

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

34 (E) If the court finds by a preponderance of the evidence that  
35 the statements in the petition are true, the court shall hold a hearing  
36 to consider whether to recall the sentence and commitment  
37 previously ordered and to resentence the defendant in the same  
38 manner as if the defendant had not previously been sentenced,  
39 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

12 (iii) The defendant committed the offense with at least one adult  
13 codefendant.

14 (iv) Prior to the offense for which the sentence is being  
15 considered for recall, the defendant had insufficient adult support  
16 or supervision and had suffered from psychological or physical  
17 trauma, or significant stress.

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

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

28 (vii) The defendant has maintained family ties or connections  
29 with others through letter writing, calls, or visits, or has eliminated  
30 contact with individuals outside of prison who are currently  
31 involved with crime.

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

35 (G) The court shall have the discretion to recall the sentence  
36 and commitment previously ordered and to resentence the  
37 defendant in the same manner as if the defendant had not  
38 previously been sentenced, provided that the new sentence, if any,  
39 is not greater than the initial sentence. The discretion of the court  
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,  
2 shall be notified of the resentencing hearing and shall retain their  
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit  
5 another petition for recall and resentencing to the sentencing court  
6 when the defendant has been committed to the custody of the  
7 department for at least 20 years. If recall and resentencing is not  
8 granted under that petition, the defendant may file another petition  
9 after having served 24 years. The final petition may be submitted,  
10 and the response to that petition shall be determined, during the  
11 25th year of the defendant's sentence.

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

39 The Board of Parole Hearings shall make findings pursuant to  
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner  
2 sentenced to death or a term of life without the possibility of parole.

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

6 (4) Any physician employed by the department who determines  
7 that a prisoner has six months or less to live shall notify the chief  
8 medical officer of the prognosis. If the chief medical officer  
9 concurs with the prognosis, he or she shall notify the warden.  
10 Within 48 hours of receiving notification, the warden or the  
11 warden's representative shall notify the prisoner of the recall and  
12 resentencing procedures, and shall arrange for the prisoner to  
13 designate a family member or other outside agent to be notified  
14 as to the prisoner's medical condition and prognosis, and as to the  
15 recall and resentencing procedures. If the inmate is deemed  
16 mentally unfit, the warden or the warden's representative shall  
17 contact the inmate's emergency contact and provide the information  
18 described in paragraph (2).

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

25 (6) Notwithstanding any other provisions of this section, the  
26 prisoner or his or her family member or designee may  
27 independently request consideration for recall and resentencing  
28 by contacting the chief medical officer at the prison or the  
29 secretary. Upon receipt of the request, the chief medical officer  
30 and the warden or the warden's representative shall follow the  
31 procedures described in paragraph (4). If the secretary determines  
32 that the prisoner satisfies the criteria set forth in paragraph (2), the  
33 secretary or board may recommend to the court that the prisoner's  
34 sentence be recalled. The secretary shall submit a recommendation  
35 for release within 30 days in the case of inmates sentenced to  
36 determinate terms and, in the case of inmates sentenced to  
37 indeterminate terms, the secretary shall make a recommendation  
38 to the Board of Parole Hearings with respect to the inmates who  
39 have applied under this section. The board shall consider this  
40 information and make an independent judgment pursuant to

1 paragraph (2) and make findings related thereto before rejecting  
2 the request or making a recommendation to the court. This action  
3 shall be taken at the next lawfully noticed board meeting.

4 (7) Any recommendation for recall submitted to the court by  
5 the secretary or the Board of Parole Hearings shall include one or  
6 more medical evaluations, a postrelease plan, and findings pursuant  
7 to paragraph (2).

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

10 (9) If the court grants the recall and resentencing application,  
11 the prisoner shall be released by the department within 48 hours  
12 of receipt of the court’s order, unless a longer time period is agreed  
13 to by the inmate. At the time of release, the warden or the warden’s  
14 representative shall ensure that the prisoner has each of the  
15 following in his or her possession: a discharge medical summary,  
16 full medical records, state identification, parole or postrelease  
17 community supervision medications, and all property belonging  
18 to the prisoner. After discharge, any additional records shall be  
19 sent to the prisoner’s forwarding address.

20 (10) The secretary shall issue a directive to medical and  
21 correctional staff employed by the department that details the  
22 guidelines and procedures for initiating a recall and resentencing  
23 procedure. The directive shall clearly state that any prisoner who  
24 is given a prognosis of six months or less to live is eligible for  
25 recall and resentencing consideration, and that recall and  
26 resentencing procedures shall be initiated upon that prognosis.

27 (11) The provisions of this subdivision shall be available to an  
28 inmate who is sentenced to a county jail pursuant to subdivision  
29 (h). For purposes of those inmates, “secretary” or “warden” shall  
30 mean the county correctional administrator and “chief medical  
31 officer” shall mean a physician designated by the county  
32 correctional administrator for this purpose.

33 (f) Notwithstanding any other provision of this section, for  
34 purposes of paragraph (3) of subdivision (h), any allegation that  
35 a defendant is eligible for state prison due to a prior or current  
36 conviction, sentence enhancement, or because he or she is required  
37 to register as a sex offender shall not be subject to dismissal  
38 pursuant to Section 1385.

1 (g) A sentence to state prison for a determinate term for which  
2 only one term is specified, is a sentence to state prison under this  
3 section.

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

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

11 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
12 (A) has a prior or current felony conviction for a serious felony  
13 described in subdivision (c) of Section 1192.7 or a prior or current  
14 conviction for a violent felony described in subdivision (c) of  
15 Section 667.5, (B) has a prior felony conviction in another  
16 jurisdiction for an offense that has all the elements of a serious  
17 felony described in subdivision (c) of Section 1192.7 or a violent  
18 felony described in subdivision (c) of Section 667.5, (C) is required  
19 to register as a sex offender pursuant to Chapter 5.5 (commencing  
20 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
21 and as part of the sentence an enhancement pursuant to Section  
22 186.11 is imposed, an executed sentence for a felony punishable  
23 pursuant to this subdivision shall be served in state prison.

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

28 (5) (A) Unless the court finds, in the interest of justice, that it  
29 is not appropriate in a particular case, the court, when imposing a  
30 sentence pursuant to paragraph (1) or (2), shall suspend execution  
31 of a concluding portion of the term for a period selected at the  
32 court's discretion.

33 (B) The portion of a defendant's sentenced term that is  
34 suspended pursuant to this paragraph shall be known as mandatory  
35 supervision, and, unless otherwise ordered by the court, shall  
36 commence upon release from physical custody or an alternative  
37 custody program, whichever is later. During the period of  
38 mandatory supervision, the defendant shall be supervised by the  
39 county probation officer in accordance with the terms, conditions,  
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the  
2 court. The period of supervision shall be mandatory, and may not  
3 be earlier terminated except by court order. Any proceeding to  
4 revoke or modify mandatory supervision under this subparagraph  
5 shall be conducted pursuant to either subdivisions (a) and (b) of  
6 Section 1203.2 or Section 1203.3. During the period when the  
7 defendant is under that supervision, unless in actual custody related  
8 to the sentence imposed by the court, the defendant shall be entitled  
9 to only actual time credit against the term of imprisonment imposed  
10 by the court. Any time period which is suspended because a person  
11 has absconded shall not be credited toward the period of  
12 supervision.

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

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

20 (i) This section shall become operative on January 1, 2017.

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because this act creates a new crime or  
25 infraction, eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section 17556 of  
27 the Government Code, or changes the definition of a crime within  
28 the meaning of Section 6 of Article XIII B of the California  
29 Constitution.