

**ASSEMBLY BILL**

**No. 2765**

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**Introduced by Assembly Member Weber**

February 19, 2016

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An act to amend Section 1170.18 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2765, as introduced, Weber. Proposition 47: sentence reduction.

Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, reduced the penalties for various crimes. Under the provisions of the act, a person currently convicted of a felony or felonies who would have been guilty of a misdemeanor under the act if the act had been in effect at the time of the conviction may petition or apply to have the sentence reduced in accordance with the act. That act requires that this petition or application be filed before November 4, 2017.

Proposition 47 provides that its provisions may be amended by a statute that is consistent with and furthers its intent and that is passed by a  $\frac{2}{3}$  vote of each house of the Legislature and is signed by the Governor. Proposition 47 also provides that the Legislature may, by majority vote, amend, add, or repeal provisions to further reduce the penalties for offenses it addresses.

Because the bill would remove the time limitation for petitioning or applying for a reduction of sentence, the bill would amend the act and would require a  $\frac{2}{3}$  vote of the Legislature.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 1170.18 of the Penal Code is amended  
2 to read:

3 1170.18. (a) A person currently serving a sentence for a  
4 conviction, whether by trial or plea, of a felony or felonies who  
5 would have been guilty of a misdemeanor under the act that added  
6 this section (“this act”) had this act been in effect at the time of  
7 the offense may petition for a recall of sentence before the trial  
8 court that entered the judgment of conviction in his or her case to  
9 request resentencing in accordance with Sections 11350, 11357,  
10 or 11377 of the Health and Safety Code, or Section 459.5, 473,  
11 476a, 490.2, 496, or 666 of the Penal Code, as those sections have  
12 been amended or added by this act.

13 (b) Upon receiving a petition under subdivision (a), the court  
14 shall determine whether the petitioner satisfies the criteria in  
15 subdivision (a). If the petitioner satisfies the criteria in subdivision  
16 (a), the petitioner’s felony sentence shall be recalled and the  
17 petitioner resentenced to a misdemeanor pursuant to Sections  
18 11350, 11357, or 11377 of the Health and Safety Code, or Section  
19 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, *as* those  
20 sections have been amended or added by this act, unless the court,  
21 in its discretion, determines that resentencing the petitioner would  
22 pose an unreasonable risk of danger to public safety. In exercising  
23 its discretion, the court may consider all of the following:

24 (1) The petitioner’s criminal conviction history, including the  
25 type of crimes committed, the extent of injury to victims, the length  
26 of prior prison commitments, and the remoteness of the crimes.

27 (2) The petitioner’s disciplinary record and record of  
28 rehabilitation while incarcerated.

29 (3) Any other evidence the court, within its discretion,  
30 determines to be relevant in deciding whether a new sentence  
31 would result in an unreasonable risk of danger to public safety.

32 (c) As used throughout this Code, “unreasonable risk of danger  
33 to public safety” means an unreasonable risk that the petitioner  
34 will commit a new violent felony within the meaning of clause  
35 (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of  
36 Section 667.

37 (d) A person who is resentenced pursuant to subdivision (b)  
38 shall be given credit for time served and shall be subject to parole

1 for one year following completion of his or her sentence, unless  
2 the court, in its discretion, as part of its resentencing order, releases  
3 the person from parole. Such person is subject to Section 3000.08  
4 parole supervision by the Department of Corrections and  
5 Rehabilitation and the jurisdiction of the court in the county in  
6 which the parolee is released or resides, or in which an alleged  
7 violation of supervision has occurred, for the purpose of hearing  
8 petitions to revoke parole and impose a term of custody.

9 (e) Under no circumstances may resentencing under this section  
10 result in the imposition of a term longer than the original sentence.

11 (f) A person who has completed his or her sentence for a  
12 conviction, whether by trial or plea, of a felony or felonies who  
13 would have been guilty of a misdemeanor under this act had this  
14 act been in effect at the time of the offense, may file an application  
15 before the trial court that entered the judgment of conviction in  
16 his or her case to have the felony conviction or convictions  
17 designated as misdemeanors.

18 (g) If the application satisfies the criteria in subdivision (f), the  
19 court shall designate the felony offense or offenses as a  
20 misdemeanor.

21 (h) Unless requested by the applicant, no hearing is necessary  
22 to grant or deny an application filed under subsection (f).

23 (i) The provisions of this section shall not apply to persons who  
24 have one or more prior convictions for an offense specified in  
25 clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e)  
26 of Section 667 or for an offense requiring registration pursuant to  
27 subdivision (c) of Section 290.

28 ~~(j) Any petition or application under this section shall be filed~~  
29 ~~within three years after the effective date of the act that added this~~  
30 ~~section or at a later date upon a showing of good cause.~~

31 ~~(k)~~

32 (j) Any felony conviction that is recalled and resentenced under  
33 subdivision (b) or designated as a misdemeanor under subdivision  
34 (g) shall be considered a misdemeanor for all purposes, except that  
35 such resentencing shall not permit that person to own, possess, or  
36 have in his or her custody or control any firearm or prevent his or  
37 her conviction under Chapter 2 (commencing with Section 29800)  
38 of Division 9 of Title 4 of Part 6.

39 ~~(t)~~

1 (k) If the court that originally sentenced the petitioner is not  
2 available, the presiding judge shall designate another judge to rule  
3 on the petition or application.

4 ~~(m)~~

5 (l) Nothing in this section is intended to diminish or abrogate  
6 any rights or remedies otherwise available to the petitioner or  
7 applicant.

8 ~~(n)~~

9 (m) Nothing in this and related sections is intended to diminish  
10 or abrogate the finality of judgments in any case not falling within  
11 the purview of this act.

12 ~~(o)~~

13 (n) A resentencing hearing ordered under this act shall constitute  
14 a “post-conviction release proceeding” under paragraph (7) of  
15 subdivision (b) of Section 28 of Article I of the California  
16 Constitution (Marsy’s Law).