

**Introduced by Senator Lara**February 18, 2016

---

---

An act to add Section 1210.6 to the Penal Code, relating to sentencing.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1242, as introduced, Lara. Sentencing: modification: immigration consequences.

Existing law authorizes, in certain circumstances, the court, within 120 days of the defendant's commitment to the custody of the Secretary of the Department of Corrections and Rehabilitation or the county correctional administrator on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings or the county correctional administrator, as applicable, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.

This bill would, grant the court jurisdiction to reduce a county jail term that is part of an otherwise final judgment if the defendant establishes by a preponderance of the evidence that certain conditions are satisfied, including, among others, that the defendant is not a United States citizen and may be subject to adverse immigration consequences because of a plea of guilty or nolo contendere to, or conviction for, the offense for which the county jail term was served and reducing the county jail term would ameliorate those consequences, and that, if the county jail was a material term of a plea agreement, the prosecution consents to the reduction. The bill would authorize the court to reduce the county jail term to any lower term allowed by law for the offense. The bill would provide that a grant or denial of relief under these provisions is not appealable, but may be challenged by a petition for a

writ of mandate or prohibition filed within 60 days of the grant or denial. By imposing new duties on local prosecutors, this bill would impose a state-mandated local program.

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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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. Section 1210.6 is added to the Penal Code,  
 2 immediately following Section 1210.5, to read:  
 3 1210.6. (a) The court shall at any time have jurisdiction to  
 4 reduce a county jail term that is part of an otherwise final judgment  
 5 if the defendant establishes by a preponderance of the evidence  
 6 that all of the following conditions are satisfied:  
 7 (1) The county jail term was served as a result of a plea of guilty  
 8 or nolo contendere to, or conviction for, a misdemeanor offense  
 9 or as a condition of probation imposed as a result of a plea of guilty  
 10 or nolo contendere to, or a conviction for, a felony offense in which  
 11 the court never imposed sentence.  
 12 (2) The defendant is not a United States citizen and may be  
 13 subject to adverse immigration consequences because of the plea  
 14 of guilty or nolo contendere to, or conviction for, the offense for  
 15 which the county jail term was served and reducing the county jail  
 16 term would ameliorate those adverse immigration consequences.  
 17 (3) In the discretion of the court, reducing the county jail term  
 18 would be in furtherance of justice.  
 19 (4) If the county jail term was a material term of a plea  
 20 agreement, the prosecution consents to a reduction pursuant to this  
 21 section.  
 22 (b) The defendant shall bring a motion to reduce a county jail  
 23 term in the same court in which the defendant entered his or her  
 24 plea of guilty or nolo contendere or in which he or she was  
 25 convicted. The court may reduce the county jail term to any lower

1 term allowed by law for the offense. However, the court shall not  
2 modify any other terms of the conviction.

3 (c) If the defendant has previously been granted relief under  
4 this section, the court may deny a subsequent request without  
5 considering the merits. Notwithstanding any other provision of  
6 law, the grant or denial of relief under this section shall not be  
7 appealable, but may be challenged by a petition for a writ of  
8 mandate or prohibition filed within 60 days of the grant or denial.

9 SEC. 2. The Legislature finds that there is no mandate  
10 contained in this act that will result in costs incurred by a local  
11 agency or school district for a new program or higher level of  
12 service which require reimbursement pursuant to Section 6 of  
13 Article XIII B of the California Constitution and Part 7  
14 (commencing with Section 17500) of Division 4 of Title 2 of the  
15 Government Code.

O