

AMENDED IN ASSEMBLY JULY 7, 1999

AMENDED IN SENATE MAY 18, 1999

SENATE BILL

No. 1117

Introduced by Senator Vasconcellos

February 26, 1999

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1117, as amended, Vasconcellos. Inmates: rehabilitation.

Existing law provides that the purpose of imprisonment for crime is punishment, and that this purpose is best served by the imposition of determinate sentences, as specified.

This bill would provide that the purposes of imprisonment are the prevention and punishment of crime, and the rehabilitation of inmates.

Existing law provides that the above-described existing provisions of law shall not be construed to preclude programs, including educational programs, that are designed to rehabilitate nonviolent, first-time felony offenders.

This bill would provide that provisions of law establishing the purposes of imprisonment would be construed to include programs that are designed to rehabilitate nonviolent, first-time felony offenders, reduce the rate of recidivism, and promote public safety, including, but not limited to, educational, vocational, and drug treatment programs.

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 is
 2 amended to read:
 3 1170. (a) (1) The Legislature finds and declares that
 4 the purposes of imprisonment for crime are *punishment*,
 5 *and in addition*, the prevention ~~and punishment~~ of crime,
 6 and the rehabilitation of inmates. These purposes are best
 7 accomplished by an effective, comprehensive program
 8 that promotes the public safety of all Californians. This is
 9 especially true because most Californians who are
 10 convicted felons will eventually finish serving their terms
 11 of incarceration and will be released into California
 12 communities. It is critical to improving *our* public safety
 13 that during their time in state prison, inmates be
 14 provided with services that ~~enable~~ *prepare* them to lead
 15 constructive, *safe*, law-abiding lives upon *their* release
 16 from prison. In addition, the Legislature finds and
 17 declares that the purposes of imprisonment are best
 18 served by imposing terms that are proportionate to the
 19 seriousness of the offense with provision for uniformity in
 20 the sentences of offenders committing the same offense
 21 under similar circumstances. The Legislature further
 22 finds and declares that the elimination of disparity and
 23 the provision of uniformity of sentences can best be
 24 achieved by determinate sentences fixed by statute in
 25 proportion to the seriousness of the offense as determined
 26 by the Legislature to be imposed by the court with
 27 specified discretion.
 28 (2) Paragraph (1) shall be construed to include
 29 programs, such as educational programs, vocational and
 30 drug treatment programs, that are designed to
 31 rehabilitate nonviolent, first-time felony offenders,
 32 reduce the rate of recidivism, and promote the public
 33 safety. The Legislature encourages the development of
 34 policies and programs designed to educate and
 35 rehabilitate nonviolent, first-time felony offenders



1 consistent with the purpose of imprisonment and the
2 intent to reduce the rate of recidivism and promote the
3 public safety.

4 (3) In any case in which the punishment prescribed by
5 statute for a person convicted of a public offense is a term
6 of imprisonment in the state prison of any specification of
7 three time periods, the court shall sentence the
8 defendant to one of the terms of imprisonment specified
9 unless the convicted person is given any other disposition
10 provided by law, including a fine, jail, probation, or the
11 suspension of imposition or execution of sentence or is
12 sentenced pursuant to subdivision (b) of Section 1168
13 because he or she had committed his or her crime prior
14 to July 1, 1977. In sentencing the convicted person, the
15 court shall apply the sentencing rules of the Judicial
16 Council. The court, unless it determines that there are
17 circumstances in mitigation of the punishment
18 prescribed, shall also impose any other term that it is
19 required by law to impose as an additional term. Nothing
20 in this article shall affect any provision of law that imposes
21 the death penalty, that authorizes or restricts the
22 granting of probation or suspending the execution or
23 imposition of sentence, or expressly provides for
24 imprisonment in the state prison for life. In any case in
25 which the amount of preimprisonment credit under
26 Section 2900.5 or any other provision of law is equal to or
27 exceeds any sentence imposed pursuant to this chapter,
28 the entire sentence shall be deemed to have been served
29 and the defendant shall not be actually delivered to the
30 custody of the Director of Corrections. The court shall
31 advise the defendant that he or she shall serve a period
32 of parole and order the defendant to report to the parole
33 office closest to the defendant's last legal residence, unless
34 the in-custody credits equal the total sentence, including
35 both confinement time and the period of parole. The
36 sentence shall be deemed a separate prior prison term
37 under Section 667.5, and a copy of the judgment and other
38 necessary documentation shall be forwarded to the
39 Director of Corrections.



1 (b) When a judgment of imprisonment is to be
2 imposed and the statute specifies three possible terms,
3 the court shall order imposition of the middle term, unless
4 there are circumstances in aggravation or mitigation of
5 the crime. At least four days prior to the time set for
6 imposition of judgment, either party or the victim, or the
7 family of the victim if the victim is deceased, may submit
8 a statement in aggravation or mitigation to dispute facts
9 in the record or the probation officer's report, or to
10 present additional facts. In determining whether there
11 are circumstances that justify imposition of the upper or
12 lower term, the court may consider the record in the case,
13 the probation officer's report, other reports including
14 reports received pursuant to Section 1203.03 and
15 statements in aggravation or mitigation submitted by the
16 prosecution, the defendant, or the victim, or the family of
17 the victim if the victim is deceased, and any further
18 evidence introduced at the sentencing hearing. The court
19 shall set forth on the record the facts and reasons for
20 imposing the upper or lower term. The court may not
21 impose an upper term by using the fact of any
22 enhancement upon which sentence is imposed under any
23 provision of law. A term of imprisonment shall not be
24 specified if imposition of sentence is suspended.

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

30 (d) When a defendant subject to this section or
31 subdivision (b) of Section 1168 has been sentenced to be
32 imprisoned in the state prison and has been committed to
33 the custody of the Director of Corrections, the court may,
34 within 120 days of the date of commitment on its own
35 motion, or at any time upon the recommendation of the
36 Director of Corrections or the Board of Prison Terms,
37 recall the sentence and commitment previously ordered
38 and resentence the defendant in the same manner as if
39 he or she had not previously been sentenced, provided
40 the new sentence, if any, is no greater than the initial



1 sentence. The resentence under this subdivision shall
2 apply the sentencing rules of the Judicial Council so as to
3 eliminate disparity of sentences and to promote
4 uniformity of sentencing. Credit shall be given for time
5 served.

6 (e) (1) Notwithstanding any other law and consistent
7 with paragraph (1) of subdivision (a) of Section 1170, if
8 the Director of Corrections or the Board of Prison Terms
9 or both determine that a prisoner satisfies the criteria set
10 forth in paragraph (2), the director or the board may
11 recommend to the court that the prisoner's sentence be
12 recalled.

13 (2) The court shall have the discretion to resentence
14 or recall if the court finds both of the following:

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

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

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

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

31 (4) The prisoner or his or her family member or
32 designee may request consideration for recall and
33 resentencing by contacting the chief medical officer at
34 the prison or the Director of Corrections. Upon receipt of
35 the request, if the director determines that the prisoner
36 satisfies the criteria set forth in paragraph (2), the
37 director or board may recommend to the court that the
38 prisoner's sentence be recalled. The director shall submit
39 a recommendation for release within 30 days in the case
40 of inmates sentenced to determinate terms and, in the



1 case of inmates sentenced to indeterminate terms, the
2 director may make a recommendation to the Board of
3 Prison Terms with respect to the inmates who have
4 applied under this section. The board shall consider this
5 information and make an independent judgment
6 pursuant to paragraph (2) and make findings related
7 thereto before rejecting the request or making a
8 recommendation to the court. This action shall be taken
9 at the next lawfully noticed board meeting.

10 (5) Any recommendation for recall submitted to the
11 court by the Director of Corrections or the Board of
12 Prison Terms shall include one or more medical
13 evaluations, a postrelease plan, and findings pursuant to
14 paragraph (2).

15 (6) If possible, the matter shall be heard before the
16 same judge of the court who sentenced the prisoner.

17 (f) Any sentence imposed under this article shall be
18 subject to the provisions of Sections 3000 and 3057 and any
19 other applicable provisions of law.

20 (g) A sentence to state prison for a determinate term
21 for which only one term is specified, is a sentence to state
22 prison under this section.

