

ASSEMBLY BILL

No. 765

Introduced by Assembly Member Ammiano

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 765, as introduced, Ammiano. Sentencing.

Existing law sets forth legislative findings establishing that the purpose of imprisonment for crimes is punishment and that this purpose is best served by terms proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

This bill would make technical, nonsubstantive changes to those provisions.

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 2 of Chapter 828 of the Statutes of 2012, is amended to
- 3 read:
- 4 1170. (a) (1) The Legislature finds and declares that the
- 5 purpose of imprisonment for crime is punishment. This purpose
- 6 is best served by terms *that are* proportionate to the seriousness
- 7 of the offense with provision for uniformity in the sentences of
- 8 offenders committing the same offense under similar

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

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

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

have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

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

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

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the

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

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

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

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

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

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

38 (iii) The defendant committed the offense with at least one adult
39 codefendant.

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

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

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

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

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

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

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

33 (iii) The defendant committed the offense with at least one adult
34 codefendant.

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

39 (v) The defendant suffers from cognitive limitations due to
40 mental illness, developmental disabilities, or other factors that did

1 not constitute a defense, but influenced the defendant's
2 involvement in the offense.

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

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

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

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

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

38 (J) This subdivision shall have retroactive application.

39 (e) (1) Notwithstanding any other law and consistent with
40 paragraph (1) of subdivision (a), if the secretary or the Board of

1 Parole Hearings or both determine that a prisoner satisfies the
2 criteria set forth in paragraph (2), the secretary or the board may
3 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

27 (4) Any physician employed by the department who determines
28 that a prisoner has six months or less to live shall notify the chief
29 medical officer of the prognosis. If the chief medical officer
30 concurs with the prognosis, he or she shall notify the warden.
31 Within 48 hours of receiving notification, the warden or the
32 warden's representative shall notify the prisoner of the recall and
33 resentencing procedures, and shall arrange for the prisoner to
34 designate a family member or other outside agent to be notified
35 as to the prisoner's medical condition and prognosis, and as to the
36 recall and resentencing procedures. If the inmate is deemed
37 mentally unfit, the warden or the warden's representative shall
38 contact the inmate's emergency contact and provide the information
39 described in paragraph (2).

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

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

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

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

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

1 additional records shall be sent to the prisoner's forwarding
2 address.

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

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

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

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

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

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

39 (4) Nothing in this subdivision shall be construed to prevent
40 other dispositions authorized by law, including pretrial diversion,

1 deferred entry of judgment, or an order granting probation pursuant
2 to Section 1203.1.

3 (5) The court, when imposing a sentence pursuant to paragraph
4 (1) or (2) of this subdivision, may commit the defendant to county
5 jail as follows:

6 (A) For a full term in custody as determined in accordance with
7 the applicable sentencing law.

8 (B) (i) For a term as determined in accordance with the
9 applicable sentencing law, but suspend execution of a concluding
10 portion of the term selected in the court's discretion, during which
11 time the defendant shall be supervised by the county probation
12 officer in accordance with the terms, conditions, and procedures
13 generally applicable to persons placed on probation, for the
14 remaining unserved portion of the sentence imposed by the court.
15 The period of supervision shall be mandatory, and may not be
16 earlier terminated except by court order. Any proceeding to revoke
17 or modify mandatory supervision under this subparagraph shall
18 be conducted pursuant to either subdivisions (a) and (b) of Section
19 1203.2 or Section 1203.3. During the period when the defendant
20 is under such supervision, unless in actual custody related to the
21 sentence imposed by the court, the defendant shall be entitled to
22 only actual time credit against the term of imprisonment imposed
23 by the court. Any time period which is suspended because a person
24 has absconded shall not be credited toward the period of
25 supervision.

26 (ii) The portion of a defendant's sentenced term during which
27 time he or she is supervised by the county probation officer
28 pursuant to this subparagraph shall be known as mandatory
29 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 (i) This section shall become operative on January 1, 2014.