

AMENDED IN ASSEMBLY AUGUST 30, 2000

AMENDED IN ASSEMBLY AUGUST 29, 2000

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 *the Department of Corrections and 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 primary purpose of our entire criminal justice system
5 is to maximize the public safety of all Californians in hopes
6 of our moving each and all of our practices so that we have
7 no more victims among us. In particular, the specific
8 purposes of the Department of Corrections ~~and the~~
9 ~~Department of the Youth Authority~~ and of imprisonment
10 are punishment, as well as the prevention of crime, and
11 the rehabilitation of inmates. These purposes are best
12 accomplished by an effective, comprehensive program
13 that seeks to promote the public safety of all Californians.
14 This is especially true because most Californians who are
15 convicted felons will eventually finish serving their terms
16 of incarceration and will be released into California
17 communities. It is critical to improving our public safety
18 that during their time in state prison, inmates be
19 provided with services that prepare and enable them to
20 lead constructive, safe, law-abiding lives upon their
21 release from prison. In addition, the Legislature finds and
22 declares that the purposes of imprisonment are best
23 served by imposing terms that are proportionate to the
24 seriousness of the offense with provision for uniformity in
25 the sentences of offenders committing the same offense
26 under similar circumstances. The Legislature further
27 finds and declares that the elimination of disparity and
28 the provision of uniformity of sentences can best be
29 achieved by determinate sentences fixed by statute in
30 proportion to the seriousness of the offense as determined
31 by the Legislature to be imposed by the court with
32 specified discretion.



1 (2) Paragraph (1) shall be construed to include
2 programs, such as educational programs, vocational and
3 drug treatment programs, that are designed to
4 rehabilitate nonviolent, first-time felony offenders,
5 reduce the rate of recidivism, and promote the public
6 safety. The Legislature encourages the development of
7 policies and programs designed to educate and
8 rehabilitate nonviolent, first-time felony offenders
9 consistent with the purpose of imprisonment and the
10 intent to reduce the rate of recidivism and promote the
11 public safety.

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

1 office closest to the defendant's last legal residence, unless
2 the in-custody credits equal the total sentence, including
3 both confinement time and the period of parole. The
4 sentence shall be deemed a separate prior prison term
5 under Section 667.5, and a copy of the judgment and other
6 necessary documentation shall be forwarded to the
7 Director of Corrections.

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

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

37 (d) When a defendant subject to this section or
38 subdivision (b) of Section 1168 has been sentenced to be
39 imprisoned in the state prison and has been committed to
40 the custody of the Director of Corrections, the court may,

1 within 120 days of the date of commitment on its own
2 motion, or at any time upon the recommendation of the
3 Director of Corrections or the Board of Prison Terms,
4 recall the sentence and commitment previously ordered
5 and resentence the defendant in the same manner as if
6 he or she had not previously been sentenced, provided
7 the new sentence, if any, is no greater than the initial
8 sentence. The resentence under this subdivision shall
9 apply the sentencing rules of the Judicial Council so as to
10 eliminate disparity of sentences and to promote
11 uniformity of sentencing. Credit shall be given for time
12 served.

13 (e) (1) Notwithstanding any other law and consistent
14 with paragraph (1) of subdivision (a) of Section 1170, if
15 the Director of Corrections or the Board of Prison Terms
16 or both determine that a prisoner satisfies the criteria set
17 forth in paragraph (2), the director or the board may
18 recommend to the court that the prisoner's sentence be
19 recalled.

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

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

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

29 The Board of Prison Terms shall make findings
30 pursuant to this subdivision before making a
31 recommendation for resentence or recall to the court.
32 This subdivision does not apply to a prisoner sentenced to
33 death or a term of life without the possibility of parole.

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

38 (4) The prisoner or his or her family member or
39 designee may request consideration for recall and
40 resentencing by contacting the chief medical officer at

1 the prison or the Director of Corrections. Upon receipt of
2 the request, if the director determines that the prisoner
3 satisfies the criteria set forth in paragraph (2), the
4 director or board may recommend to the court that the
5 prisoner's sentence be recalled. The director shall submit
6 a recommendation for release within 30 days in the case
7 of inmates sentenced to determinate terms and, in the
8 case of inmates sentenced to indeterminate terms, the
9 director may make a recommendation to the Board of
10 Prison Terms with respect to the inmates who have
11 applied under this section. The board shall consider this
12 information and make an independent judgment
13 pursuant to paragraph (2) and make findings related
14 thereto before rejecting the request or making a
15 recommendation to the court. This action shall be taken
16 at the next lawfully noticed board meeting.

17 (5) Any recommendation for recall submitted to the
18 court by the Director of Corrections or the Board of
19 Prison Terms shall include one or more medical
20 evaluations, a postrelease plan, and findings pursuant to
21 paragraph (2).

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

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

27 (g) A sentence to state prison for a determinate term
28 for which only one term is specified, is a sentence to state
29 prison under this section.

