
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2942 **Hearing Date:** June 26, 2018
Author: Ting
Version: May 8, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal Procedure: Recall of Sentencing*

HISTORY

Source: Santa Clara County District Attorney

Prior Legislation: SB 1084 (Hancock), Ch. 867, Stats. 2016
AB 1156 (Brown), Ch. 378, Stats. 2015
AB 560 (Ammiano), 2013, held in Assembly Appropriations
SB 9 (Yee), Ch. 828, Stats. 2012
SB 1226 (Kuehl), 2004, held in Assembly Appropriations

Support: Alameda County District Attorney; American Civil Liberties Union of California; California Public Defenders Association; Conference of California Bar Associations; Ella Baker Center for Human Rights; National Center for Youth Law; San Francisco District Attorney

Opposition: None known

Assembly Floor Vote: 45 - 27

PURPOSE

The purpose of this bill is to allow the court to recall and resentencing an inmate upon the recommendation of the district attorney of the county in which a defendant was sentenced and to create a procedure for inmates sentenced to lengthy terms to submit a request to the district attorney for a recommendation for recall and resentencing.

Existing law provides that the court can recall the defendant's sentence within 120 days of the defendant's commitment, or at any time upon a recommendation of the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings (for prison sentences) or the county correctional administrator (for jail sentences) and impose a new sentence. (Pen. Code, § 1170, subd. (d)(1).)

Existing law provides that when a sentencing enhancement specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. (Pen. Code, § 1170.1(d).)

Existing law allows a defendant who was a minor at the time he or she received a sentence of life without the possibility of parole to petition the court for a new sentence after completing 15 years imprisonment. (Pen. Code, § 1170, subd. (d)(2)(A)(i).)

Existing law allows the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings to make a recommendation to the sentencing court that a defendant's sentence be recalled and that he or she be given a new sentence for medical reasons. (Pen. Code, § 1170, subd. (e)(1).)

This bill allows the district attorney of the county in which the defendant was sentenced to make a recommendation to the court to recall the sentence and commitment previously ordered and resentence the defendant.

This bill allows a defendant who was sentenced for a term of 15 years or more, a term of life, or life without the possibility of parole, and who has been incarcerated for no less than the lesser of 15 years or 50 percent of the term, may submit to the district attorney of the county in which the defendant was sentenced a request for a recommendation to the sentencing court for recall and resentencing.

This bill provides that the request shall be in writing and shall set forth the reasons why a recommendation is warranted, including, but not limited to, both of the following:

- 1) Evidence of the defendant's behavior and disciplinary history during incarceration demonstrating the defendant's rehabilitation and demonstrating that the defendant does not pose a threat to the public; and,
- 2) Evidence of activities that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, participation in, or completion of, rehabilitative, educational, or vocational programs, if those programs have been available at his or her classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

This bill makes ineligible to submit a request for recommendation for recall and resentencing a defendant serving a sentence for murder in the first degree or any offense that requires sex offender registration.

This bill clarifies that the provisions of this bill grants a district attorney the discretion to consider a request for a recommendation to promote the general welfare; it does not impose upon a district attorney any obligation to consider or grant a request, nor does it create a right to appeal the denial of a request.

COMMENTS

1. Need for this Bill

According to the author of this bill:

While public safety remains a key priority for all Californians, emerging research suggests that we should revisit past policies thought necessary to achieve the best

public safety outcomes. A report published by the University of Chicago reveals that longer prison sentences have marginal effects on recidivism. Research from the Brennan Center for Justice found that prison sentences could be shortened by 25% across the board without causing a negative effect on public safety.

2. Jurisdiction and Existing Recall and Resentencing Provisions

As a general matter, a court typically loses jurisdiction over a sentence when the sentence begins. (*Dix v. Superior Court* (1991) 53 Cal. 3d 442, 455.) Once the defendant has been committed on a sentence pronounced by the court, the court no longer has the legal authority to increase, reduce, or otherwise alter the defendant's sentence. (*Id.*)

However, the Legislature has created limited statutory exceptions allowing a court to recall a sentence and resentence the defendant. (*Id.*; Pen. Code, § 1170, subd. (d).) Specifically, within 120 days of commitment, the court has the ability to resentence the defendant as if it had never imposed sentence to begin with. (Pen. Code, § 1170, subd. (d)(1).) In addition, the Director of the Corrections Department, and the Board of Parole Hearings or the county correctional administrator, can make a recommendation for resentencing at any time. (*Id.*) The court also has authority to recall the sentence of terminally ill defendants. (Penal Code Section 1170, subd. (e).) Finally, a defendant who was sentenced to a term of life without the possibility of parole prior to the age of eighteen may petition the court to recall his or her sentence in order to impose a new one. (Pen. Code, § 1170, subd. (d)(2)(A)(i).) In order to take advantage of this petition, the defendant must first have served fifteen years of his or her sentence. (*Id.*)

This bill would add district attorneys to the list of persons who may recommend recall of resentencing to the court. Additionally, this bill would provide the court with the jurisdiction to resentence any defendant who received a sentence of 15 years or more after the defendant completes one half of his or her sentence, or 15 years of incarceration, whichever comes first. In order to be resentenced, the defendant would first have to submit a letter to the district attorney that sentenced him or her in order to receive a recommendation for resentencing. The request must include evidence that the defendant is not a threat to the public and evidence that tend to indicate rehabilitation or the potential for rehabilitation.

3. Argument in Support

According to the Conference of California Bar Associations:

At times District Attorneys become aware of defendants, who, for one reason or another, should have their sentences recalled and resentenced to a lesser term. There presently is no mechanism for a District Attorney to ask the court to recall the sentence to fix the problem. AB 2942 would provide this mechanism, allowing the court to recall and resentence a defendant upon the recommendation of the district attorney of the county in which the defendant was sentenced.

The list of people who can recommend recall of sentencing is very short: The court itself, the secretary of the California Department of Corrections and Rehabilitation (CDCR) or Board of Parole Hearings (BPH). Nor is the process automatic. The court must agree with the recommendation, at which point it can 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. The change proposed by AB 2942 provides increased fairness and public protection.

A prison sentence can be recalled for any reason rationally related to sentencing. (Dix v. Superior Court (1991) 53 Cal.3d 442.) Two reasons a court might want to recall a sentence, identified in the statute, are to eliminate disparity of sentences and to promote uniformity of sentencing. . . .

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