SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2017 - 2018 Regular

Bill No:	SB 143	**Hearing Date:**	March 21, 2017
Author:	Beall		
Version:	February 21, 2017		
Urgency:	No	**Fiscal:**	Yes
Consultant:	SC		

Subject: ***Sentencing: Persons Confined to a State Hospital***

HISTORY

Source: NAACP Legal Defense Fund

Prior Legislation: SB 955 (Beall) Ch. 715, Stats. 2016

Support: American Civil Liberties Union of California; American Friends Service Committee; Anti-Recidivism Coalition; California Attorneys for Criminal Justice; California Coalition of Women Prisoners; California Public Defenders Association; Disability Rights California; National Union of Healthcare Workers; San Diego District Attorney's Office; San Francisco District Attorney's Office

Opposition: California District Attorneys Association; California State Sheriffs' Association

PURPOSE

The purpose of this bill is to apply the resentencing provisions of Proposition 36 (2012) and Proposition 47 (2014) to persons committed to the Department of State Hospitals (DSH).

Existing law includes a number of "forensic" civil commitment schemes for persons who have been in the criminal justice system, have a mental disorder that caused or contributed to the person's criminal conduct and are involuntarily committed to DSH for treatment. These include persons who are incompetent to stand trial (IST), not guilty by reason of insanity (NGI), mentally disordered offender-parolees (MDO) and sexually violent predators (SVP). The maximum period of confinement for treatment varies with the category of forensic patient, but generally lasts for the length of time necessary to treat the person's condition, with limits determined by the maximum criminal sentence for the underlying conduct in the case of an IST or NGI patient. MDO and SVP patients are subject to recommitment hearings, as specified. (Pen. Code, §§ 1026, 1367, 2980; Welf. & Inst. Code, § 6600.)

Existing law, as enacted by Proposition 36, approved by California voters on November 6, 2012, revises California's "Three Strikes Law" to require the third strike to be a "serious" or "violent" felony in order to impose a life sentence. Proposition 36 contains provisions to authorize a court to resentence offenders currently serving life sentences if their third strike conviction was not "serious" or "violent" and if the judge determines that the re-sentence does not pose unreasonable risk to public safety. (Pen. Code, §§ 1170.126.)

Existing law makes ineligible for resentencing under the provisions of Proposition 36 (2012) a person who has prior convictions of certain offenses such as felony sex offenses or homicide, as specified, or if the person's current offense involves use of a firearm, felony drug offenses and felony sex offenses, as specified. (Pen. Code, § 1170.126, subd. (e).)

Existing law, as enacted by Proposition 47, approved by California voters on November 4, 2014, requires misdemeanor sentencing for certain drug and property crimes. Proposition 47 includes provisions authorizing resentencing of persons convicted of felonies for the crimes that were reduced to misdemeanors. (Pen. Code, § 1170.18.)

Existing law requires a court to determine whether resentencing the person would pose an unreasonable risk of danger to public safety, as defined to mean an unreasonable risk that the petitioner will commit a new "violent" felony. (Pen. Code, § 1170.18, sub. (b).)

Existing law makes ineligible for resentencing under the provisions of Proposition 47 a person who has one or more prior convictions for an offense requiring registration on the sex offender registry or other specified offenses. (Pen. Code, § 1170.18, sub. (i).)

This bill authorizes a person who is committed to a state hospital after being found NGI to petition the court to have his or her maximum term of commitment reduced to the length it would have been had the provisions of this bill been in effect at the time of the original determination.

This bill specifies that the person must file the petition for a reduction of the maximum term of commitment before January 1, 2021, or on a later date upon a showing of good cause.

This bill requires the person to meet all of the criteria for a reduction in sentence as provided in existing provisions of law enacted by Proposition 36 (2012) and Proposition 47 (2014).

This bill states the intent of the Legislature to nullify the holding in *People v. Dobson* (2016) 245 Cal.App.4th 310.

COMMENTS

1. Need for This Bill

According to the author:

> In 2012, voters enacted Proposition 36 ("Three Strikes Reform Act"), which gave certain prison inmates serving life sentences for non-serious, non-violent crimes an opportunity to petition in court for a lower sentence. In order to receive a reduced sentence, the court had to agree that the prisoner no longer poses "an unreasonable risk of danger to public safety." To date, over 2,100 former lifers have had their terms reduced the courts under this program and the recidivism rate of those released is at least three times better than the average inmate released from prison in California.
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> In 2014, voters enacted Proposition 47 ("Safe Neighborhoods and Schools Act"), which, among other things, extended the re-sentencing procedure enacted in

Proposition 36 to a select group of non-serious, non-violent prison inmates who were not serving life sentences under the Three Strikes law. The recidivism rate of prisoners released under Proposition 47 is also far below average.

In 2016, the Fourth District Court of Appeal ruled in *People v. Dobson*, 245 Cal. App. 4th 310 (2016), that the re-sentencing procedure enacted by Proposition 36 did not apply to mentally ill offenders in state hospitals because the initiative applied to "prisoners" and not "patients" confined in state hospitals, even if those patients had committed the same crime and had the same criminal histories.

This bill clarifies that criminal justice reforms under Proposition 36 (2012) and Proposition 47 (2014) apply to people confined at a state mental hospital if the individual is no longer a danger to public safety. The exclusion of these patients in state hospitals was not intended by the authors of these propositions. SB 143 simply allows fair and equal access to the law.

2. Insanity Plea Generally

In a criminal proceeding, a jury may find a defendant to be NGI if the defendant proves "by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (Pen. Code, § 25.)

If a defendant is found NGI, he or she will be committed to a state hospital or other treatment facility for a period of time not to exceed the maximum term of commitment, except as provided. The maximum term of commitment for a felony means "the longest term of imprisonment which could have been imposed for the offense or the offenses of which the person was convicted, including the upper term of the base offense and any additional terms for enhancements and consecutive sentences which could have been imposed. . . ." (Pen. Code, § 1026.5, sub. (a)(1).) For a misdemeanor, the maximum term of commitment means the longest term of county jail confinement which could have been imposed for the offense or offenses which the person was found to have committed. (Pen. Code, § 1026.5, sub. (a)(3).) The court may extend a person's commitment the maximum term of commitment, two years at a time, only if the person was committed for a felony and the person "by reason of mental disease, defect, or disorder represents a substantial danger of physical harm to others." (Pen. Code, § 1026.5, sub. (b)(1).)

A person committed to a state hospital may be released upon expiration of the maximum term of commitment or upon a showing that the person's sanity has been restored and that the person does not pose a danger to the health and safety of others due to a mental defect, disease, or disorder. In the latter situation, the court must first place the person in a one-year conditional release program. The court may not determine whether a person has been restored to sanity until the person has completed one year in the program, unless the program director recommends earlier release. (Pen. Code, § 1026.5, subd. (e).) A person committed to a state hospital may also be conditionally released into an outpatient program upon the recommendation of the director of the state hospital upon a finding that the person will not be a danger to the health and safety of others while on outpatient status and will benefit from such outpatient status. The outpatient status is subject to annual reviews by the court to determine whether the person shall be discharged, have his or her outpatient status renewed, or to be returned to the state hospital. (Pen. Code, §§ 1602, 1604, 1606.)

This bill would authorize a person committed to DSH after being found NGI to petition the court for resentencing pursuant to the provisions in Proposition 36 and Proposition 47. Both initiatives require a finding related to the person's dangerousness and make certain persons ineligible based on either the current offense or a prior offense. This bill requires a person petitioning the court for resentencing to meet all of the eligibility criteria laid out in the initiatives' provisions.

3. Resentencing Eligibility

Proposition 47 authorizes a court to resentence a person who was convicted of a felony that was reduced to a misdemeanor as a result of the initiative. Specifically, those offenses include drug possession for personal use and non-violent property crimes where the property taken is less than $950. Persons who have prior convictions for specified sex, homicide, weapons offenses or offense that require registration as a sex offender are not eligible for resentencing. (Pen. Code, § 1170.18, subd. (i).) The court must also make a determination that the person would not pose an unreasonable risk of danger to public safety. (Pen. Code, § 1170.18, subd. (b).) An inmate may not be resentenced to a term longer than the original sentence. (Pen. Code, § 1170.18, subd. (e).)

Proposition 36 authorizes a court to resentence an inmate serving a life sentence for a third strike if the third offense was not a "serious" or "violent" felony. An inmate is ineligible for resentencing if his or her current sentence was imposed for the following: specified controlled substance, sex, or firearm offenses. (Pen. Code, § 1170.126, subd. (e)(2).) An inmate is also ineligible for resentencing if he or she has a prior conviction for any of the following: specified sex, homicide, weapons offenses or any serious or violent felonies that may be punished by life imprisonment or death. (Pen. Code, § 1170.126, subd. (e)(3).) If the inmate is eligible for resentencing, he or she must be resentenced unless the court determines that resentencing the inmate would pose an unreasonable risk of danger to public safety. (Pen. Code, § 1170.126, subd. (f).) An inmate may not be resentenced to a term longer than the original sentence. (Pen. Code, § 1170.126, subd. (h).)

In *People v. Dobson*, *supra*, 245 Cal.App.4th 310, the Fifth District Court of Appeal held that persons found NGI and committed to DSH cannot apply for relief under Proposition 36's resentencing provision because the plain language of the initiative requires a person to be currently serving a "term of imprisonment" in order to apply. (*Id*. at 317.) A person who is committed to DSH, while not free to leave, is not serving a term of imprisonment. This bill would state the Legislative intent to nullify the court's holding and allow a person who is committed to a state hospital to petition the court for resentencing under Proposition 36 and Proposition 47's resentencing provisions. The petitioner must meet all of the criteria for a reduction in sentence as provided above.

4. Support

According to the Anti-Recidivism Coalition:

> SB143 would allow people confined to a state mental hospital to reenter the community for treatment. By allowing equal access to Proposition 36 (2012) and Proposition 47 (2014), this population would be able to access community mental health centers and other support networks. If the person is found to no longer be a danger to public safety, then community treatment would allow them more treatment options and access to their natural support systems such as family and friends.

Both Proposition 36 (2012) and Proposition 47 (2014) were enacted to allow an opportunity for re-sentencing or a reduced sentence for prisoners who are no longer a danger to public safety. SB 143 ensures that these same rights are accessible to individuals confined at a state mental hospital. SB 143 allows these individuals to have greater access to resources without further need for incarceration. It would also provide more space in state mental hospitals for individual in need of intensive services.

5. Opposition

The California State Sheriffs' Association writes in opposition of this bill:

Persons found NGI are committed to the state hospital for treatment, not punishment. Conversely, persons found guilty of an offense can be sentenced to incarceration as punishment. While both types of persons may ultimately be confined, the purpose of the confinement is materially different. An NGI's term of commitment reflects the need to treat the mental condition that underlies the activity at issue. Allowing such a commitment length to be reduced simply because a criminal sentence of the same length may be retroactively shortened under Prop 36 or 47 ignores the reason why a person is committed to the state hospital, namely, to be treated.

Additionally, given that an NGI may be released before his or her maximum term of confinement has ended by prevailing at a sanity restoration trial, this bill is not necessary.

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