
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 600 **Hearing Date:** June 27, 2023
Author: Ting
Version: March 7, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal procedure: resentencing*

HISTORY

Source: Prosecutors Alliance of California

Prior Legislation: AB 200 (Committee on Budget), Ch. 58, Stats. 2022
AB 124 (Kamlger), Ch. 695, Stats. 2021
AB 1540 (Ting), Ch. 719, Stats. 2021
AB 2942 (Ting), Ch. 1001, Stats. 2018
AB 1156 (Brown), Ch. 378, Stats. 2015

Support: ACLU California Action; California Attorneys for Criminal Justice; California Public Defenders Association; Friends Committee on Legislation of California; National Association of Social Workers – California Chapter; Smart Justice California

Opposition: California District Attorneys Association

Assembly Floor Vote: 48 - 17

PURPOSE

The purpose of this bill is to authorize a court, on its own motion, to recall and resentence a defendant at any time if the applicable sentencing laws at the time of the original sentencing are subsequently changed by new statutorily authority or case law.

Existing law provides that when a defendant has been convicted of a felony offense and imprisoned, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary of BPH in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, the district attorney of the county in which the defendant was sentenced, or the Attorney General (AG) if the Department of Justice (DOJ) originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, provided the new sentence, if any, is not greater than the initial sentence. (Pen. Code, § 1172.1, subd. (a)(1).)

This bill additionally authorizes a court to recall the sentence and commitment previously ordered and resentence the defendant if the applicable sentencing laws at the time of the original sentence are subsequently changed by a new statutory authority or case law.

Existing law states that the resentencing court shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing. (Pen. Code, § 1172.1, subd. (a)(2).)

Existing law provides that the resentencing court may, in the interest of justice regardless of whether the original sentence was imposed after a trial or plea agreement, do the following:

- Reduce a defendant's term of imprisonment by modifying the sentence; or,
- Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the AG if DOJ originally prosecuted the case. (Pen. Code, § 1172.1, subd. (a)(3).)

This bill strikes the requirement that the district attorney or the AG must concur in vacating the conviction and imposing judgement on a necessarily included lesser offense or lesser related offense.

Existing law states that the court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. (Pen. Code, § 1172.1, subd. (a)(4).)

Existing law requires the court to consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth, as defined, at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. (*Ibid.*)

This bill requires the court to consider postconviction factors and states that evidence that the defendant's incarceration is no longer in the interest of justice includes, but is not limited to, evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence.

Existing law requires the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (Pen. Code, § 1172.1, subd. (a)(6).)

Existing law provides that resentencing may be granted without a hearing upon stipulation by the parties. (Pen. Code, § 1172.1, subd. (a)(7).)

Existing law states that resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or

rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court. (Pen. Code, § 1172.1, subd. (a)(8).)

Existing law specifies that if a resentencing request is from the Secretary of CDCR, BPH, a county correctional administrator, a district attorney, or the AG, all of the following shall apply:

- The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant.
- There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined. (Pen. Code, § 1172.1, subd. (a).)

This bill clarifies that the presumption in favor of recall and resentencing of the defendant may only be overcome if a court finds the defendant currently poses an unreasonable risk of danger to public safety.

This bill requires, after a ruling on a referral for recall and resentencing, the court to advise the defendant of their right to an appeal and the necessary steps and time for taking an appeal.

This bill contains the following legislative findings and declarations:

- It is the intent of the Legislature that, in resentencing proceedings pursuant to Section 1172.1 of the Penal Code, all ameliorative laws and court decisions allowing discretionary relief should be applied regardless of the date of the offense or conviction;
- It is the further intent of the Legislature that courts have full discretion in resentencing proceedings pursuant to Section 1172.1 of the Penal Code to reconsider past decisions to impose prior strikes. The list of factors considered in *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, is not exhaustive. Courts should consider Section 1385 of the Penal Code, postconviction factors, or any other evidence that continued incarceration is no longer in the interests of justice;
- Consistent with the California Racial Justice Act, it is the intent of the Legislature to provide remedies that ameliorate discriminative practices in the criminal justice system, including discrimination in seeking or obtaining convictions or imposing sentences
- It is the intent of the Legislature that, in cases where the judge concludes that recall and resentencing pursuant to Section 1172.1 of the Penal Code is appropriate, the resentencing result in a meaningful modification. "Meaningful modification" means it will cause some actual change in the person's circumstances, including, but not limited to, immediate release, earlier release, and newly acquired entitlement to review by the Board of Parole Hearings or the advancement of eligibility for a parole hearing.

COMMENTS

1. Need for This Bill

According to the author of this bill:

California’s Penal Code allows for law enforcement authorities to request a person be resentenced if the circumstances have changed since the original sentencing and/or if the person’s incarceration is no longer in the interest of justice. AB 600 addresses remaining procedural and technical issues, expands judicial authority and provides clarity for courts when applying the law.

Over the past few years, the CDCR Secretary and District Attorneys have begun using their resentencing authority more frequently. However, this increase in referrals has exposed several procedural issues that resulted in the law not being applied as intended. AB 1540 (Ting) in 2021 addressed many of the procedural issues and resulted in the safe releases of many more incarcerated people in the last year; however, there are still some implementation barriers identified and ways the state can improve the current process.

AB 600 fills in the gaps to create equity and due process in resentencing by:

- Expanding judicial authority to recall sentences at any time versus 120 days;
- Providing judicial discretion to impose judgement on lesser related or lesser included offenses without requiring the District Attorney’s approval;
- Clarifying that the factors and presumption guiding the judge’s use of discretion apply uniformly to each step of the process in recall and resentencing;
- Expanding the list of factors for judges to consider when making determinations related to the “interest of justice” and “changed circumstances”;
- Requiring judges to inform petitioners of their right to appeal a denial; and.
- Ensuring the standard applied reflects the parole hearing standard—that the person must pose a current unreasonable risk to public safety.

2. Recall and Resentencing Law

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. Specifically, within 120 days of commitment for a felony conviction, the court has the ability to resentence the defendant as if it had never imposed

sentence, provided the new sentence is no greater than the original sentence. In addition, CDCR, BPH, the county correctional administrator, the district attorney, or the Attorney General can make a recommendation for resentencing at any time. (Pen. Code, § 1172.1, subd. (a).)

The recall and resentencing law was originally added to Penal Code section 1170 related to sentencing but was recast into a separate code section, Penal Code section 1170.03, and amended to include specified procedures for recall and resentencing such as when a hearing is required, that defendant is entitled to appointment of counsel, and requiring the court to state on the record the reasons for its decision to grant or deny recall and resentencing. (AB 1540 (Ting), Chapter 719, Statutes of 2021.) The statute was again recast into Penal Code section 1172.1 in 2022. (AB 200 (Committee on Budget), Chapter 58, Statutes of 2022.)

The recall and resentencing process set forth in Penal Code section 1172.1 requires a hearing to be set to determine whether the person should be resentenced, unless otherwise stipulated to by the parties, and requires the court's decision to grant or deny the petition to be stated on the record. When resentencing is recommended by one of the specified law enforcement entities statutorily authorized to do so, the court must provide notice to the defendant, set a status conference within 30 days of receiving the petition, and appoint counsel. A presumption in favor of resentencing applies to petitions submitted by law enforcement entities unless overcome by a finding by the court that the defendant poses an unreasonable risk to public safety

This bill additionally authorizes a court, at any time, to recall the sentence and commitment previously ordered and resentence the defendant if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law. This bill also removes the requirement that if the court vacates a conviction and imposes judgment on any lesser included or lesser related offense there must be concurrence by the district attorney of the county in which the defendant was sentenced or the AG if DOJ originally prosecuted the case but leaves intact the requirement that the defendant must concur. The bill also provides clarification of postconviction factors to be considered by the court including evidence that the defendant's constitutional rights were violated in the proceedings related to the conviction or sentence at issue, and any other evidence that undermines the integrity of the underlying conviction or sentence in determining that the defendant's incarceration is no longer in the interest of justice. This bill requires the court to advise the defendant of their right to appeal and the necessary steps and time for taking an appeal.

3. Marsy's Law and Post-Conviction Proceedings

Among the enumerated rights in Marsy's Law, otherwise known as the California Victims Bill of Rights, is the victim's right to "a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings." (Cal. Const., art. I, § 28, subd. (b)(9).) As noted by the court in *People v. Lamoureux* (2019) 42 Cal.App.5th 241, Marsy's Law "did not foreclose post-judgment proceedings altogether. On the contrary, it expressly contemplated the availability of such postjudgment proceedings, including in section 28, subdivision (b)(7) of the Constitution, which affords victims a right to reasonable notice of 'parole [and] other post-conviction release proceedings,' and in subdivision (b)(8), which grants victims a right to be heard at 'post-conviction release decision[s] ...'" (*Id.* at pp. 264-265.)

According to the court in *Lamoureux*, "Both the Legislature and courts have recognized that victims may exercise these rights during postjudgment proceedings that existed at the time the

electorate approved Marsy's Law, as well as postjudgment proceedings that did not exist when Marsy's Law was approved ... It would be anomalous and untenable ... to conclude ... that the voters intended to categorically foreclose the creation of any new postjudgment proceedings not in existence at the time Marsy's Law was approved simply because the voters granted crime victims a right to a 'prompt and final conclusion' of criminal cases." (*Lamoureux, supra*, 42 Cal.App.5th at p. 265 [citations, quotations, footnote omitted].)

4. Separation of Powers: Removing concurrence of the prosecution for resentencing to a lesser included or lesser related offense

This bill would remove the required concurrence of the prosecution for resentencing to a lesser included or lesser related offense in the existing recall and resentencing law. Opponents of the bill argue this may violate the separation of powers doctrine.

The California Supreme Court in *People v. Birks* (1998) 19 Cal.4th 108 (*Birks*) discussed the separation of powers doctrine as it related to jurors being given instructions to consider lesser related offenses to those charged without the prosecution's concurrence. The Court highlighted that the prosecution controls the charging document and questioned whether instructing on lesser related offenses absent the prosecution's concurrence could be reconciled with the separation of powers clause. The Court, however, did not resolve this issue. (*Id.* at pp. 134-135.)

This bill would not alter the prosecution's control of charging documents; it would instead allow the court to, in the interest of justice, resentence a defendant to a lesser related offense without the concurrence of the prosecution. The *Birks* decision does not discuss separation of powers in this different context of post-conviction relief.

More recently, the court in *Lamoureux, supra*, 42 Cal.App.5th 241 addressed separation of powers in a somewhat more analogous context -- that of a petition to vacate a first degree murder conviction and obtain resentencing under SB 1437 (Skinner), Chapter 1015, Statutes of 2018, as set forth in former Penal Code section 1170.95 (renumbered Pen. Code, § 1172.6). Relief under former section 1170.95 includes allowing the court to vacate a first degree murder conviction and resentence on an uncharged target offense.

The *Lamoureux* court rejected the prosecution's separation of powers arguments that former section 1170.95 usurped the executive's clemency power and impaired the core function of the judiciary. Although noting it was not a sufficient reason on its own for affirming the constitutionality of former section 1170.95, the court noted the prevalence of such remedial legislation. In the court's view, this "confirm[ed] there is nothing especially unique about section 1170.95, which appear[ed] to [the court] to constitute a legitimate and ordinary exercise of legislative authority." (*Lamoureux, supra*, 42 Cal.App.5th at p. 263.)

The court also noted the fundamental purposes underlying the separation of powers doctrine is that "[p]ower is diffused between coequal branches of government not as an end to itself, but rather to protect the liberty of individuals." (*Lamoureux, supra*, 42 Cal.App.5th at p. 260.) This bill, similar to SB 1437, in that it would "provide[] potentially ameliorative benefits to the only individuals whose individual liberty interests are at stake in a criminal prosecution—the criminal defendant [themselves]." (*Id.* at p. 261.)

5. Argument in Support

According to the Prosecutors Alliance of California, the sponsor of this bill:

The recall and resentencing law allows the modification of lengthy sentences when the interests of justice warrant a reduction. Currently, recall and resentence can be recommended by CDCR, Board of Parole Hearings, or the prosecuting agency. This bill would also provide the courts the ability to recall and resentence at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law. This bill would also allow courts to vacate convictions and sentence the individual to a lesser included offense without the concurrence of the prosecuting agency, under certain circumstances.

These reforms will continue the quest to promote due process and the equitable application of the law, and to ensure that Penal Code Section 1172.1 is applied by the courts as the Legislature intended.

6. Argument in Opposition

According to the California District Attorneys Association:

The bill violates Separation of Powers as well as Marsy's Rights (Cal. Const., art. I, § 28, subd. (a)(6)).

Further, it appears to violate Cal. Con. Article VI, section 13: No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.

The bill does not contain any requirement of a showing of prejudice. We must therefore oppose AB 600.

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