
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 88 **Hearing Date:** June 27, 2023
Author: Sanchez
Version: January 4, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Criminal procedure: victims' rights*

HISTORY

Source: Author

Prior Legislation: AB 200 (Committee on Budget), Ch. 58, Stats. 2022
AB 1847 (Valladares), held on suspense Sen. Approps., 2022
AB 1540 (Ting), Ch. 719, Stats. 2021
AB 2942 (Ting), Ch. 1001, Stats. 2018
AB 1156 (Brown), Ch. 378, Stats. 2015

Support: California District Attorneys Association; California State Sheriffs' Association; California Statewide Law Enforcement Association; Crime Victims United; Orange County Sheriff's Department; Peace Officers Research Association of California; Riverside County District Attorney's Office; Riverside County Sheriff's Office

Opposition: California Attorneys for Criminal Justice; California Calls; Initiate Justice

Assembly Floor Vote: 77 - 0

PURPOSE

The purpose of this bill is to require a court to provide opportunity for a victim to be heard at a resentencing hearing if the victim desires to be heard, as specified, and prohibit the California Department of Corrections and Rehabilitation (CDCR) and the Board of Parole Hearings (BPH) from requiring more than 15 days' notice of a victim or victim's representative to be heard at a parole hearing.

Existing law, known as Marsy's Law, states that in order to preserve a victims' right to due process and justice, the victim is, among other things, entitled to: reasonable notice of all public proceedings which the defendant and the prosecutor are entitled to be present at and of all parole or other post-conviction release proceedings, as well as to be present at these proceedings; be heard, upon request, at any proceeding, including sentencing, a post-conviction release decision, or any proceeding in which a right of the victim is at issue; and be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28(b)[7]-[8] & [15].)

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).)

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).)

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.*)

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 states notwithstanding the ability of the court to grant resentencing without a hearing when stipulated to by the parties, if a victim of a crime wishes to be heard pursuant to Marsy's Law or pursuant to any other provision of law applicable to the hearing, the victim shall notify the prosecution of their request to be heard within 15 days of being notified that resentencing is being sought and the court shall provide an opportunity for the victim to be heard.

Existing law states that the victim or next of kin if the victim has died is entitled to be notified, upon request, of any parole eligibility hearing and of the right to appear, either personally or by other means specified, to reasonably express their views, and to have their statements considered. (Pen. Code, § 679.02, subd. (a)(5).)

Existing law requires, upon request to CDCR and verification of the identity of the requester, notice of any hearing to review or consider the parole suitability for any inmate in a state prison to be given by BPH at least 90 days before the hearing to any victim of any crime committed by the inmate, or to the next of kin of the victim if the victim has died. The requesting party shall keep BPH apprised of his or her current contact information in order to receive the notice. (Pen. Code, § 3043, subd. (a)(1).)

Existing law requires, no later than 30 days before the date selected for the hearing, any person, other than the victim, entitled to attend the hearing shall inform BPH of their intention to attend the hearing and the name and identifying information of any other person entitled to attend the hearing who will accompany them. (Pen. Code, § 3043, subd. (a)(2).)

Existing law states that no later than 14 days before the hearing, BPH must notify every person entitled to attend the hearing confirming the date, time, and place of the hearing. (Pen. Code, § 3043, subd. (a)(3).)

This bill limits the amount of notice that CDCR may require from a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons of their intention to attend the hearing to no more than 15 days.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Recently enacted emergency regulations adopted by the California Department of Corrections require crime victims to provide 15 days' notice and next of kin and immediate family members of crime victims to provide 30 days' notice if they wish to participate in parole hearings. (15 C.C.R. § 2057(b)-(c).) This requirement became operative on September 27, 2021 as an emergency regulation. This applies regardless of whether they will participate in person or remotely. This requirement can be difficult for crime victims, but is especially onerous for their next of kin and family members. Prosecutors may need more time to locate these individuals and many could find it difficult for them to schedule that far in advance (<https://calcoastnews.com/2021/08/parole-policy-harmful-to-victims-of-violent-crime/>). Some may not even receive notice of the hearing with sufficient time to respond. While the Department needs some time to perform background checks for individuals who will enter prison grounds, it is unreasonable to require a different standard for victims' families and next of kin than crime victims and the same standard for in-person appearances and those providing remote testimony.

To address this, AB 88 provides that the Board of Parole Hearings cannot require more than 15 days' minimum notice that a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, of their intention to attend a parole suitability hearing.

Too often, crime victims are unable to voice their concerns during criminal proceedings due to unnecessary bureaucratic hurdles. AB 88 will help crime victims meaningfully access and participate in parole hearings so that their perspectives are shared. The bill ensures that crime victims will not be an afterthought, but can be crucial participants in our criminal justice system.

2. Victims' Rights Provided by Marsy's Law

On November 4, 2008, voters approved Proposition 9, which amended the California Constitution to provide a victim's Bill of Rights. This is known as Mary's Law. (Cal. Const., art. I § 28(b).) In order to preserve a victims' right to due process and justice, the victim is, among other things, entitled to: reasonable notice of all public proceedings which the defendant and the prosecutor are entitled to be present at and of all parole or other post-conviction release proceedings, as well as to be present at these proceedings; be heard, upon request, at any proceeding, including sentencing, a post-conviction release decision, or any proceeding in which a right of the victim is at issue; and be informed of all parole procedures, to participate in the parole process, and to provide information to the parole authority to be considered before the person is paroled. (Cal. Const., art. I § 28(b)[7]-[8] & [15].)

This bill requires a court, if a victim of a crime wishes to be heard pursuant to Marsy's Law or any other applicable laws and has notified the prosecution of their request for a hearing within 15 days of being notified that resentencing is being sought, to provide an opportunity for the victim to be heard. This bill also states that CDCR and BPH may not require more than 15 days' notice by a victim of a crime, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these person, or victim support persons that they intend to attend the hearing.

3. 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 requires, notwithstanding the provision in Penal Code section 1172.1 that authorizes the parties to stipulate to having resentencing granted without a hearing, if a victim of a crime wishes to be heard pursuant to Marsy's Law, or pursuant to any other provision of law applicable to the hearing, and the victim has notified the prosecution of their request for a hearing within 15 days of being notified that resentencing is being sought, the court to provide an opportunity for the victim to be heard.

4. Notice of Parole Hearings

Victims and victims' next of kin who have registered with CDCR's Office of Victim and Survivor Rights and Services to receive notice of parole hearings are required to receive notice at least 90 days before the parole hearing pursuant to Penal Code section 3043, subdivision (a)(1).

CDCR regulations state that if BPH determines that an in-person hearing is necessary for the hearing officers to establish effective communication with the inmate, then the inmate, the inmate's attorney, and the interpreter shall be physically present with the inmate during the hearing, unless one of the specified exceptions applies. (Cal. Code Regs., tit. 15, § 2057, subd. (b).) The regulations require at least 15 days' notice prior to the hearing of the intent to attend by any victim, victim's counsel, victim's designated representative, and victim's support person; at least 30 days' notice prior to the hearing for any victim's next of kin, their counsel, designated representative, and support person; and at least 30 days' notice prior to the hearing of any victim's family member, their counsel, and support person. (Cal. Code Regs., tit. 15, § 2057, subd. (b)&(c).)

This bill prohibits CDCR and BPH from requiring any more than 15 days' notice by a victim, victim's next of kin, member of the victim's family, victim's representative, counsel representing any of these persons, or victim support persons, of their intention to attend the hearing. As discussed above, CDCR's regulations require at minimum 15 days' notice from a victim of their intent to attend a parole hearing, and at minimum 30 days' notice from a victim's next of kin or victim's family member.

The proponents of this bill argue that 30 days' notice can be difficult for crime victims, but is especially onerous for their next of kin and family members. Prosecutors may need more time to locate these individuals and many could find it difficult for them to schedule that far in advance. They acknowledge that some notice is necessary as CDCR has to perform background checks of individuals as well as other administrative functions prior to allowing someone access to the to prison grounds, but that it is unreasonable to require a different standard for victims' families and next of kin than victims. Thus, the bill states that for victims, next of kin, and victim family, and their counsel and support persons, CDCR and BPH may not require more than 15 days' notice of their intent to be heard on the matter.

5. Argument in Support

According to the California Police Chiefs Association:

AB 88 sets a timeline for notification that the victim wishes to participate in a resentencing hearing. By setting a minimum timeframe, all parties involved will be better able to plan and engage with the court. This is also consistent with our constitutional laws meant to promote and protect victims' participation in court decisions.

Too often we have seen unclear deadlines lead to victims missing their chance to weigh in on decisions directly impacting their lives and safety.

6. Argument in Opposition

According to Initiate Justice:

AB 88 (Sanchez) purports to support “voiceless” victims of crime, but in fact, victims do have voices and they have expressed their desire for counseling and healing services, not further exposure to court hearings. According to California Crime Survivors Speak , less than one in 1 five California crime victims report receiving financial assistance, counseling, medical assistance and other types of healing services that can help someone recover and stabilize. Supporting victims looks like ensuring they have what they need to be whole again, not attending more court dates. Re-sentencing hearings are few and far in between, and when they do happen, they are the result of years of deliberation. These decisions are not arrived at lightly, and often come after the facts of the case have been closely scrutinized and an incarcerated person has served decades in prison while often times demonstrating a strong rehabilitation record. Rarely, if ever, do victims have any personal knowledge of an incarcerated person’s current actions, statements, attitudes, or current risk to public safety.

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