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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 1084                      **Hearing Date:** April 19, 2016  
**Author:** Hancock  
**Version:** February 17, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Sentencing*

### HISTORY

**Source:** Human Rights Watch  
**Prior Legislation:** SB 9 (Yee) Chapter 828, Stats. 2012  
**Support:** California Public Defenders Association  
**Opposition:** None known

### PURPOSE

*The purpose of this bill is to make technical non-substantive changes to the provisions allowing a person who was under 18 years of age when sentenced to life without parole to submit a petition for resentencing.*

*Existing law* authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole to submit a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. (Penal Code § 1170(d) (2)(A)(i))

*This bill* would instead provide that the defendant could submit the petition for resentencing after he or she has been committed to the custody of the department for at least 15 years.

*Existing law* provides that the ability to file a petition for recall does not apply to a defendant who tortured his or her victim. (Penal Code § 1170(d) (2)(ii))

*This bill* clarifies that the element of torture had to have been pled and proved.

*Existing law* provides that if the court finds by a preponderance of the evidence that the statements in the petition are true the court shall hold a hearing to consider whether to recall the sentences and commitment previously ordered to resentence the defendant. (Penal Code § 1170(d) (2)(E))

*This bill* provides instead that if the court finds by a preponderance of the evidence that one or more of the statements specified is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant.

*Existing law* provides that if a sentence is not recalled, the defendant may submit another petition for recall and resentencing again after having served 20 and 24 years. (Penal Code § 1170(d)(2)(H))

*This bill* provides instead that if the sentence is not recalled or the defendant is resentenced to life without the possibility of parole then the defendant may file again after he or she has been committed to the department for 20 or 24 years.

*This bill* makes other technical changes.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;

- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for The Bill

According to the author:

This bill has technical, non-substantive changes to SB 9 (Yee, 2012). The bill clarifies language that has caused some confusion in the courts in the following ways:

- Replacing “served at least 15 years of that sentence” with “been committed to the custody of the department for at least 15 years.”
- Adding the phrase “it was pled and proved that.”
- Replacing “the statements in the petition are true” with “one or more of the statements specified in clauses (i) to (iv), inclusive of subparagraph (B) is true.”
- Replacing “recall” with “recalled or the defendant is resentenced to imprisonment for life without possibility of parole.”
- Replacing “served” with “been committed to the custody of the department.”

### 2. SB 9 Cleanup

SB 9 (Yee) Chapter 828, Statutes 2012 authorized a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole (LWOP) to submit a petition for recall and resentencing to the sentencing court, as specified. As SB 9 has been implemented there has been some confusion over some of the language in the bill in some courts. This bill clarifies that language.

According to the sponsor Human Rights Watch:

In 2012, California created a judicial review process for cases in which people under the age of 18 have been sentenced to life without the possibility of parole. It was the first law of its type in the country. Our work on the issue of life without parole for juveniles has led to contact with attorneys representing youth offenders in these hearings. We believe there are areas where the law is unclear as written and leading to different interpretations in different courtrooms. It is our hope that his bill will clarify the language of the law and ensure consistency in practice across the state.

### 3. Amendments in Committee

The author will offer the following additional technical amendments in Committee:

- Page 6, line 19 and 20 delete “sentence is being considered for recall” and insert “defendant was sentenced to life without the possibility of parole”
- Page 6 line 23 and 24 delete “sentence is being considered for recall” and insert “defendant was sentenced to life without the possibility of parole”
- Page 7 line 19 delete “recall and resentencing is not granted” and insert “the sentence is not recalled or the defendant is resentenced to imprisonment for life without the possibility of parole”
- Page 7 after line 29 insert: “(J) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the inmate.

**-- END --**