

---

# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

---

**Bill No:** SB 94                      **Hearing Date:** April 11, 2023  
**Author:** Cortese  
**Version:** March 23, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Recall and resentencing: special circumstances*

## HISTORY

**Source:** Ella Baker Center for Human Rights

**Prior Legislation:** SB 300 (Cortese) not heard Assembly floor 2021-2022  
SB 1437 (Skinner) Chapter 105, Stats. 2018  
SCR 48 (Skinner) Chapter 175, Stats. 2017  
SB 878 (Hayden) Failed Senate Floor 1999

**Support:** 8th Amendment Project; A New Way of Life Reentry Project; Alliance for Boys and Men of Color; American Friends Service Committee; Amnesty International USA; Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment; Asian Prisoner Support Committee; Bend the Arc: Jewish Action California; Black Women Organized for Political Action (BWOPA); Blameless and Forever Free Ministries; California Attorneys for Criminal Justice; California Catholic Conference; California Coalition for Women Prisoners; California Families Against Solitary Confinement; California Immigrant Policy Center; California Native Vote Project; California Public Defenders Association (CPDA); Californians for Safety and Justice; Californians United for A Responsible Budget; Center for Employment Opportunities; Center on Juvenile and Criminal Justice; City of Oakland Mayor Sheng Thao; Communities United for Restorative Youth Justice (CURYJ); Community Agency for Resources, Advocacy and Services; Community Legal Services in East Palo Alto; Courage California; Cure California; Decarcerate Sacramento; Drop LWOP Coalition; Drug Policy Alliance; Ella Baker Center for Human Rights; Empowering Pacific Islander Communities (EPIC) Fiscally Sponsored by Community Partners; End Solitary Santa Cruz County; FUEL - Families United to End LWOP; Fair Chance Project; Faith in Action East Bay; Families Against Mandatory Minimums Foundation; Felony Murder Elimination Project; Foundation Aussergewöhnlich Berlin; Friends Committee on Legislation of California; Holy Cross Lutheran Church, Livermore, CA; Housing and Economic Rights Advocates; Human Rights Watch; If/When/How: Lawyering for Reproductive Justice; Individual; Indivisible CA Statestrong; Indivisible Sacramento; Indivisible San Francisco; Indivisible Yolo; Initiate Justice; Inland Equity Partnership; Interfaith Movement for Human Integrity; Islamic Shura Council of Southern California; John Burton Advocates for Youth; Justice2jobs Coalition; La Defensa; Latinojustice Prldef; Law Enforcement Action Partnership; Lawyers' Committee for Civil Rights of The San

Francisco Bay Area; Legal Services for Prisoners With Children; Long Beach Immigrant Rights Coalition; Milpa (motivating Individual Leadership for Public Advancement); National Association of Social Workers, California Chapter; National Center for Lesbian Rights; National Harm Reduction Coalition; North Bay Jobs With Justice; Peninsula Multifaith Coalition; Prosecutors Alliance California; Restore Oakland, INC.; Root & Rebound; Safe Return Project; San Francisco Public Defender; Santa Cruz Barrios Unidos INC.; Secure Justice; Showing Up for Racial Justice (SURJ) Bay Area; Showing Up for Racial Justice Santa Cruz County; Silicon Valley De-bug; Sister Warriors Freedom Coalition Smart Justice California; Social Change; Starting Over, INC.; Survived & Punished; Techequity Collaborative; The Place4grace; The Resistance Northridge-indivisible; The San Diego Lgbt Community Center; The Transformative In-prison Workgroup; Unapologetically Hers; Uncommon Law; Underground Grit; Underground Scholars Initiative At the University of California, Irvine; United Core Alliance; White People 4 Black Lives; Young Women's Freedom Center

Opposition: California Association of Highway Patrolman; California District Attorneys Association; California State Sheriffs' Association; Crime Victims United of California; San Diegans Against Crime; San Diego County District Attorney's Office; San Diego Deputy District Attorneys Association

## PURPOSE

***The purpose of this bill is to set up a process for a person who has been sentenced to death or life imprisonment before June 5, 1990 can seek a recall of their sentence and be resentenced to a lesser sentence.***

*Existing law* defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Penal Code, § 187(a))

*Existing law* defines malice for this purpose as either express or implied and defines those terms.

- It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.
- It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Penal Code § 188)

*Existing law* defines first degree murder, in part, as all murder that is committed in the perpetration of, or attempt to perpetrate, specified felonies. (Penal Code § 189.)

*Existing law*, as enacted by Proposition 7, approved by the voters at the November 7, 1978, statewide general election, prescribes a penalty for that crime of death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. (Penal Code § 190)

*Existing law* provides that the penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of 22 special circumstances are found to be true. (Penal Code § 190.2)

*This bill* provides that an individual who has been sentenced to death or life imprisonment without possibility of parole for a conviction in which one or more special circumstance has been found true, may petition the court to recall the sentence and resentence to a lesser sentence if:

- 1) The offense occurred before June 5, 1990.
- 2) The individual has served at least 20 years in custody.

*This bill* provides that the petition shall be filed with the court that sentenced the petitioner and served on the district attorney or on the agency that prosecuted the petitioner.

*This bill* provides that the presiding judge shall designate a judge to rule on the petition.

*This bill* provides that the petition shall include all the following:

- 1) A declaration by the petitioner that the petitioner is eligible for relief.
- 2) The superior court case number and date of the petitioner's offense and conviction.
- 3) Whether the petitioner currently has counsel, and if not, whether the petitioner is indigent.

*This bill* provides that if any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that matter cannot be considered without the missing information.

*This bill* provides that the court shall review the petition and determine if it alleges the elements required.

*This bill* provides that if the court does not have counsel and is indigent, the court shall appoint the State Public Defender or other qualified counsel to represent the individual.

*This bill* provides if counsel is newly appointed, they may file a supplementary petition within 60 days.

*This bill* provides that the prosecutor may file and serve a response within 60 days of service of the petition or supplementary petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served.

*This bill* provides that the deadlines may be extended for good cause.

*This bill* provides that within 60 days after the reply is filed, the courts shall hold a hearing to determine whether to recall the sentence and resentence the petitioner.

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

- 1) May modify the petitioner's sentence to impose a lesser sentence, and apply any changes in law that reduce sentences or provide for judicial discretion.
- 2) May vacate the petitioner's conviction and impose judgment on a necessarily included lesser offense, wither or not that offense was charged in the original pleading, and then resentence the petitioner to a lesser sentence.

*This bill* provides that the parties may waive a resentencing hearing and stipulate that the petitioner is eligible for recall and resentencing.

*This bill* provides that a petitioner who is resentenced shall be given credit for time served.

*This bill* provides that resentencing under this subdivision shall not result in the imposition of a term longer than the original sentence.

*This bill* provides that the court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

*This bill* provides that in considering a petition pursuant to this section, the court shall consider and afford great weight to evidence offered by the petitioner to prove that any of the following mitigating circumstances are present:

- 1) The petitioner was the victim of intimate partner violence, sexual violence, or human trafficking;
- 2) The petitioner experienced childhood trauma, including abuse, neglect, exploitation, or sexual violence.
- 3) The petitioner is a veteran and the conduct involved in the offense related to trauma experienced in the military.
- 4) The petitioner has been diagnosed with cognitive impairments, intellectual disability, or mental illness.
- 5) The petitioner was under the age of 26 at the time of the offense.
- 6) The sentence violates the California Racial Justice Act.
- 7) The petitioner's age, time served, or diminished physical condition reduces the petitioner's risk for future violence.

*This bill* provides that proof of the presence of one or more of the above circumstances weighs greatly in favor of dismissing the special circumstance, unless the court finds that the petitioner is currently an unreasonable risk of danger to public safety.

*This bill* provides that the court shall consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the petitioner while incarcerated, and evidence that reflects that circumstances have changed since the original sentence so that the sentence originally imposed is no longer in the interest of justice.

*This bill* provides that it does not diminish or abrogate any rights or remedies otherwise available to the subject of the petition.

*This bill* provides that if the judge declines to impose a reduced sentence, a subsequent petition pursuant to this section may be filed if at least two years have passed for the denial of the prior application.

*This bill* provides that the petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court and if not otherwise prohibited by state law.

This bill contains uncodified Legislative findings and declarations.

## COMMENTS

### 1. Need for This Bill

According to the author:

Existing law provides that when a prosecutor charges a special circumstance enhancement and it is found true, a person found guilty of first degree murder with special circumstances shall be punished by death or LWOP. (Pen. Code, § 190.2.) Prop 115, passed by the voters on June 5, 1990, removed from judges the discretion to dismiss a special circumstance finding after it has been found true. Judges retain the power to dismiss special circumstances after they have been found true for offenses that occurred before June 5, 1990.

Penal Code section 1172.1 permits a judge, prosecutor or CDCR to recall a sentence for reconsideration. This code section does not permit an individual to petition for recall and reconsideration of a sentence.

The majority of people serving a life without parole sentence are classified as low risk according to California Department of Corrections and Rehabilitation (CDCR)'s own California Static Risk Assessment tool - 88% of people serving life without parole have been assessed with the lowest risk score on that scale. Research also conclusively demonstrates that there is little risk for elderly individuals to re-offend or recidivate upon release. For individuals previously sentenced to life without parole who were granted a commutation and released, the recidivism rate is zero percent. Based on CDCR data, an analysis from the Special Circumstances Conviction Project of UCLA Center for the Study of Women, estimates that this reform might qualify 200 death penalty cases, and 600 LWOP cases for review.

### 2. Proposition 115

Existing law, as enacted by Proposition 115, approved by California voters on June 6, 1990, made a number of procedural changes to criminal law in California including changes to discovery and the allowance of hearsay testimony by peace officers at preliminary hearings. It also added additional special circumstances to those for which the death penalty applies and removed from judges the discretion to dismiss a special circumstance finding after it has been found true. Judges retain the power to dismiss special circumstances after they have been found true for offenses that occurred before June 5, 1990.

### 3. Recall and resentence for cases before June 5, 1990.

Because Judges retain the power to dismiss special circumstances after they have been found true for offenses that occurred before June 5, 1990, this bill sets up a process for people who were sentenced to death or life without the possibility of parole and the offense occurred prior to June 5, 1990 to petition a court to recall the sentence and resentence to a lesser sentence. The person must also have already served at least 20 years in custody.

## a. Petition Filed in sentencing court

The petition is to be filed with the court that sentenced the petitioner and served on the district attorney. The presiding judge shall assign a judge to hear a petition, it has been over 20 years so it is unlikely, but not impossible, that the judge who originally heard the case is still on the bench. If the petition does not include required information it can be denied without prejudice.

If the petition is denied, without prejudice, because of something lacking in the petition, should this only occur after an indigent defendant has been appointed counsel?

## b. Indigent defendants.

The petition shall include a statement as to whether the petitioner has counsel or if the petitioner is indigent. If the petitioner is indigent, the court shall appoint the State Public Defender or other qualified counsel to represent the defendant. The newly appointed counsel may have 60 days to file a supplementary petition and the district attorney has 60 days to respond to the original or supplementary petition.

## c. Actions the court may take

The resentencing court may, in the interest of justice do any of the following:

- Modify the petitioner's sentence to impose a lesser sentence, and apply any changes in law that reduce sentences or provide for judicial discretion.
- Vacate the petitioner's conviction and impose judgement on any necessarily included lesser offense, whether or not that offense was charged in the original pleading, and then resentence the petitioner to a lesser sentence.

## d. Considerations by the court

In considering the petition, the court shall consider and afford great weight to evidence offered by the petitioner to prove any of the following mitigating circumstances are present

- The petitioner was victim of intimate partner violence, sexual violence, or human trafficking.
- The petitioner experienced childhood trauma, including abuse, neglect, exploitation, or sexual violence.
- The petitioner is a veteran and conduct involved in the offense related to trauma experienced in the military.
- The petitioner has been diagnosed with cognitive impairment, intellectual disability, or mental illness.
- The petitioner was under the age of 26 at the time of the offense.
- The sentence violates the California Racial Justice Act.
- The petitioner's age, time served, or diminished physical condition reduces the petitioner's risk for future violence.

The bill provides that proof of one of the above weighs greatly in favor of dismissing the special circumstance, unless the court finds that the petitioner is currently at risk to public safety.

The court shall also consider postconviction factors including disciplinary record while incarcerated, rehabilitation of the petitioner while incarcerated, and evidence that reflects the circumstances have changed.

e. Procedural issues

This bill also sets forth a number of procedural considerations:

- The parties may waive a resentencing hearing and stipulate that the petitioner is eligible.
- The petitioner may appear remotely and the court may conduct the hearing using remote technology, unless counsel requests their physical presence.
- A petitioner who is resentenced shall be given credit for time served.
- Resentencing under this section should not result in a longer sentence.
- The court shall state on the record the reasons for its decision to grant or deny recall and sentencing.

#### 4. Argument in Support

Supporters of this bill note that nothing in this bill guarantees a person will be resentenced or leave prison, but it is consistent with some of the other recent criminal justice reforms in recognizing that people may change while incarcerated and may no longer pose a threat to society. Specifically the Alliance for Boys and Men of Color states:

There are people languishing in state prisons, that were they in court today, would receive a more just sentence. In the last ten years, the Legislature has enacted several reforms to restore judicial discretion and to allow judges to consider mitigating factors at sentencing, including whether the person was a victim of intimate partner violence or human trafficking or had experienced childhood trauma, exploitation or sexual abuse.

Although individuals sentenced to LWOP or death have no path to parole today, many have exhibited decades of exemplary behavior, participated in extensive positive programming, have come to understand the contributing factors which led to their incarceration, and have devoted themselves to becoming positive members of society. The majority of people serving a life without parole sentence are classified as low risk according to California Department of Corrections and Rehabilitation's own California Static Risk Assessment tool - 88% of people serving life without parole have been assessed with the lowest risk score on that scale. Research also conclusively demonstrates that there is little risk for elderly individuals to re-offend or recidivate upon release. For individuals previously sentenced to life without parole in California who were granted a commutation and released, the recidivism rate is zero percent.

This bill does not guarantee resentencing or release. Any individual who is granted resentencing by a judge will then need to go before the parole board, who will make a determination about their suitability for release. This bill allows courts to consider old cases in light of changes in law, thereby applying the law more fairly.

This will mean that individuals that deserve a second chance won't have to die behind bars. For these reasons, our organization strongly supports SB 94 (Cortese).

## 5. Argument in Opposition

The California District Attorneys oppose this bills stating:

First, SB 94 subverts the will of The People of the State of California, who voted to prohibit the dismissal of special circumstances in 1990 via Proposition 115. Your bill acknowledges this fact. However, the bill then seeks to avoid this declaration by providing dismissal of special circumstances to sentences not covered by the Proposition. While this is technically legal, it is in direct conflict with the will of the People. Rather than govern through technicality, we suggest you bring the issue back to the voters to see if they agree with you, or abide by the conditions in their initiative—specifically a  $\frac{2}{3}$  vote in both houses. As it stands, we must oppose.

Second, your bill would impose a substantial and unwarranted burden on the judicial system, limiting access and extending wait times for individuals in order to allow individuals who have committed the most egregious offenses to seek resentencing. This measure makes no distinction between those who have demonstrated some indicators of redemption or rehabilitation and those who have not. Instead, it would burden the state's already overburdened judicial system and retraumatize the families of murder victims with resentencing hearings for individuals who have shown few or no signs of redemption, and who jurors did not believe were worthy of the opportunity for parole based on the nature of their crimes.

-- END --