

AMENDED IN ASSEMBLY JUNE 4, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1539

Introduced by Assembly Members Krekorian and Lieber
(Coauthor: Assembly Member Leno Coauthors: Assembly Members
Beall, Leno, and Ma)
(Coauthor: Senator Steinberg Coauthors: Senators Cedillo, Kuehl, Scott,
and Steinberg)

February 23, 2007

An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 1539, as amended, Krekorian. Sentencing.

Under existing law, a state prisoner who is diagnosed with a disease that would produce death within 6 months and whose release is deemed not to threaten the public safety may have his or her sentence recalled and be resentenced. Existing law additionally sets forth grounds under which the court has discretion to find that a prisoner is eligible for resentence or recall.

~~This bill would make prisoners who are diagnosed with a disease that would produce death within 6 months, and whose release is deemed not to threaten public safety, eligible to have their sentences recalled and to be resentenced and would expand the grounds under which the court exercises discretion to find eligibility for resentencing or recall~~ *extend those provisions for early release to prisoners who are permanently medically incapacitated and whose release is deemed not to threaten public safety.* This bill would also oblige a physician employed by the Department of Corrections and Rehabilitation who

determines that a prisoner has 6 months or less to live to inform the appropriate chief medical officer of that fact, and, if he or she concurs, would oblige the chief medical officer to inform the warden of that fact. This bill would also require the warden or the warden’s representative to inform a prisoner given that prognosis of the recall and resentencing procedures, and to arrange for the prisoner’s designee to be informed of the prisoner’s medical condition and prognosis, and of the procedures for recall and resentencing. This bill would require the warden or the warden’s representative to contact a mentally unfit inmate’s emergency contact and provide the contact with this information. This bill would also direct the warden or the warden’s representative to keep the prisoner and the prisoner’s designee apprised of the prisoner’s medical condition and recall and resentencing proceedings. This bill would also provide that when a prisoner or his or her designee initiates recall and resentencing procedures, the chief medical officer and the warden or the warden’s representative, if they find that the prisoner has 6 months or less to live, shall, within 48 hours of their finding, inform the prisoner or his or her designee of the recall and resentencing procedures. This bill would also require release of a prisoner who is resentenced within 48 hours of receipt of the court’s order, unless the prisoner agrees to a longer time period, and would require that the prisoner be given his or her medical records, state identification, medications, and property at the time of release. Finally, this bill would require the secretary to issue a directive to Department of Corrections and Rehabilitation staff explaining recall and resentencing procedures.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1170 of the Penal Code is amended to
 2 read:
 3 1170. (a) (1) The Legislature finds and declares that the
 4 purpose of imprisonment for crime is punishment. This purpose
 5 is best served by terms proportionate to the seriousness of the
 6 offense with provision for uniformity in the sentences of offenders
 7 committing the same offense under similar circumstances. The
 8 Legislature further finds and declares that the elimination of
 9 disparity and the provision of uniformity of sentences can best be
 10 achieved by determinate sentences fixed by statute in proportion

1 to the seriousness of the offense as determined by the Legislature
2 to be imposed by the court with specified discretion.

3 (2) Notwithstanding paragraph (1), the Legislature further finds
4 and declares that programs should be available for inmates,
5 including, but not limited to, educational programs, that are
6 designed to prepare nonviolent felony offenders for successful
7 reentry into the community. The Legislature encourages the
8 development of policies and programs designed to educate and
9 rehabilitate nonviolent felony offenders. In implementing this
10 section, the Department of Corrections and Rehabilitation is
11 encouraged to give priority enrollment in programs to promote
12 successful return to the community to an inmate with a short
13 remaining term of commitment and a release date that would allow
14 him or her adequate time to complete the program.

15 (3) In any case in which the punishment prescribed by statute
16 for a person convicted of a public offense is a term of imprisonment
17 in the state prison of any specification of three time periods, the
18 court shall sentence the defendant to one of the terms of
19 imprisonment specified unless the convicted person is given any
20 other disposition provided by law, including a fine, jail, probation,
21 or the suspension of imposition or execution of sentence or is
22 sentenced pursuant to subdivision (b) of Section 1168 because he
23 or she had committed his or her crime prior to July 1, 1977. In
24 sentencing the convicted person, the court shall apply the
25 sentencing rules of the Judicial Council. The court, unless it
26 determines that there are circumstances in mitigation of the
27 punishment prescribed, shall also impose any other term that it is
28 required by law to impose as an additional term. Nothing in this
29 article shall affect any provision of law that imposes the death
30 penalty, that authorizes or restricts the granting of probation or
31 suspending the execution or imposition of sentence, or expressly
32 provides for imprisonment in the state prison for life. In any case
33 in which the amount of preimprisonment credit under Section
34 2900.5 or any other provision of law is equal to or exceeds any
35 sentence imposed pursuant to this chapter, the entire sentence shall
36 be deemed to have been served and the defendant shall not be
37 actually delivered to the custody of the secretary. The court shall
38 advise the defendant that he or she shall serve a period of parole
39 and order the defendant to report to the parole office closest to the
40 defendant's last legal residence, unless the in-custody credits equal

1 the total sentence, including both confinement time and the period
2 of parole. The sentence shall be deemed a separate prior prison
3 term under Section 667.5, and a copy of the judgment and other
4 necessary documentation shall be forwarded to the secretary.

5 (b) When a judgment of imprisonment is to be imposed and the
6 statute specifies three possible terms, the court shall order
7 imposition of the middle term, unless there are circumstances in
8 aggravation or mitigation of the crime. At least four days prior to
9 the time set for imposition of judgment, either party or the victim,
10 or the family of the victim if the victim is deceased, may submit
11 a statement in aggravation or mitigation to dispute facts in the
12 record or the probation officer's report, or to present additional
13 facts. In determining whether there are circumstances that justify
14 imposition of the upper or lower term, the court may consider the
15 record in the case, the probation officer's report, other reports
16 including reports received pursuant to Section 1203.03 and
17 statements in aggravation or mitigation submitted by the
18 prosecution, the defendant, or the victim, or the family of the victim
19 if the victim is deceased, and any further evidence introduced at
20 the sentencing hearing. The court shall set forth on the record the
21 facts and reasons for imposing the upper or lower term. The court
22 may not impose an upper term by using the fact of any
23 enhancement upon which sentence is imposed under any provision
24 of law. A term of imprisonment shall not be specified if imposition
25 of sentence is suspended.

26 (c) The court shall state the reasons for its sentence choice on
27 the record at the time of sentencing. The court shall also inform
28 the defendant that as part of the sentence after expiration of the
29 term he or she may be on parole for a period as provided in Section
30 3000.

31 (d) When a defendant subject to this section or subdivision (b)
32 of Section 1168 has been sentenced to be imprisoned in the state
33 prison and has been committed to the custody of the secretary, the
34 court may, within 120 days of the date of commitment on its own
35 motion, or at any time upon the recommendation of the secretary
36 or the Board of Parole Hearings, recall the sentence and
37 commitment previously ordered and resentence the defendant in
38 the same manner as if he or she had not previously been sentenced,
39 provided the new sentence, if any, is no greater than the initial
40 sentence. The resentence under this subdivision shall apply the

1 sentencing rules of the Judicial Council so as to eliminate disparity
2 of sentences and to promote uniformity of sentencing. Credit shall
3 be given for time served.

4 (e) (1) Notwithstanding any other law and consistent with
5 paragraph (1) of subdivision (a) of Section 1170, if the secretary
6 or the Board of Parole Hearings or both determine that a prisoner
7 satisfies the criteria set forth in paragraph (2), the secretary or the
8 board may recommend to the court that the prisoner's sentence be
9 recalled.

10 (2) The court shall have the discretion to resentence or recall if
11 the court finds that the facts described in subparagraphs (A) and
12 (B) or subparagraphs (B) and (C) exist:

13 (A) The prisoner is terminally ill with an incurable condition
14 caused by an illness or disease that would produce death within
15 six months, as determined by a physician employed by the
16 department.

17 (B) The conditions under which the prisoner would be released
18 or receive treatment do not pose a threat to public safety.

19 ~~(C) The prisoner is medically incapacitated by a medical
20 condition that renders him or her permanently unable to move
21 without assistance, permanently unable to perform activities of
22 daily living such as dressing, eating, ambulating, or maintaining
23 personal hygiene without assistance, or permanently
24 ventilator-dependent.~~

25 *(C) The prisoner is permanently medically incapacitated with
26 a medical condition that renders him or her permanently unable
27 to perform activities of basic daily living, and results in the
28 prisoner requiring 24-hour total care, including, but not limited
29 to, coma, persistent vegetative state, brain death,
30 ventilator-dependency, loss of control of muscular or neurological
31 function, and that incapacitation did not exist at the time of the
32 original sentencing.*

33 The Board of Parole Hearings shall make findings pursuant to
34 this subdivision before making a recommendation for resentence
35 or recall to the court. This subdivision does not apply to a prisoner
36 sentenced to death or a term of life without the possibility of parole.

37 (3) Within 10 days of receipt of a positive recommendation by
38 the secretary or the board, the court shall hold a hearing to consider
39 whether the prisoner's sentence should be recalled.

1 (4) Any physician employed by the department who determines
2 that a prisoner has six months or less to live shall notify the chief
3 medical officer of the prognosis. If the chief medical officer
4 concurs with the prognosis, he or she shall notify the warden.
5 Within 48 hours of receiving notification, the warden or the
6 warden's representative shall notify the prisoner of the recall and
7 resentencing procedures, and shall arrange for the prisoner to
8 designate a family member or other outside agent to be notified
9 as to the prisoner's medical condition and prognosis, and as to the
10 recall and resentencing procedures. If the inmate is deemed
11 mentally unfit, the warden or the warden's representative shall
12 contact the inmate's emergency contact and provide the information
13 described in paragraph (2).

14 (5) The warden or the warden's representative shall provide the
15 prisoner and his or her family member, agent, or emergency
16 contact, as described in paragraph (4), updated information
17 throughout the recall and resentencing process with regard to the
18 prisoner's medical condition and the status of the prisoner's recall
19 and resentencing proceedings.

20 (6) Notwithstanding any other provisions of this section, the
21 prisoner or his or her family member or designee may
22 independently request consideration for recall and resentencing
23 by contacting the chief medical officer at the prison or the
24 secretary. Upon receipt of the request, the chief medical officer
25 and the warden or the warden's representative shall follow the
26 procedures described in paragraph (4). If the secretary determines
27 that the prisoner satisfies the criteria set forth in paragraph (2), the
28 secretary or board may recommend to the court that the prisoner's
29 sentence be recalled. The secretary shall submit a recommendation
30 for release within 30 days in the case of inmates sentenced to
31 determinate terms and, in the case of inmates sentenced to
32 indeterminate terms, the secretary shall make a recommendation
33 to the Board of Parole Hearings with respect to the inmates who
34 have applied under this section. The board shall consider this
35 information and make an independent judgment pursuant to
36 paragraph (2) and make findings related thereto before rejecting
37 the request or making a recommendation to the court. This action
38 shall be taken at the next lawfully noticed board meeting.

39 (7) Any recommendation for recall submitted to the court by
40 the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant
2 to paragraph (2).

3 (8) If possible, the matter shall be heard before the same judge
4 of the court who sentenced the prisoner.

5 (9) If the court grants the recall and resentencing application,
6 the prisoner shall be released by the department within 48 hours
7 of receipt of the court's order, unless a longer time period is agreed
8 to by the inmate. At the time of release, the warden or the warden's
9 representative shall ensure that the prisoner has each of the
10 following in his or her possession: a discharge medical summary,
11 full medical records, state identification, parole medications, and
12 all property belonging to the prisoner. After discharge, any
13 additional records shall be sent to the prisoner's forwarding
14 address.

15 (10) The secretary shall issue a directive to medical and
16 correctional staff employed by the department that details the
17 guidelines and procedures for initiating a recall and resentencing
18 procedure. The directive shall clearly state that any prisoner who
19 is given a prognosis of six months or less to live is eligible for
20 recall and resentencing consideration, and that recall and
21 resentencing procedures shall be initiated upon that prognosis.

22 (f) Any sentence imposed under this article shall be subject to
23 the provisions of Sections 3000 and 3057 and any other applicable
24 provisions of law.

25 (g) A sentence to state prison for a determinate term for which
26 only one term is specified, is a sentence to state prison under this
27 section.