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AB-600 Criminal procedure: resentencing. (2023-2024)

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Assembly Bill No. 600

CHAPTER 446

An act to amend Section 1172.1 of the Penal Code, relating to criminal procedure.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 600, Ting. Criminal procedure: resentencing.

Existing law authorizes, when a defendant has been committed to the state prison or to a county jail for the commission of a felony, the court to recall the sentence and either reduce a defendant's term by modifying the sentence, or vacate the conviction and impose judgment on any necessarily included lesser offense or lesser related offense and, with the agreement of the district attorney or attorney general, resentence the defendant to a reduced term. Existing law authorizes a defendant to be resentenced pursuant to these provisions upon the court's own motion within 120 days of the date of commitment, or upon the recommendation of specified individuals, including, among others, the district attorney of the county in which the defendant was sentenced. Existing law authorizes the court to consider postconviction factors, including evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. Existing law establishes a presumption favoring recall and resentencing of the defendant that can only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety.

This bill would additionally authorize the court to recall a sentence, on its own motion, at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed due to new statutory or case law authority. The bill would specify that recall and resentencing under these provisions may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case. The bill would eliminate the requirement that the district attorney or Attorney General concur with the resentencing court's decision to vacate the defendant's conviction and resentence the defendant to a reduced term of imprisonment. The bill would prohibit a court that has recalled the sentence on its own motion from imposing a judgment on a necessarily included lesser offense or lesser related offense without the concurrence of both the defendant and the prosecutor if the conviction was the result of a plea bargain. The bill would require the court to consider postconviction factors and would specify 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. The bill would require the presumption favoring recall and resentencing to be overcome if a court finds that the defendant currently poses an unreasonable risk of danger to public safety. The bill would require the court, after ruling on a referral brought pursuant to these provisions, to advise the defendant of their right to appeal and the necessary steps and time for taking an appeal.

This bill would incorporate additional changes to Section 1172.1 of the Penal Code proposed by AB 88 to be operative only if this bill and AB 88 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

SEC. 2. Section 1172.1 of the Penal Code is amended to read:

1172.1. (a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice 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, and provided the new sentence, if any, is no greater than the initial sentence. Recall and resentencing under this section may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case.

(2) The court, in recalling and resentencing under this subdivision, 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.

(3) 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:

(A) Reduce a defendant's term of imprisonment by modifying the sentence.

(B) 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, with the concurrence of the defendant, and then resentence the defendant to a reduced term of imprisonment.

(4) If the court has recalled the sentence on its own motion, the court shall not impose a judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain without the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case.

(5) In recalling and resentencing pursuant to this provision, the court shall 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. 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. The court shall 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 under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(6) Credit shall be given for time served.

(7) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

(8) Resentencing may be granted without a hearing upon stipulation by the parties.

(9) 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.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) 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.

(2) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant currently poses an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.

(c) A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond.

(d) After ruling on a referral authorized by this section, the court shall advise the defendant of their right to appeal and the necessary steps and time for taking an appeal.

SEC. 2.5. Section 1172.1 of the Penal Code is amended to read:

1172.1. (a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, on its own motion, within 120 days of the date of commitment or at any time if the applicable sentencing laws at the time of original sentencing are subsequently changed by new statutory authority or case law, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice 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, and provided the new sentence, if any, is no greater than the initial sentence. Recall and resentencing under this section may be initiated by the original sentencing judge, a judge designated by the presiding judge, or any judge with jurisdiction in the case.

(2) The court, in recalling and resentencing under this subdivision, 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.

(3) 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:

(A) Reduce a defendant's term of imprisonment by modifying the sentence.

(B) 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, with the concurrence of the defendant, and then resentence the defendant to a reduced term of imprisonment.

(4) If the court has recalled the sentence on its own motion, the court shall not impose a judgment on any necessarily included lesser offense or lesser related offense if the conviction was a result of a plea bargain without the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case.

(5) In recalling and resentencing pursuant to this provision, the court shall 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. 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. The court shall 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 under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(6) Credit shall be given for time served.

(7) The court shall state on the record the reasons for its decision to grant or deny recall and resentencing.

(8) (A) Resentencing may be granted without a hearing upon stipulation by the parties.

(B) Notwithstanding subparagraph (A), if a victim of a crime wishes to be heard pursuant to the provisions of Section 28 of Article I of the California Constitution, 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.

(9) 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.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) 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.

(2) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant currently poses an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18.

(c) A defendant is not entitled to file a petition seeking relief from the court under this section. If a defendant requests consideration for relief under this section, the court is not required to respond.

(d) After ruling on a referral authorized by this section, the court shall advise the defendant of their right to appeal and the necessary steps and time for taking an appeal.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 1172.1 of the Penal Code proposed by both this bill and Assembly Bill 88. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 1172.1 of the Penal Code, and (3) this bill is enacted after Assembly Bill 88, in which case Section 2 of this bill shall not become operative.