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SB-749 Criminal procedure: sentencing. (2023-2024)

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Senate Bill No. 749

CHAPTER 633

An act to amend Section 1170.18 of the Penal Code, relating to criminal procedure, and declaring the urgency thereof, to take effect immediately.

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

LEGISLATIVE COUNSEL'S DIGEST

SB 749, Smallwood-Cuevas. Criminal procedure: sentencing.

Existing law, the Safe Neighborhoods and Schools Act, enacted by Proposition 47, as approved by the voters at the November 4, 2014, statewide general election, reduced the penalties for various crimes. Under the provisions of the act, a person who, on November 5, 2014, was serving a sentence for a conviction of a felony or felonies who would have been guilty of a misdemeanor under the act if the act had been in effect at the time of the conviction may petition or apply to have the sentence reduced in accordance with the act. Existing law requires those petitions to be filed on or before November 4, 2022, or at a later date upon showing of good cause.

Proposition 47 authorizes its provisions to be amended by a statute that is consistent with and furthers its intent and that is passed by a $\frac{2}{3}$ vote of each house of the Legislature.

This bill would amend Proposition 47 to remove that deadline and the showing of good cause requirement.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1170.18 of the Penal Code is amended to read:

1170.18. (a) A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ("this act") had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in their case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's felony sentence shall be recalled and the petitioner resentenced to a misdemeanor pursuant to Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section

459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those sections have been amended or added by this act, unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety. In exercising its discretion, the court may consider all of the following:

(1) The petitioner's criminal conviction history, including the type of crimes committed, the extent of injury to victims, the length of prior prison commitments, and the remoteness of the crimes.

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated.

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(c) As used throughout this code, "unreasonable risk of danger to public safety" means an unreasonable risk that the petitioner will commit a new violent felony within the meaning of clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667.

(d) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of their sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. The person is subject to parole supervision by the Department of Corrections and Rehabilitation pursuant to Section 3000.08 and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(e) Resentencing pursuant to this section shall not result in the imposition of a term longer than the original sentence.

(f) A person who has completed their sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the felony conviction or convictions designated as misdemeanors.

(g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.

(h) Unless the applicant requests a hearing, a hearing is not necessary to grant or deny an application filed under subdivision (f).

(i) This section does not apply to a person who has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.

(j) A felony conviction that is recalled and resentenced under subdivision (b) or designated as a misdemeanor under subdivision (g) shall be considered a misdemeanor for all purposes, except that resentencing shall not permit that person to own, possess, or have in their custody or control a firearm or prevent their conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(k) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(l) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(m) Resentencing pursuant to this section does not diminish or abrogate the finality of judgments in any case that does not come within the purview of this section.

(n) A resentencing hearing ordered under this section shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(o) (1) A person who is committed to a state hospital after being found not guilty by reason of insanity pursuant to Section 1026 may petition the court to have their maximum term of commitment, as established by Section 1026.5, reduced to the length it would have been had the act that added this section been in effect at the time of the original determination. Both of the following conditions are required for the maximum term of commitment to be reduced.

(A) The person would have met all of the criteria for a reduction in sentence pursuant to this section had they been found guilty.

(B) The person files the petition for a reduction of the maximum term of commitment before January 1, 2021, or on a later date upon a showing of good cause.

(2) If a petitioner's maximum term of confinement is ordered reduced under this subdivision, the new term of confinement must provide opportunity to meet requirements provided in subdivision (b) of Section 1026.5. If a petitioner's new maximum term of confinement ordered under this section does not provide sufficient time to meet requirements provided in subdivision (b) of Section 1026.5, the new maximum term of confinement may be extended, not more than 240 days from the date the petition is granted, in order to meet requirements provided in subdivision (b) of Section 1026.5.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure all qualified persons may file their petitions after the deadline of November 4, 2022, it is necessary that this act take effect immediately.