

AMENDED IN SENATE MARCH 23, 2023

SENATE BILL

No. 94

Introduced by Senator Cortese
(Principal coauthor: Senator Becker)
(Coauthors: Senators Skinner and Wiener)
(Coauthors: Assembly Members Jackson and Weber)

January 18, 2023

An act to add Section 1172.5 to the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 94, as amended, Cortese. Recall and resentencing: special circumstances.

Existing law provides for various specified special circumstances, including murder committed for financial gain or committed during the commission or attempted commission of certain felonies, which, if found true as specified, require a defendant found guilty of murder in the first degree to be sentenced to death or imprisonment for life without the possibility of parole. Existing law, added by Proposition 115 of the June 5, 1990, statewide primary election, prohibits a judge from striking or dismissing any special circumstance that is admitted by plea or found true by a jury or court, as specified. Existing law generally authorizes a court to dismiss an action or to strike or dismiss an enhancement in the furtherance of justice, except if dismissal of that enhancement is prohibited by any initiative statute.

This bill would authorize an individual sentenced to death or life imprisonment without the possibility of parole for a conviction in which one or more special circumstances were found to be true to petition for recall and resentencing if the offense occurred before June 5, 1990, and the individual has served at least 20 years in custody. The bill would

authorize the court to modify the petitioner’s sentence to impose a lesser sentence and apply any changes in law that reduce sentences or provide for judicial discretion, or to vacate the petitioner’s conviction and impose judgment on a lesser included offense, as specified. The bill would require a court to consider and afford great weight to evidence offered by the petitioner to prove that specified mitigating circumstances are present. The bill would provide that proof of the presence of one or more specified mitigating circumstances weighs greatly in favor of dismissing a special circumstance, unless the court finds that petitioner is currently an unreasonable risk of danger to public safety, as defined. The bill would require the court to appoint the State Public Defender or other qualified counsel for an indigent petitioner.

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. The Legislature finds and declares all of the
2 following:

3 (a) In the last 10 years, the Legislature has enacted numerous
4 reforms to require judges to consider mitigating factors in
5 sentencing, including: whether the individual to be sentenced is
6 or was a victim of intimate partner violence, sexual violence, or
7 human trafficking (AB 124 enacted in 2021); whether the
8 individual experienced childhood trauma, including abuse, neglect,
9 exploitation, or sexual violence (AB 124 enacted in 2021); whether
10 the individual was young, meaning under 26 years of age, at the
11 time of the offense (AB 124 enacted in 2021, SB 260 enacted in
12 2013, SB 261 enacted in 2015); whether the individual was a
13 veteran and the conduct was related to trauma experienced in the
14 military (AB 2098 enacted in 2014, AB 865 enacted in 2018, SB
15 1209 enacted in 2022); whether the individual suffers from
16 cognitive impairment, intellectual disability, or mental illness (AB
17 2512 enacted in 2020, SB 215 enacted in 2018); and whether there
18 was racial bias in the proceedings (AB 2542 enacted in 2021, AB
19 256 enacted in 2022).

20 (b) In the last 10 years, the Legislature has also enacted reforms
21 recognizing that individuals are capable of redemption and
22 requiring judges, when reviewing previously imposed sentences,
23 to consider changed circumstances such as an individual’s

1 rehabilitation while in custody, that the passage of time may
2 significantly change the relevance of factors previously considered
3 in sentencing, and that other changed circumstances may mean
4 that an originally imposed sentence is no longer in the interest of
5 justice (AB 1812 enacted in 2018, AB 2942 enacted in 2018, AB
6 1540 enacted in 2021, AB 960 enacted in 2022).

7 (c) It is necessary to correct sentences that would not be imposed
8 today because of legal reforms enacted since an individual's
9 conviction. Judges should have the opportunity to take a second
10 look at these sentences in light of evolving standards of decency
11 and reforms that mandate the consideration of mitigating factors
12 at sentencing such as youth, childhood trauma, victimization, race,
13 military service and mental illness, and in light of changed
14 circumstances, including an individual's rehabilitation.

15 (d) While individuals sentenced to parole-eligible sentences
16 have an opportunity for some of these mitigating factors and
17 changed circumstances to be considered in the parole process,
18 individuals sentenced to life without parole or death do not.

19 (e) It is the intent of the Legislature that judges be given an
20 opportunity to review sentences of life without parole or death for
21 offenses ~~prior to~~ *before* June 5, 1990, to exercise their discretion
22 in sentencing, considering mitigating factors and changed
23 circumstances as now required in sentencing.

24 SEC. 2. Section 1172.5 is added to the Penal Code, to read:

25 1172.5. (a) An individual who has been sentenced to death or
26 life imprisonment without possibility of parole for a conviction in
27 which one or more of the special circumstances enumerated in
28 Section 190.2 has been found true, may petition the court to recall
29 the sentence and resentence to a lesser sentence if:

30 (1) The offense occurred before June 5, 1990.

31 (2) The individual has served at least 20 years in custody.

32 (b) (1) The petition shall be filed with the court that sentenced
33 the petitioner and served on the district attorney, or on the agency
34 that prosecuted the petitioner. The presiding judge shall designate
35 a judge to rule on the petition. The petition shall include all of the
36 following:

37 (A) A declaration by the petitioner that the petitioner is eligible
38 for relief pursuant to subdivision (a).

39 (B) The superior court case number and date of the petitioner's
40 offense and conviction.

1 (C) Whether the petitioner currently has counsel and, if not,
2 whether the petitioner is indigent.

3 (2) If any of the information required by this subdivision is
4 missing from the petition and cannot be readily ascertained by the
5 court, the court may deny the petition without prejudice to the
6 filing of another petition and advise the petitioner that the matter
7 cannot be considered without the missing information.

8 (c) The court shall review the petition and determine if it alleges
9 the elements set forth in subdivision (a). If the subject of the
10 petition does not have counsel and is indigent, the court shall
11 appoint the State Public Defender or other qualified counsel to
12 represent the individual. If counsel is newly appointed, they may
13 file a supplementary petition within 60 days. The prosecutor may
14 file and serve a response within 60 days of service of the petition
15 or supplementary petition and the petitioner may file and serve a
16 reply within 30 days after the prosecutor response is served. These
17 deadlines shall be extended for good cause.

18 (d) (1) Within 60 days after the reply is filed, the court shall
19 hold a hearing to determine whether to recall the sentence and
20 resentence the petitioner. This deadline may be extended for good
21 cause.

22 (2) The resentencing court may, in the interest of justice and
23 regardless of whether the original sentence was imposed after a
24 trial or plea agreement, do the following:

25 (A) May modify the petitioner's sentence to impose a lesser
26 sentence, and apply any changes in law that reduce sentences or
27 provide for judicial discretion.

28 (B) May vacate the petitioner's conviction and impose judgment
29 on any necessarily included lesser offense, whether or not that
30 offense was charged in the original pleading, and then resentence
31 the petitioner to a lesser sentence.

32 (3) The parties may waive a resentencing hearing and stipulate
33 that the petitioner is eligible for recall and resentencing.

34 (4) A petitioner who is resentenced pursuant to this section shall
35 be given credit for time served.

36 (5) Resentencing under this subdivision shall not result in the
37 imposition of a term longer than the original sentence.

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

1 (e) (1) In considering a petition pursuant to this section, the
2 court shall consider and afford great weight to evidence offered
3 by the petitioner to prove that any of the following mitigating
4 circumstances are present:

5 (A) The petitioner was a victim of intimate partner violence,
6 sexual violence, or human trafficking.

7 (B) The petitioner experienced childhood trauma, including
8 abuse, neglect, exploitation, or sexual violence.

9 (C) The petitioner is a veteran and the conduct involved in the
10 offense related to trauma experienced in the military.

11 (D) The petitioner has been diagnosed with cognitive
12 impairment, intellectual disability, or mental illness.

13 (E) The petitioner was a youth, as defined under subdivision
14 (b) of Section 1016.7 at the time of offense.

15 (F) The sentence violates Section 745 (the California Racial
16 Justice Act).

17 (G) The petitioner's age, time served, or diminished physical
18 condition reduces the petitioner's risk for future violence.

19 (2) Proof of the presence of one or more of these circumstances
20 weighs greatly in favor of dismissing the special circumstance,
21 unless the court finds that the petitioner is currently an
22 unreasonable risk of danger to public safety, as defined in
23 subdivision (c) of Section 1170.18.

24 (f) The court shall consider postconviction factors, including,
25 but not limited to, the disciplinary record and record of
26 rehabilitation of the petitioner while incarcerated, and evidence
27 that reflects that circumstances have changed since the original
28 sentencing so that the sentence originally imposed is no longer in
29 the interest of justice.

30 (g) This section does not diminish or abrogate any rights or
31 remedies otherwise available to the subject of the petition.

32 (h) If the judge declines to impose a reduced sentence, a
33 subsequent petition pursuant to this section may be filed if at least
34 two years have passed from the denial of the prior application.

35 (i) The petitioner may appear remotely, and the court may
36 conduct the hearing through the use of remote technology, unless
37 counsel requests their physical presence in court and if not
38 otherwise prohibited by state law.

O