

Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

AB 1245 (Cooley) – As Amended March 11, 2021

Policy Committee: Public Safety

Vote: 6 - 1

Urgency: No

State Mandated Local Program: Yes

Reimbursable: Yes

SUMMARY:

This bill allows a defendant to petition a court for resentencing to a lower sentence after the defendant has served at least 15 years of their sentence. Specifically, this bill:

- 1) Allows a petition for recall and resentencing to be filed by the defendant, after the defendant has served at least 15 years of their sentence and prior to the final 24 months of their sentence.
- 2) Requires a petition for recall and resentencing made by the defendant, the California Department of Corrections and Rehabilitation (CDCR), sheriff or the district attorney, be filed with the presiding judge of the superior court in which the defendant was originally sentenced.
- 3) Requires the presiding judge, or another judge designated by the presiding judge, to act on the petition within 90 days of the petition having been filed.
- 4) Specifies that the court shall not deny the petition to recall and resentence a defendant made by the Board of Parole Hearings (BPH), CDCR, the sheriff, or the district attorney, unless there is evidence beyond a reasonable doubt the defendant is likely to commit a future violent crime.
- 5) Requires the Department of Finance (DOF) to calculate the savings accrued from resentencing a defendant sentenced to imprisonment in the state prison to a lower term.
- 6) States that upon appropriation by the Legislature, 25% of the savings shall be allocated to the district attorney where resentencing occurred, 12.5% of the savings shall be allocated to the superior court in the county where resentencing occurred, and, for a defendant represented in resentencing proceedings by the public defender, 12.5% of the savings shall be allocated to the public defender of the county where the resentencing occurred.

FISCAL EFFECT:

- 1) Possible cost pressures (Trial Court Trust Fund) in the upper hundreds of thousands of dollars to low millions of dollars annually to the trial courts in increased workload, given this bill requires courts to hear and adjudicate new resentencing requests for any inmate serving

more than 15 years when the request for resentencing is made by CDCR or representatives of local law enforcement. The estimated cost of one court day is approximately \$7,644. It is unknown how many petitions may be filed, however, if 100 petitions for resentencing are filed in criminal court requiring 48 total hours (six days) of workload, the cost would be approximately \$764,000. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund and staff workload may create a need for increased funding for courts from the General Fund (GF) to perform existing duties. This is particularly true, given that courts have delayed hundreds of trials and civil motions during the COVID-19 pandemic resulting in a serious backlog that must be resolved. The Governor's 2021-22 budget proposes \$72.2 million dollars in ongoing GF revenue for trial courts to continue addressing the backlog of cases in order to provide timely access to justice.

- 2) Possibly significant loss of revenue to the GF since this bill redirects any cost savings deriving from this bill to the county courts, public defenders and district attorneys. As noted below, if a court decides to re-sentence a defendant to time served, savings on incarceration costs could be in the millions or tens of millions of dollars.
- 3) Possibly significant cost savings (GF) to the California Department of Corrections and Rehabilitation (CDCR) in reduced incarceration costs. This bill allows inmates to be re-sentenced after 15 years to less time. The average annual cost to incarcerate an inmate in state prison is \$84,000. If 10 defendants are re-sentenced to time served, resulting in a possible sentence reduction of 5 years for each inmate, cost savings would be \$4.2 million dollars.

COMMENTS:

- 1) **Purpose.** According to the author:

AB 1245 would direct savings from reduced prison incarceration to local entities, including the local prosecutor's office that made the successful resentencing request as well as the public defender's office that represented the defendant.

- 2) **Resentencing.** Penal Code section 1170, subdivision (d) allows a trial court to recall a defendant's sentence and impose any permissible new sentence, which may include consideration of facts that arose after the defendant was committed to serve the original sentence. The new sentence cannot be greater than the original sentence. The court's ability to recall and resentence a defendant on the recommendation of a county correctional administrator, CDCR, BPH or the county correctional administrator may occur at any time. However, a trial court's recall for resentencing on its own motion must occur within 120 days after the commitment date. (Pen. Code, § 1170, subd. (d)(1).)

This bill creates a presumption of recall and resentencing where the request for resentencing is made by CDCR, BPH, the county sheriff or district attorney and based on the defendant's exceptional rehabilitation while incarcerated. Additionally, this bill allows the defendant to file a motion for recall and resentencing after they have served 15 years in prison. Currently, recall and resentencing petitions pursuant to Penal Code section 1170, subdivision (h) may be summarily denied or even ignored by trial courts. There are at least 30,000 inmates in CDCR

custody that were likely sentenced to more than 15 years (i.e., sentenced on a third strike or to an indeterminate term). If even 15% of the total number of inmates serving sentences of 15 or more years are eligible for recall and resentencing, the court may be required to hear as many as 4,500 petitions, resulting in significant cost pressures to the courts.

- 3) **Related Legislation.** AB 1540 (Ting) requires the court to provide counsel for the defendant when there is recommendation from the CDCR, BPH or the district attorney to recall an inmate's sentence and resentence that inmate to a lesser sentence. AB 1540 is pending in this committee.

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