
THIRD READING

Bill No: SB 94
Author: Cortese (D), et al.
Amended: 5/18/23
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/11/23
AYES: Wahab, Bradford, Skinner, Wiener
NOES: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/23
AYES: Portantino, Ashby, Bradford, Wahab, Wiener
NOES: Jones, Seyarto

SUBJECT: Recall and resentencing: special circumstances

SOURCE: Ella Baker Center for Human Rights

DIGEST: This bill sets up a process for a person who has been sentenced to death or life imprisonment before June 5, 1990 can seek a recall of their sentence and be resentenced to a lesser sentence.

ANALYSIS:

Existing law:

- 1) Defines murder as the unlawful killing of a human being, or a fetus, with malice aforethought. (Penal Code, § 187(a))
- 2) Defines malice for this purpose as either express or implied and defines those terms.
 - a) It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature.

- b) It is implied, when no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart. (Penal Code § 188)
- 3) Defines first degree murder, in part, as all murder that is committed in the perpetration of, or attempt to perpetrate, specified felonies. (Penal Code § 189.)
- 4) Prescribes, as enacted by Proposition 7, approved by the voters at the November 7, 1978, statewide general election, a penalty for that crime of death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. (Penal Code § 190)
- 5) Provides that the penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of 22 special circumstances are found to be true. (Penal Code § 190.2)

This bill:

- 1) Provides that an individual who has been sentenced to life imprisonment without possibility of parole for a conviction in which one or more special circumstance has been found true, may petition the court to recall the sentence and resentence to a lesser sentence if:
 - a) The offense occurred before June 5, 1990.
 - b) The individual has served at least 25 years in custody.
- 2) Provides that the petition shall be filed with the court that sentenced the petitioner and served on the district attorney or on the agency that prosecuted the petitioner.
- 3) Provides that the presiding judge shall designate a judge to rule on the petition.
- 4) Provides that the petition shall include all the following:
 - a) A declaration by the petitioner that the petitioner is eligible for relief.
 - b) The superior court case number and date of the petitioner's offense and conviction.

- c) Whether the petitioner currently has counsel, and if not, whether the petitioner is indigent.
- 5) Provides that if any of the information required by this subdivision is missing from the petition and cannot be readily ascertained by the court may deny the petition without prejudice to the filing of another petition and advise the petitioner that matter cannot be considered without the missing information.
- 6) Provides that the court shall review the petition and determine if it alleges the elements required.
- 7) Provides that if the court does not have counsel and is indigent, the court shall appoint the State Public Defender or other qualified counsel to represent the individual.
- 8) Provides if counsel is newly appointed, they may file a supplementary petition within 60 days.
- 9) Provides that the prosecutor may file and serve a response within 60 days of service of the petition or supplementary petition and the petitioner may file and serve a reply within 30 days after the prosecutor response is served.
- 10) Provides that the deadlines may be extended for good cause.
- 11) Provides that within 60 days after the reply is filed, the courts shall hold a hearing to determine whether to recall the sentence and resentence the petitioner.
- 12) Provides that 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) May modify the petitioner's sentence to impose a lesser sentence, and apply any changes in law that reduce sentences or provide for judicial discretion.
 - b) May vacate the petitioner's conviction and impose judgment on a necessarily included lesser offense, wither or not that offense was charged in the original pleading, and then resentence the petitioner to a lesser sentence.
- 13) Provides that the parties may waive a resentencing hearing and stipulate that the petitioner is eligible for recall and resentencing.

- 14) Provides that a petitioner who is resentenced shall be given credit for time served.
- 15) Provides that resentencing under this subdivision shall only result in a sentence of 25 years of life with the possibility of parole followed by a review by the Board of Parole hearings.
- 16) Provides that the court shall state on the record the reasons for its decision to grant or deny recall and resentencing.
- 17) Provides that in considering a petition pursuant to this section, the court shall consider and afford great weight to evidence offered by the petitioner to prove that any of the following mitigating circumstances are present:
 - a) The petitioner was the victim of intimate partner violence, sexual violence, or human trafficking;
 - b) The petitioner experienced childhood trauma, including abuse, neglect, exploitation, or sexual violence.
 - c) The petitioner is a veteran and the conduct involved in the offense related to trauma experienced in the military.
 - d) The petitioner has been diagnosed with cognitive impairments, intellectual disability, or mental illness.
 - e) The petitioner was under the age of 26 at the time of the offense.
 - f) The sentence violates the California Racial Justice Act.
 - g) The petitioner's age, time served, or diminished physical condition reduces the petitioner's risk for future violence.
- 18) Provides that proof of the presence of one or more of the above circumstances weighs greatly in favor of dismissing the special circumstance, unless the court finds that the petitioner is currently an unreasonable risk of danger to public safety.
- 19) Provides that the court shall consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the petitioner while incarcerated, and evidence that reflects that circumstances have changed since the original sentence so that the sentence originally imposed is no longer in the interest of justice.

- 20) Provides that it does not diminish or abrogate any rights or remedies otherwise available to the subject of the petition.
- 21) Provides that if the judge declines to impose a reduced sentence, two subsequent petitions may be filed if at least three years have passed since the denial of the prior petition.
- 22) Provides that the petitioner may appear remotely, and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court and if not otherwise prohibited by state law.
- 23) Contains uncodified Legislative findings and declarations.

Background

According to the author:

Existing law provides that when a prosecutor charges a special circumstance enhancement and it is found true, a person found guilty of first degree murder with special circumstances shall be punished by death or LWOP. (Pen. Code, § 190.2.)

Prop 115, passed by the voters on June 5, 1990, removed from judges the discretion to dismiss a special circumstance finding after it has been found true. Judges retain the power to dismiss special circumstances after they have been found true for offenses that occurred before June 5, 1990.

Penal Code section 1172.1 permits a judge, prosecutor or CDCR to recall a sentence for reconsideration. This code section does not permit an individual to petition for recall and reconsideration of a sentence.

The majority of people serving a life without parole sentence are classified as low risk according to California Department of Corrections and Rehabilitation (CDCR)'s own California Static Risk Assessment tool - 88% of people serving life without parole have been assessed with the lowest risk score on that scale. Research also conclusively demonstrates that there is little risk for elderly individuals to re-offend or recidivate upon release. For individuals previously sentenced to life without parole who were granted a commutation and released, the recidivism rate is zero percent. Based on CDCR data, an analysis from the Special Circumstances Conviction Project of UCLA

Center for the Study of Women, estimates that this reform might qualify 200 death penalty cases, and 600 LWOP cases for review.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- *Judicial Branch:* Unknown court workload cost pressures to adjudicate review petitions for recall and resentencing and hold additional review and resentencing hearings (Trial Court Trust Fund, General Fund).
- *OSPD:* Staff notes potential ongoing costs, likely in the low to mid hundreds thousands, as a result of additional staff workload for the Office of the State Public Defender (OSPD) (General Fund).
- *DOJ:* Staff notes ongoing costs to the Department of Justice (DOJ), likely in the hundreds of thousands for additional staff resources in the Appeals, Writs, and Trials division (General Fund). Actual costs will depend on how many petitions are filed under SB 94 and how many are the responsibility of the Attorney General (AG) as opposed to the district attorney who originally handled the case.
- *Incarceration Savings:* Unknown, potential annual savings in reduced state incarceration costs as a result of inmates being resentenced and possibly being released on parole (General Fund).

SUPPORT: (Verified 5/18/23)

Ella Baker Center for Human Rights (source)

8th Amendment Project

A New Way of Life Reentry Project

ACLU California Action

Alliance for Boys and Men of Color

American Friends Service Committee

Amnesty International USA

Asian Pacific Islander Re-entry and Inclusion Through Support and Empowerment

Asian Prisoner Support Committee

Bend the Arc California

Bend the Arc: Jewish Action California

Black Women Organized for Political Action

Blameless and Forever Free Ministries

California Attorneys for Criminal Justice
California Calls
California Catholic Conference
California Coalition for Women Prisoners
California Families Against Solitary Confinement
California Immigrant Policy Center
California Native Vote Project
California Public Defenders Association
Californians for Safety and Justice
Californians United for A Responsible Budget
Center for Employment Opportunities
Center on Juvenile and Criminal Justice
City of Oakland Mayor Sheng Thao
Communities United for Restorative Youth Justice
Community Agency for Resources, Advocacy and Services
Community Legal Services in East Palo Alto
Courage California
Cure California
Decarcerate Sacramento
Democrats of Rossmoor
Drop Lwop Coalition
Drug Policy Alliance
Empowering Pacific Islander Communities, Fiscally Sponsored by Community
Partners
End Solitary Santa Cruz County
F.u.e.l.- Families United to End LWOP
Fair Chance Project
Faith in Action East Bay
Families Against Mandatory Minimums Foundation
Felony Murder Elimination Project
Foundation Aussergewöhnlich Berlin
Friends Committee on Legislation of California
Holy Cross Lutheran Church, Livermore, CA
Housing and Economic Rights Advocates
Human Rights Watch
If/when/how: Lawyering for Reproductive Justice
Individual
Indivisible CA Statestrong
Indivisible Sacramento
Indivisible San Francisco

Indivisible Yolo
Initiate Justice
Inland Equity Partnership
Interfaith Movement for Human Integrity
Islamic Shura Council of Southern California
John Burton Advocates for Youth
Justice2jobs Coalition
LA Defensa
Latinojustice Prldef
Law Enforcement Action Partnership
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Prisoners With Children
Long Beach Immigrant Rights Coalition
MILPA
NARAL Pro-Choice California
National Association of Social Workers, California Chapter
National Center for Lesbian Rights
National Harm Reduction Coalition
North Bay Jobs With Justice
Peninsula Multifaith Coalition
Prosecutors Alliance California
Restore Oakland, Inc.
Root & Rebound
Safe Return Project
San Francisco Public Defender
Santa Cruz Barrios Unidos Inc.
Secure Justice
Showing Up for Racial Justice Bay Area
Showing Up for Racial Justice Santa Cruz County
Silicon Valley De-Bug
Sister Warriors Freedom Coalition
Smart Justice California
Social Change
Starting Over, Inc.
Survived & Punished
Techequity Collaborative
The Place4grace
The Resistance Northridge-indivisible
The San Diego LGBT Community Center
The Transformative In-Prison Workgroup

Unapologetically Hers
Uncommon Law
Underground Grit
Underground Scholars Initiative at the University of California, Irvine
United Core Alliance
Urban Peace Movement
Voices for Progress
White People 4 Black Lives
Witness to Innocence
Young Women's Freedom Center

OPPOSITION: (Verified 5/18/23)

Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Highway Patrolmen
California Coalition of School Safety Professionals
California District Attorneys Association
California State Sheriffs' Association
Claremont Police Officers Association
Corona Police Officers Association
Crime Victims United
Crime Victims United of California
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Inglewood Police Officers Association
Los Angeles School Police Officers Association
Monterey County District Attorney's Office
Murrieta Police Officers' Association
Newport Beach Police Association
Palos Verdes Police Officers Association
Peace Officers Research Association of California
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
San Diegans Against Crime
San Diego County District Attorney's Office
San Diego Deputy District Attorneys Association
Santa Ana Police Officers Association

Upland Police Officers Association

ARGUMENTS IN SUPPORT: Supporters of this bill note that nothing in this bill guarantees a person will be resentenced or leave prison, but it is consistent with some of the other recent criminal justice reforms in recognizing that people may change while incarcerated and may no longer pose a threat to society. Specifically the Alliance for Boys and Men of Color states:

There are people languishing in state prisons, that were they in court today, would receive a more just sentence. In the last ten years, the Legislature has enacted several reforms to restore judicial discretion and to allow judges to consider mitigating factors at sentencing, including whether the person was a victim of intimate partner violence or human trafficking or had experienced childhood trauma, exploitation or sexual abuse.

Although individuals sentenced to LWOP or death have no path to parole today, many have exhibited decades of exemplary behavior, participated in extensive positive programming, have come to understand the contributing factors which led to their incarceration, and have devoted themselves to becoming positive members of society. The majority of people serving a life without parole sentence are classified as low risk according to California Department of Corrections and Rehabilitation's own California Static Risk Assessment tool - 88% of people serving life without parole have been assessed with the lowest risk score on that scale. Research also conclusively demonstrates that there is little risk for elderly individuals to re-offend or recidivate upon release. For individuals previously sentenced to life without parole in California who were granted a commutation and released, the recidivism rate is zero percent.

This bill does not guarantee resentencing or release. Any individual who is granted resentencing by a judge will then need to go before the parole board, who will make a determination about their suitability for release. This bill allows courts to consider old cases in light of changes in law, thereby applying the law more fairly. This will mean that individuals that deserve a second chance won't have to die behind bars. For these reasons, our organization strongly supports SB 94 (Cortese).

ARGUMENTS IN OPPOSITION: The California District Attorneys oppose this bills stating:

First, SB 94 subverts the will of The People of the State of California, who voted to prohibit the dismissal of special circumstances in 1990 via Proposition 115. Your bill acknowledges this fact. However, the bill then seeks to avoid this declaration by providing dismissal of special circumstances to sentences not covered by the Proposition. While this is technically legal, it is in direct conflict with the will of the People. Rather than govern through technicality, we suggest you bring the issue back to the voters to see if they agree with you, or abide by the conditions in their initiative—specifically a $\frac{2}{3}$ vote in both houses. As it stands, we must oppose.

Second, your bill would impose a substantial and unwarranted burden on the judicial system, limiting access and extending wait times for individuals in order to allow individuals who have committed the most egregious offenses to seek resentencing. This measure makes no distinction between those who have demonstrated some indicators of redemption or rehabilitation and those who have not. Instead, it would burden the state's already overburdened judicial system and retraumatize the families of murder victims with resentencing hearings for individuals who have shown few or no signs of redemption, and who jurors did not believe were worthy of the opportunity for parole based on the nature of their crimes.

Prepared by: Mary Kennedy / PUB. S. /
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