



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

Title	Agenda Item Type
Judicial Council–Sponsored Legislation: Recalling Felony Sentences Under Criminal Justice Realignment	Action Required
Rules, Forms, Standards, or Statutes Affected Amend Pen. Code, § 1170(d)(1)	Effective Date December 12, 2014
Recommended by Policy Coordination and Liaison Committee Hon. Kenneth K. So, Chair Criminal Law Advisory Committee Hon. Tricia A. Bigelow, Chair	Date of Report October 29, 2014
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Executive Summary

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee propose amending Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h). This proposal was developed at the request of criminal law judges to enhance judicial discretion by applying existing recall authority to a new category of felony sentences created by criminal justice realignment.

Recommendation

The Policy Coordination and Liaison Committee and Criminal Law Advisory Committee recommend that the Judicial Council sponsor legislation to amend Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h).

The text of the proposed amendment to Penal Code section 1170(d)(1) is attached at page 4.

Previous Council Action

No relevant previous Judicial Council action to report.

Rationale for Recommendation

Penal Code section 1170(d)(1)¹ authorizes courts to recall felony prison sentences on their own motion within 120 days of the defendant’s commitment to prison or anytime upon recommendation of state prison officials. Section 1170(d)(1) is generally designed to vest courts with broad authority to resentence “for any reason rationally related to lawful sentencing.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 456.) By its express terms, section 1170(d)(1) only applies to state prison sentences.

Legislation enacted as part of the Criminal Justice Realignment Act of 2011 implemented broad changes to felony sentencing laws, including replacing prison sentences for certain felony offenders with county jail sentences under section 1170(h). The legislation, however, did not also amend section 1170(d)(1) to apply existing court discretion to recall felony sentences to the sentences now served in county jail under section 1170(h).

The committee believes that the general purpose of section 1170(d)(1)—to authorize courts to resentence for any reason rationally related to lawful sentencing—applies equally to the recall of county jail sentences under section 1170(h). By expanding court discretion to recall sentences, this proposal is designed to enhance judicial discretion, promote uniform and effective sentencing practices, and update long-standing sentencing laws to reflect recent criminal justice realignment legislation.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of seven comments. Of those, five agreed with the proposal, including the Superior Courts of Los Angeles, Riverside, and San Diego Counties, and the Public Defender and Alternate Public Defender of Los Angeles County; one agreed with the proposal if modified; and one did not take a formal position. A chart with all comments received and committee responses is attached at pages 5–8.

In addition, in April 2014, before the proposal circulated for public comment, the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees (JLWG) reviewed the proposal and voted unanimously to support. Additionally, on October 2, the JLWG reviewed the proposal again and again voted unanimously to support it.

Notable alternatives considered

The committee considered but declined a suggestion regarding providing notice of recalled sentences. The California Attorney General’s Office (AG) recommended that the proposal include a provision requiring that, in the event a notice of appeal has been filed at the time of

¹ All subsequent statutory references are to the Penal Code.

recall and resentence, the sentencing court provide notice of the recall and resentence to the Court of Appeal and the parties, including the AG. The committee, however, declined the suggestion as unnecessary. Rule 8.340(a) of the California Rules of Court provides that if the trial court amends or recalls a judgment or makes any other order in the case following the certification of the record, the clerk must send a copy of the amended abstract of judgment to the reviewing court, the parties, and others, including the AG if counsel for the prosecution on appeal.

In addition, to ensure that the proposal applies to *all* counties, including counties in which the county jail is operated by a corrections department, rather than a county sheriff, the committee modified the proposal to replace references to “county sheriff” with “county sheriff *or county director of corrections.*”

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected.

Attachments

1. Proposed amendments to Penal Code section 1170(d)(1), at page 4
2. Chart of comments, LEG14-03, at pages 5–8

Penal Code section 1170(d)(1) would be amended, effective January 1, 2016, to read:

1 (d)(1) When a defendant subject to this section or subdivision (b) of Section 1168 has been
2 sentenced to be imprisoned in the state prison or county jail under subdivision (h) and has been
3 committed to the custody of the secretary, county sheriff, or county director of corrections, the
4 court may, within 120 days of the date of commitment on its own motion, or at any time upon
5 the recommendation of the secretary or the Board of Parole Hearings, county sheriff, or county
6 director of corrections, recall the sentence and commitment previously ordered and resentence
7 the defendant in the same manner as if he or she had not previously been sentenced, provided the
8 new sentence, if any, is no greater than the initial sentence. The court resentencing under this
9 subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of
10 sentences and to promote uniformity of sentencing. Credit shall be given for time served.

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LEG14-03

Proposed Legislation: Criminal Justice Realignment: Recalling Sentences under Penal Code section 1170(d)(1) (amend Penal Code section 1170(d)(1))

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Conference of California Bar Associations (CCBA) by Larry Doyle, Legislative Representative	A	This recommendation essentially duplicates Resolution 09-01-2013 (http://larrydoylelaw.com/wp-content/uploads/2013/11/09-01-2013.pdf) adopted by the CCBA at its October 2013 meeting. The resolution notes that with little difference between these sentences other than the location of incarceration – prison as compared to county jail - treating the ability to recall these two types of sentences differently would otherwise raise state and federal constitutional equal protection problems, and leave the judiciary completely powerless to remedy all Penal Code section 1170 (h) sentences for any legitimate reason post judgment. Clarity in section 1170 (d)(1) will eliminate arbitrary results for all trial courts across California and give expressed guidance to all trial courts on how best to exercise its constitutional and statutory authority to effectuate post judgment section 1170 (h) (county jail) sentences.	No response required.
2.	California Department of Justice, Office of the Attorney General by Melissa Whitaker, Legislative Coordinator	AM	A trial court may recall a sentence and resentence a defendant under Penal Code section 1170(d)(1) even though a notice of appeal has already been filed. (<i>Portillo v. Superior Court</i> (1992) 10 Cal.App.4th 1829, 1835-1836; see <i>People v. Turrin</i> (2009) 176 Cal.App.4th 1200, 1204.) The proposed legislation does not provide a mechanism for the Attorney General’s Office to receive notice of a recall and resentence in the event a notice of	The committee declines the suggestion as unnecessary. Rule 8.340(a) of the California Rules of Court provides that if the trial court amends or recalls the judgment or makes any other order in the case following the certification of the record, the clerk must send a copy of the amended abstract of judgment to the parties, including the Attorney General if counsel for the prosecution on appeal, as well as the reviewing court.

LEG14-03

Proposed Legislation: Criminal Justice Realignment: Recalling Sentences under Penal Code section 1170(d)(1) (amend Penal Code section 1170(d)(1))

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			<p>appeal has been filed. In the past, our office has often learned of such action through CDCR, but that connection will not benefit us in cases in which the defendant is sentenced locally pursuant to Penal Code section 1170(h)(5). Notice of such action is necessary for our office's proper and efficient handling of appeals.</p> <p>It would be beneficial for the parties and the Court of Appeal for the proposal to include a provision stating that, in the event a notice of appeal has been filed at the time of recall and resentencing, the sentencing court shall provide notice of the recall and resentencing to the court of appeal and the parties, including the Attorney General's Office.</p>	
3.	<p>Los Angeles County Offices of the Public Defender and Alternate Public Defender by Ronald L. Brown, Public Defender, and Janice Y. Fukai, Alternate Public Defender</p>	A	<p>The Los Angeles County Offices of the Public Defender and Alternate Public Defender agree with Proposed Legislation 14-03, which will amend Penal Code section 1170, subdivision (d)(1), to apply existing court authority to recall felony prison sentences to new county jail sentences under Penal Code section 1170, subdivision (h)(5).</p> <p>Penal Code section 1170, subdivision (d)(1), while designed to provide courts with broad authority to resentence defendants, clearly only applies to state prison sentences. However, since the implementation of criminal justice realignment legislation in October of 2011,</p>	No response required.

LEG14-03

Proposed Legislation: Criminal Justice Realignment: Recalling Sentences under Penal Code section 1170(d)(1) (amend Penal Code section 1170(d)(1))

All comments are verbatim unless indicated by an asterisk (*).

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			<p>prison sentences for certain felony offenses have been replaced with county jail sentences pursuant to Penal Code section 1170, subdivision (h)(5). As a result, this major legislative change has now created two classes of felons: state prison felons and county jail felons.</p> <p>Unfortunately for county jail felons, although felony sentences served in prison and felony sentences served in a county jail are considered identical for priorability purposes under Penal Code section 667.5, subdivision (b), only the state prison sentences are currently subject to recall under Penal Code section 1170, subdivision (d)(1). This creates a strange and counter-intuitive result; defendants who were sentenced to more serious offenses that mandated state prison sentences are allowed to have their sentences recalled, while defendants who committed less serious offenses which resulted in sentences served in county jail are denied any such relief. The stated purpose of the realignment legislation is to realign low-level felony offenders who have no prior convictions for serious, violent, or sex offenses to locally-run community-based corrections programs. (Pen. Code § 17.5, subd. (1)(5).) However, for those “realigned” prisoners, it is grossly unfair that they are not given the same opportunity for a sentence recall that more serious offenders are entitled to.</p>	

LEG14-03

Proposed Legislation: Criminal Justice Realignment: Recalling Sentences under Penal Code section 1170(d)(1) (amend Penal Code section 1170(d)(1))

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			In order to further promote uniform and effective sentencing practices, and to give county jail felons the same access to the sentencing court for sentence corrections that are currently limited to state prison felons, the Los Angeles County Offices of the Public Defender and Alternate Public Defender support the proposed legislation.	
4.	Superior Court of Los Angeles County	A		No response required.
5.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	A	Agree with proposal.	No response required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response required.
7.	Hon. Peter B. Twede Superior Court of Glenn County	NI	Leg 14-03 1170(d)(1) Recall of sentence. The only issue I have with this particular legislation is the ability of the <i>county sheriff</i> to request the recall “at any time” after sentence is imposed. I envision petitions being filed on the basis of the good conduct of the defendant requesting a modification to decrease the sentence and therefore increase available space in the facility.	The committee appreciates this comment, and acknowledges the importance of issues involving prison and county jail overcrowding. The statute currently permits courts to recall felony prison sentences at the recommendation of state prison officials, made at any time. The court has the discretion to deny such recommendations. This proposal is simply designed to apply this existing court authority to the new county jail sentences under section 1170(h). The committee believes that the general purpose of section 1170(d)(1)—to authorize courts to resentence for any reason rationally related to lawful sentencing—applies equally to the recall of county jail sentences under section 1170(h).