

PETITION IN FAVOR OF M.M.’S LAW

Also known as: law creating a presumption among executive officers to take action to eliminate enhancements that exceed base terms, an act to amend Sections 1172.1 and 1170.18 of the Penal Code.

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Do you support M.M.’s Law? (circle one): --yes-- --no--

(Optional) Do you know the name of your California State Assemblymember or State Senator? _____

(Optional) Why do you support M.M.’s Law? _____

Instructions:

Mail this form to the criminal appeals law firm Spolin & Dukes P.C. at 11500 W. Olympic Blvd., Suite 400, Los Angeles, CA 90064. Please write “MM’s Law” on the envelope for proper sorting.

Disclaimer: *The authors of this letter are asking you to sign a petition in favor of a law change. This letter does not amount to legal advice. The attorneys at Spolin & Dukes P.C. can only give out advice or provide legal services to clients who have formally hired the firm. The firm can be reached at (866) 716-2805.*

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL – PROPOSED

“M.M.’s LAW”

Also known as “LAW CREATING A PRESUMPTION AMONG
EXECUTIVE OFFICERS TO TAKE ACTION TO ELIMINATE
ENHANCEMENTS THAT EXCEED BASE TERMS”

An act to amend Sections 1172.1 and 1170.18 of the Penal Code.

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

Section 1172.1 of the Penal Code is amended to read:

(a) (1) When a defendant, upon conviction for a felony offense, has been committed to the custody of the Secretary of the Department of Corrections and Rehabilitation or to the custody of the county correctional administrator pursuant to subdivision (h) of Section 1170, the court may, within 120 days of the date of commitment on its own motion, at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, whether or not the defendant is still in custody, and provided the new sentence, if any, is no greater than the initial sentence. *Executive officers and entities described above are directed to consider cases for resentencing based on the provisions outlined in subsection (c) of this section.*

(2) The court, in recalling and resentencing under this subdivision, shall apply the sentencing rules of the Judicial Council and apply any changes in law that reduce sentences or provide for judicial discretion so as to eliminate disparity of sentences and to promote uniformity of sentencing.

(3) 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) Reduce a defendant’s term of imprisonment by modifying the sentence.

(B) Vacate the defendant's conviction and impose judgment on any necessarily included lesser offense or lesser related offense, whether or not that offense was charged in the original pleading, and then resentence the defendant to a reduced term of imprisonment, with the concurrence of both the defendant and the district attorney of the county in which the defendant was sentenced or the Attorney General if the Department of Justice originally prosecuted the case.

(4) In recalling and resentencing pursuant to this provision, the court may consider postconviction factors, including, but not limited to, the disciplinary record and record of rehabilitation of the defendant while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence, and evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(5) Credit shall be given for time served.

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

(7) Resentencing may be granted without a hearing upon stipulation by the parties.

(8) Resentencing shall not be denied, nor a stipulation rejected, without a hearing where the parties have an opportunity to address the basis for the intended denial or rejection. If a hearing is held, the defendant may appear remotely and the court may conduct the hearing through the use of remote technology, unless counsel requests their physical presence in court.

(b) If a resentencing request pursuant to subdivision (a) is from the Secretary of the Department of Corrections and Rehabilitation, the Board of Parole Hearings, a county correctional administrator, a district attorney, or the Attorney General, all of the following shall apply:

(1) The court shall provide notice to the defendant and set a status conference within 30 days after the date that the court received the request. The court's order setting the conference shall also appoint counsel to represent the defendant.

(2) (A) There shall be a presumption favoring recall and resentencing of the defendant, which may only be overcome if a court finds the defendant is an unreasonable risk of danger to public safety, as defined in subdivision (c) of Section 1170.18, and such basis is explicitly stated on the record.

(B) This presumption, applicable to judicial officers, does not limit or modify the presumption described in subdivision (c) of this section, which applies to executive officers.

(c) (1) To carry out the intent of this statute, there will be a presumption that executive officers are to initiate resentencing proceedings in the following instances:

(A) When an enhancement or aggregate enhancements on a given case exceed the base term(s) of that case,

(B) When an enhancement includes a life term but the base term(s) do not include a life term, or

(C) When an enhancement or aggregate enhancements equal or exceed 20 years.

(2) Executive officer is defined as any of the following: the secretary or the Board of Parole Hearings in the case of a defendant incarcerated in state prison, the county correctional administrator in the case of a defendant incarcerated in county jail, the district attorney of the county in which the defendant was sentenced, or the Attorney General if the Department of Justice originally prosecuted the case.

(d) If within twelve (12) months of the effective date of this statute, a case falling into subdivision (c)(1)(A) or (c)(1)(B) is not initiated by an executive officer, a state prison inmate whose case falls into the listed presumption criteria may bring a petition in Superior Court seeking resentencing without the necessity of prior executive action. Proper venue for such a petition will include the county where the original case was initiated or the county of the inmate's confinement.

Section 1170.18(c) of the Penal Code is amended to read:

(c) *(1)* 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.

(2) When the term “unreasonable risk of danger to public safety” is used in rebutting a presumption in favor of resentencing, as outlined in subdivision (b)(2)(A) of Section 1172.1, the basis must include specific instances of conduct that go beyond the case involved in the resentencing.
