

AMENDED IN SENATE APRIL 19, 2021  
AMENDED IN SENATE MARCH 10, 2021

**SENATE BILL**

**No. 481**

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**Introduced by Senator Durazo**

February 17, 2021

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~~An act to amend Section 1170 of the Penal Code, relating to criminal procedure.~~ *An act to repeal and add Section 1385.1 of the Penal Code, relating to crimes.*

LEGISLATIVE COUNSEL'S DIGEST

SB 481, as amended, Durazo. ~~Criminal procedure: sentencing.~~ *Sentencing: special circumstances.*

*Existing law provides for various specified special circumstances, including the murder of a peace officer, firefighter, or witness, 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 authorizes a judge to, in furtherance of justice, order an action to be dismissed. Existing law, added by Proposition 115 of the June 5, 1990, statewide primary election, prohibits a judge from striking or dismissing any special circumstance admitted by plea or found true by a jury or court, as specified. Existing law provides for amendment of these provisions by a <sup>2</sup>/<sub>3</sub> vote of each house of the Legislature.*

*This bill would amend Proposition 115 by repealing the provision prohibiting a judge from striking a special circumstance. The bill would also authorize a judge, on the judge's own motion or upon the application of either party, and in the furtherance of justice, to order the dismissal of a special circumstance finding or admission in cases in which the sentence is life imprisonment without the possibility of*

*parole. The bill would require a judge, when exercising this discretion, to consider and put great weight on specified factors, and to have a presumption of dismissal for people who have been incarcerated for at least 15 years and were 25 years of age or younger at the time of the offense or offenses that are the basis of the special circumstance. The bill would require the court, upon dismissal of a special circumstance, to offer the survivor or survivors and surviving family members information about services to address their needs as related to the crime and case process, as specified.*

*This bill would state that its provisions are severable.*

Existing law provides a punishment of imprisonment for life without the possibility of parole as a possible punishment for certain criminal offenses.

Existing law allows an inmate serving a sentence of life without the possibility of parole for an offense that was committed when the inmate was under 18 years of age to petition the court to have that sentence recalled and to be resentenced to a lesser sentence, as specified, if the inmate has served at least 15 years of their sentence and meets certain other specified criteria. Existing law makes this process unavailable to any inmate serving a sentence for murder in which the inmate tortured their victim, or in which the victim was a public safety official, including a firefighter or peace officer.

Existing law, the Gang Violence and Juvenile Crime Prevention Act of 1998, an initiative measure enacted by Proposition 21, as approved by the voters at the March 7, 2000, statewide primary election, among other things, imposed a sentence of death or imprisonment for life without the possibility of parole for gang-related murder. Existing law authorizes the provisions of Proposition 21 to be amended by a statute enacted by the Legislature with a  $\frac{2}{3}$  vote.

~~This bill would extend the applicability of these resentencing provisions to any inmate serving a sentence of life without the possibility of parole for an offense that was committed when the inmate was under 26 years of age. The bill would also make the process available to those inmates serving a sentence for murder in which the inmate tortured their victim, or in which the victim was a public safety official, including a firefighter or peace officer.~~

~~Because this bill would extend resentencing provisions to certain inmates serving a sentence of life without the possibility of parole for gang-related murder, the bill would amend Proposition 21.~~

Vote: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1385.1 of the Penal Code is repealed.*

2     ~~1385.1. Notwithstanding Section 1385 or any other provision~~  
3 ~~of law, a judge shall not strike or dismiss any special circumstance~~  
4 ~~which is admitted by a plea of guilty or nolo contendere or is found~~  
5 ~~by a jury or court as provided in Sections 190.1 to 190.5, inclusive.~~

6     *SEC. 2. Section 1385.1 is added to the Penal Code, to read:*

7     *1385.1. (a) Notwithstanding any other law, at any time the*  
8 *court, either on the court’s own motion or upon the motion of*  
9 *either party, and in furtherance of justice, shall hold a hearing*  
10 *and may strike or dismiss any special circumstance found true*  
11 *pursuant to Section 190.2, whether by jury, a court, admission by*  
12 *a guilty plea, or by plea of nolo contendere, as provided in Sections*  
13 *190.1 to 190.5, inclusive, in all cases in which the sentence is life*  
14 *imprisonment without the possibility of parole.*

15     *(b) If the trial court judgment has become final and the sentence*  
16 *has been executed or the imposition of sentence has been*  
17 *suspended, this section shall apply retroactively to enable the judge*  
18 *to dismiss a special circumstance finding or admission pursuant*  
19 *to subdivision (a).*

20     *(c) There shall be a presumption in favor of striking or*  
21 *dismissing special circumstance findings and admissions in cases*  
22 *in which the person was 25 years of age or younger at the time of*  
23 *the offense that was the basis of the special circumstance finding*  
24 *or admission and the person has been incarcerated for 15 years*  
25 *or more.*

26     *(d) In all cases, in exercising its discretion whether to strike or*  
27 *dismiss a special circumstance finding or admission, the court*  
28 *shall consider all relevant circumstances, regardless of whether*  
29 *those circumstances were presented at any time during the previous*  
30 *proceedings, and the court shall place great weight on the*  
31 *following factors, which shall mitigate in favor of striking or*  
32 *dismissing any special circumstance:*

33     *(1) The person has demonstrated growth and maturity since the*  
34 *offense, including, but not limited to, acts that tend to indicate*  
35 *rehabilitation or the potential for rehabilitation, including, but*

1 *not limited to, availing themselves of rehabilitative, educational,*  
2 *or vocational programs, if those programs have been available at*  
3 *their classification level and facility, using self-study for*  
4 *self-improvement, maintaining prosocial relationships, or showing*  
5 *evidence of remorse.*  
6 *(2) The hallmark features of youth, including, but not limited*  
7 *to, any of the following:*  
8 *(A) Lack of maturity.*  
9 *(B) Underdeveloped sense of responsibility.*  
10 *(C) Limited ability to appreciate risks and consequences of*  
11 *behavior.*  
12 *(D) Impulsivity.*  
13 *(E) Increased vulnerability or susceptibility to negative*  
14 *influences and outside pressures, particularly from family members*  
15 *or peers.*  
16 *(3) Prior to the offense, the person experienced abuse, trauma,*  
17 *or significant stress.*  
18 *(4) The person was a victim of intimate partner violence,*  
19 *commercial sex trafficking, commercial sexual exploitation, or*  
20 *human trafficking.*  
21 *(5) The person has cognitive limitations due to mental illness,*  
22 *developmental disabilities, or other factors that did not constitute*  
23 *a defense to the offense, but influenced the person's involvement*  
24 *in the offense.*  
25 *(e) This section does not change the public safety consideration*  
26 *required for release on a parole for an indeterminately sentenced*  
27 *person. In any case where striking or dismissal of a special*  
28 *circumstance finding or admission results in a sentence that does*  
29 *not require a determination that person does not pose an*  
30 *unreasonable risk to public safety by the Board of Parole Hearings*  
31 *prior to release, the court shall not strike or dismiss the special*  
32 *circumstance if the court finds by a preponderance of the evidence*  
33 *that the person would pose an immediate threat to public safety.*  
34 *(f) Survivors of crime and surviving family members of a*  
35 *deceased victim shall be notified of the dismissal and shall retain*  
36 *their rights. Upon dismissal of a special circumstance, the court*  
37 *shall offer the survivor or survivors and surviving family members*  
38 *information about existing services to address their needs as*  
39 *related to the crime and case process. This information shall*  
40 *include, but is not limited to, information about all of the following:*

1 (1) *Counseling or treatment opportunities.*

2 (2) *Contact information for peer support groups and*  
3 *community-based organizations that support survivors and family*  
4 *members, including accompaniment or support at a parole hearing.*

5 (3) *Options for receiving letters of remorse from the offender,*  
6 *if available.*

7 (4) *Information about what to expect of the parole hearing*  
8 *process and the survivor or family member role.*

9 (g) *The reasons for the dismissal or denial of dismissal or*  
10 *striking of a special circumstance finding or admission pursuant*  
11 *to this section shall be stated orally on the record. The court shall*  
12 *also set forth the reasons in an order entered upon the minutes if*  
13 *requested by either party or when the proceedings are not being*  
14 *recorded electronically or reported by a court reporter.*

15 (h) *Any order denying dismissal or striking of a special*  
16 *circumstance finding or admission pursuant to this section shall*  
17 *be appealable.*

18 *SEC. 3. The provisions of this measure are severable. If any*  
19 *provision of this measure or its application is held invalid, that*  
20 *invalidity shall not affect other provisions or applications that can*  
21 *be given effect without the invalid provision or application.*

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**All matter omitted in this version of the bill  
appears in the bill as amended in the  
Senate, March 10, 2021. (JR11)**