

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 28, 2009

**SENATE BILL**

**No. 399**

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**Introduced by Senator Yee  
(Principal coauthor: Senator Romero)  
(Coauthor: Senator Steinberg)**

February 26, 2009

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An act to amend Section 1170 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings or both may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and resentencing to the sentencing court, as specified. The bill would establish certain criteria to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and whether to grant the petition. The bill would require the court to make findings within 90 days of submission of the petition, and to hold a hearing if the court finds that the criteria are met, as specified. The bill would apply retroactively, as specified.

Vote: majority. 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 1170 of the Penal Code, as amended by  
2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to  
3 read:

4 1170. (a) (1) The Legislature finds and declares that the  
5 purpose of imprisonment for crime is punishment. This purpose  
6 is best served by terms proportionate to the seriousness of the  
7 offense with provision for uniformity in the sentences of offenders  
8 committing the same offense under similar circumstances. The  
9 Legislature further finds and declares that the elimination of  
10 disparity and the provision of uniformity of sentences can best be  
11 achieved by determinate sentences fixed by statute in proportion  
12 to the seriousness of the offense as determined by the Legislature  
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds  
15 and declares that programs should be available for inmates,  
16 including, but not limited to, educational programs, that are  
17 designed to prepare nonviolent felony offenders for successful  
18 reentry into the community. The Legislature encourages the  
19 development of policies and programs designed to educate and  
20 rehabilitate nonviolent felony offenders. In implementing this  
21 section, the Department of Corrections and Rehabilitation is  
22 encouraged to give priority enrollment in programs to promote  
23 successful return to the community to an inmate with a short  
24 remaining term of commitment and a release date that would allow  
25 him or her adequate time to complete the program.

26 (3) In any case in which the punishment prescribed by statute  
27 for a person convicted of a public offense is a term of imprisonment  
28 in the state prison of any specification of three time periods, the  
29 court shall sentence the defendant to one of the terms of  
30 imprisonment specified unless the convicted person is given any  
31 other disposition provided by law, including a fine, jail, probation,  
32 or the suspension of imposition or execution of sentence or is  
33 sentenced pursuant to subdivision (b) of Section 1168 because he  
34 or she had committed his or her crime prior to July 1, 1977. In  
35 sentencing the convicted person, the court shall apply the

1 sentencing rules of the Judicial Council. The court, unless it  
2 determines that there are circumstances in mitigation of the  
3 punishment prescribed, shall also impose any other term that it is  
4 required by law to impose as an additional term. Nothing in this  
5 article shall affect any provision of law that imposes the death  
6 penalty, that authorizes or restricts the granting of probation or  
7 suspending the execution or imposition of sentence, or expressly  
8 provides for imprisonment in the state prison for life, except as  
9 provided in subdivision (e). In any case in which the amount of  
10 preimprisonment credit under Section 2900.5 or any other provision  
11 of law is equal to or exceeds any sentence imposed pursuant to  
12 this chapter, the entire sentence shall be deemed to have been  
13 served and the defendant shall not be actually delivered to the  
14 custody of the secretary. The court shall advise the defendant that  
15 he or she shall serve a period of parole and order the defendant to  
16 report to the parole office closest to the defendant's last legal  
17 residence, unless the in-custody credits equal the total sentence,  
18 including both confinement time and the period of parole. The  
19 sentence shall be deemed a separate prior prison term under Section  
20 667.5, and a copy of the judgment and other necessary  
21 documentation shall be forwarded to the secretary.

22 (b) When a judgment of imprisonment is to be imposed and the  
23 statute specifies three possible terms, the choice of the appropriate  
24 term shall rest within the sound discretion of the court. At least  
25 four days prior to the time set for imposition of judgment, either  
26 party or the victim, or the family of the victim if the victim is  
27 deceased, may submit a statement in aggravation or mitigation. In  
28 determining the appropriate term, the court may consider the record  
29 in the case, the probation officer's report, other reports including  
30 reports received pursuant to Section 1203.03 and statements in  
31 aggravation or mitigation submitted by the prosecution, the  
32 defendant, or the victim, or the family of the victim if the victim  
33 is deceased, and any further evidence introduced at the sentencing  
34 hearing. The court shall select the term which, in the court's  
35 discretion, best serves the interests of justice. The court shall set  
36 forth on the record the reasons for imposing the term selected and  
37 the court may not impose an upper term by using the fact of any  
38 enhancement upon which sentence is imposed under any provision  
39 of law. A term of imprisonment shall not be specified if imposition  
40 of sentence is suspended.

1 (c) The court shall state the reasons for its sentence choice on  
2 the record at the time of sentencing. The court shall also inform  
3 the defendant that as part of the sentence after expiration of the  
4 term he or she may be on parole for a period as provided in Section  
5 3000.

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

19 (e) (1) When a defendant who was under 18 years of age at the  
20 time of the commission of the offense for which the defendant was  
21 sentenced to imprisonment for life without the possibility of parole  
22 has served at least 10 years of that sentence, the defendant may  
23 submit to the sentencing court a petition for recall and resentencing,  
24 *provided that defendants who have served 10 or more years as of*  
25 *January 1, 2010, shall not be permitted to submit a petition for*  
26 *recall and resentencing pursuant to this subdivision until they have*  
27 *served 15 years.* The court shall consider the petition and shall  
28 issue written findings not later than 90 days after the submission  
29 of the petition. Defendants who have served 15 or more years but  
30 less than 25 years as of January 1, 2010, shall be permitted to  
31 submit a petition for recall and resentencing as follows:

32 (A) Those defendants who entered custody prior to July 1, 1993,  
33 may submit a petition in 2010.

34 (B) Those defendants who entered custody on or after July 1,  
35 1993, but prior to January 1, 1994, may submit a petition in 2011.

36 (C) Those defendants who entered custody on or after January  
37 1, 1994, but prior to July 1, 1994, may submit a petition in 2012.

38 (D) Those defendants who entered custody on or after July 1,  
39 1994, but prior to January 1, 1995, may submit a petition in 2013.

1 (2) If the court finds, based on a preponderance of the evidence,  
2 that the defendant satisfies three or more of the following criteria,  
3 the court, shall conduct a hearing as specified in paragraph (3):

4 (A) The defendant was convicted pursuant to felony murder or  
5 aiding and abetting murder provisions of law.

6 (B) The defendant does not have juvenile felony adjudications  
7 for assault or other felony crimes with a significant potential for  
8 personal harm to victims prior to the offense for which the sentence  
9 is being considered for recall.

10 (C) The defendant committed the offense with at least one adult  
11 codefendant.

12 (D) Prior to the offense for which the sentence is being  
13 considered for recall, the defendant had insufficient adult support  
14 or supervision and had suffered from psychological or physical  
15 trauma, or significant stress.

16 (E) The defendant suffers from cognitive limitations due to  
17 mental illness, developmental disabilities, or other factors that did  
18 not constitute a defense, but influenced the defendant's  
19 involvement in the offense.

20 (F) The defendant has performed acts that tend to indicate  
21 rehabilitation or the potential for rehabilitation, including, but not  
22 limited to, availing himself or herself of rehabilitative, educational,  
23 or vocational programs, if those programs have been available at  
24 his or her classification level and facility, using self-study for  
25 self-improvement, or taking action that demonstrates the presence  
26 of remorse.

27 (G) The defendant has maintained family ties or connections  
28 with others through letter writing, calls, or visits, or has eliminated  
29 contact with individuals outside of prison who are currently  
30 involved with crime.

31 (H) The defendant has had no violent disciplinary violations in  
32 the last five years in which the defendant was determined to be  
33 the aggressor.

34 (3) The court shall have the discretion to recall the sentence and  
35 commitment previously ordered and to resentence the defendant  
36 in the same manner as if the defendant had not previously been  
37 sentenced, provided that the new sentence, if any, is not greater  
38 than the initial sentence. The discretion of the court shall be  
39 exercised in consideration of the criteria in paragraph (2). Victims,  
40 or victim family members if the victim is deceased, shall be notified

1 of the resentencing hearing and shall retain their rights to  
2 participate in the hearing.

3 (4) If the sentence is not recalled, the defendant may submit  
4 another petition for recall and resentencing to the sentencing court  
5 when the defendant has been committed to the custody of the  
6 department for at least 15 years. If recall and resentencing is not  
7 granted under that petition, the defendant may file another petition  
8 after having served 20 years. If recall and resentencing is not  
9 granted under that petition, the defendant may file another petition  
10 after having served 24 years. The final petition may be submitted,  
11 and the response to that petition shall be determined, during the  
12 25th year of the defendant's sentence.

13 (5) In addition to the criteria in paragraph (2), the court may  
14 consider any other criteria that the court deems relevant to its  
15 decision, so long as the court identifies them on the record,  
16 provides a statement of reasons for adopting them, and states why  
17 the defendant does or does not satisfy the criteria.

18 (6) This subdivision shall have retroactive application.

19 (f) (1) Notwithstanding any other law and consistent with  
20 paragraph (1) of subdivision (a), if the secretary or the Board of  
21 Parole Hearings or both determine that a prisoner satisfies the  
22 criteria set forth in paragraph (2), the secretary or the board may  
23 recommend to the court that the prisoner's sentence be recalled.

24 (2) The court shall have the discretion to resentence or recall if  
25 the court finds that the facts described in subparagraph (A) and  
26 (B) or subparagraphs (B) and (C) exist:

27 (A) The prisoner is terminally ill with an incurable condition  
28 caused by an illness or disease that would produce death within  
29 six months, as determined by a physician employed by the  
30 department.

31 (B) The conditions under which the prisoner would be released  
32 or receive treatment do not pose a threat to public safety.

33 (C) The prisoner is permanently medically incapacitated with  
34 a medical condition that renders him or her permanently unable  
35 to perform activities of basic daily living, and results in the prisoner  
36 requiring 24-hour total care, including, but not limited to, coma,  
37 persistent vegetative state, brain death, ventilator-dependency, loss  
38 of control of muscular or neurological function, and that  
39 incapacitation did not exist at the time of the original sentencing.

1 The Board of Parole Hearings shall make findings pursuant to  
2 this subdivision before making a recommendation for resentence  
3 or recall to the court. This subdivision does not apply to a prisoner  
4 sentenced to death or a term of life without the possibility of parole.

5 (3) Within 10 days of receipt of a positive recommendation by  
6 the secretary or the board, the court shall hold a hearing to consider  
7 whether the prisoner's sentence should be recalled.

8 (4) Any physician employed by the department who determines  
9 that a prisoner has six months or less to live shall notify the chief  
10 medical officer of the prognosis. If the chief medical officer  
11 concurs with the prognosis, he or she shall notify the warden.  
12 Within 48 hours of receiving notification, the warden or the  
13 warden's representative shall notify the prisoner of the recall and  
14 resentencing procedures, and shall arrange for the prisoner to  
15 designate a family member or other outside agent to be notified  
16 as to the prisoner's medical condition and prognosis, and as to the  
17 recall and resentencing procedures. If the inmate is deemed  
18 mentally unfit, the warden or the warden's representative shall  
19 contact the inmate's emergency contact and provide the information  
20 described in paragraph (2).

21 (5) The warden or the warden's representative shall provide the  
22 prisoner and his or her family member, agent, or emergency  
23 contact, as described in paragraph (4), updated information  
24 throughout the recall and resentencing process with regard to the  
25 prisoner's medical condition and the status of the prisoner's recall  
26 and resentencing proceedings.

27 (6) Notwithstanding any other provisions of this section, the  
28 prisoner or his or her family member or designee may  
29 independently request consideration for recall and resentencing  
30 by contacting the chief medical officer at the prison or the  
31 secretary. Upon receipt of the request, the chief medical officer  
32 and the warden or the warden's representative shall follow the  
33 procedures described in paragraph (4). If the secretary determines  
34 that the prisoner satisfies the criteria set forth in paragraph (2), the  
35 secretary or board may recommend to the court that the prisoner's  
36 sentence be recalled. The secretary shall submit a recommendation  
37 for release within 30 days in the case of inmates sentenced to  
38 determinate terms and, in the case of inmates sentenced to  
39 indeterminate terms, the secretary shall make a recommendation  
40 to the Board of Parole Hearings with respect to the inmates who

1 have applied under this section. The board shall consider this  
2 information and make an independent judgment pursuant to  
3 paragraph (2) and make findings related thereto before rejecting  
4 the request or making a recommendation to the court. This action  
5 shall be taken at the next lawfully noticed board meeting.

6 (7) Any recommendation for recall submitted to the court by  
7 the secretary or the Board of Parole Hearings shall include one or  
8 more medical evaluations, a postrelease plan, and findings pursuant  
9 to paragraph (2).

10 (8) If possible, the matter shall be heard before the same judge  
11 of the court who sentenced the prisoner.

12 (9) If the court grants the recall and resentencing application,  
13 the prisoner shall be released by the department within 48 hours  
14 of receipt of the court's order, unless a longer time period is agreed  
15 to by the inmate. At the time of release, the warden or the warden's  
16 representative shall ensure that the prisoner has each of the  
17 following in his or her possession: a discharge medical summary,  
18 full medical records, state identification, parole medications, and  
19 all property belonging to the prisoner. After discharge, any  
20 additional records shall be sent to the prisoner's forwarding  
21 address.

22 (10) The secretary shall issue a directive to medical and  
23 correctional staff employed by the department that details the  
24 guidelines and procedures for initiating a recall and resentencing  
25 procedure. The directive shall clearly state that any prisoner who  
26 is given a prognosis of six months or less to live is eligible for  
27 recall and resentencing consideration, and that recall and  
28 resentencing procedures shall be initiated upon that prognosis.

29 (g) Any sentence imposed under this article shall be subject to  
30 the provisions of Sections 3000 and 3057 and any other applicable  
31 provisions of law.

32 (h) A sentence to state prison for a determinate term for which  
33 only one term is specified, is a sentence to state prison under this  
34 section.

35 (i) This section shall remain in effect only until January 1, 2011,  
36 and as of that date is repealed, unless a later enacted statute, that  
37 is enacted before that date, deletes or extends that date.

38 SEC. 2. Section 1170 of the Penal Code, as amended by Section  
39 2 of Chapter 416 of the Statutes of 2008, is amended to read:



1 1170. (a) (1) The Legislature finds and declares that the  
2 purpose of imprisonment for crime is punishment. This purpose  
3 is best served by terms proportionate to the seriousness of the  
4 offense with provision for uniformity in the sentences of offenders  
5 committing the same offense under similar circumstances. The  
6 Legislature further finds and declares that the elimination of  
7 disparity and the provision of uniformity of sentences can best be  
8 achieved by determinate sentences fixed by statute in proportion  
9 to the seriousness of the offense as determined by the Legislature  
10 to be imposed by the court with specified discretion.

11 (2) Notwithstanding paragraph (1), the Legislature further finds  
12 and declares that programs should be available for inmates,  
13 including, but not limited to, educational programs, that are  
14 designed to prepare nonviolent felony offenders for successful  
15 reentry into the community. The Legislature encourages the  
16 development of policies and programs designed to educate and  
17 rehabilitate nonviolent felony offenders. In implementing this  
18 section, the Department of Corrections and Rehabilitation is  
19 encouraged to give priority enrollment in programs to promote  
20 successful return to the community to an inmate with a short  
21 remaining term of commitment and a release date that would allow  
22 him or her adequate time to complete the program.

23 (3) In any case in which the punishment prescribed by statute  
24 for a person convicted of a public offense is a term of imprisonment  
25 in the state prison of any specification of three time periods, the  
26 court shall sentence the defendant to one of the terms of  
27 imprisonment specified unless the convicted person is given any  
28 other disposition provided by law, including a fine, jail, probation,  
29 or the suspension of imposition or execution of sentence or is  
30 sentenced pursuant to subdivision (b) of Section 1168 because he  
31 or she had committed his or her crime prior to July 1, 1977. In  
32 sentencing the convicted person, the court shall apply the  
33 sentencing rules of the Judicial Council. The court, unless it  
34 determines that there are circumstances in mitigation of the  
35 punishment prescribed, shall also impose any other term that it is  
36 required by law to impose as an additional term. Nothing in this  
37 article shall affect any provision of law that imposes the death  
38 penalty, that authorizes or restricts the granting of probation or  
39 suspending the execution or imposition of sentence, or expressly  
40 provides for imprisonment in the state prison for life, except as

1 provided in subdivision (e). In any case in which the amount of  
2 preimprisonment credit under Section 2900.5 or any other provision  
3 of law is equal to or exceeds any sentence imposed pursuant to  
4 this chapter, the entire sentence shall be deemed to have been  
5 served and the defendant shall not be actually delivered to the  
6 custody of the secretary. The court shall advise the defendant that  
7 he or she shall serve a period of parole and order the defendant to  
8 report to the parole office closest to the defendant's last legal  
9 residence, unless the in-custody credits equal the total sentence,  
10 including both confinement time and the period of parole. The  
11 sentence shall be deemed a separate prior prison term under Section  
12 667.5, and a copy of the judgment and other necessary  
13 documentation shall be forwarded to the secretary.

14 (b) When a judgment of imprisonment is to be imposed and the  
15 statute specifies three possible terms, the court shall order  
16 imposition of the middle term, unless there are circumstances in  
17 aggravation or mitigation of the crime. At least four days prior to  
18 the time set for imposition of judgment, either party or the victim,  
19 or the family of the victim if the victim is deceased, may submit  
20 a statement in aggravation or mitigation to dispute facts in the  
21 record or the probation officer's report, or to present additional  
22 facts. In determining whether there are circumstances that justify  
23 imposition of the upper or lower term, the court may consider the  
24 record in the case, the probation officer's report, other reports  
25 including reports received pursuant to Section 1203.03 and  
26 statements in aggravation or mitigation submitted by the  
27 prosecution, the defendant, or the victim, or the family of the victim  
28 if the victim is deceased, and any further evidence introduced at  
29 the sentencing hearing. The court shall set forth on the record the  
30 facts and reasons for imposing the upper or lower term. The court  
31 may not impose an upper term by using the fact of any  
32 enhancement upon which sentence is imposed under any provision  
33 of law. A term of imprisonment shall not be specified if imposition  
34 of sentence is suspended.

35 (c) The court shall state the reasons for its sentence choice on  
36 the record at the time of sentencing. The court shall also inform  
37 the defendant that as part of the sentence after expiration of the  
38 term he or she may be on parole for a period as provided in Section  
39 3000.

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

(e) (1) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has served at least 10 years of that sentence, the defendant may submit to the sentencing court a petition for recall and resentencing, *provided that defendants who have served 10 or more years as of January 1, 2010, shall not be permitted to submit a petition for recall and resentencing pursuant to this subdivision until they have served 15 years.* The court shall consider the petition and shall issue written findings not later than 90 days after the submission of the petition. Defendants who have served 15 or more years but less than 25 years as of January 1, 2010, shall be permitted to submit a petition for recall and resentencing as follows:

(A) Those defendants who entered custody prior to July 1, 1993, may submit a petition in 2010.

(B) Those defendants who entered custody on or after July 1, 1993, but prior to January 1, 1994, may submit a petition in 2011.

(C) Those defendants who entered custody on or after January 1, 1994, but prior to July 1, 1994, may submit a petition in 2012.

(D) Those defendants who entered custody on or after July 1, 1994, but prior to January 1, 1995, may submit a petition in 2013.

(2) If the court finds, based on a preponderance of the evidence, that the defendant satisfies three or more of the following criteria, the court shall conduct a hearing as specified in paragraph (3):

(A) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.

1 (B) The defendant does not have juvenile felony adjudications  
2 for assault or other felony crimes with a significant potential for  
3 personal harm to victims prior to the offense for which the sentence  
4 is being considered for recall.

5 (C) The defendant committed the offense with at least one adult  
6 codefendant.

7 (D) Prior to the offense for which the sentence is being  
8 considered for recall, the defendant had insufficient adult support  
9 or supervision and had suffered from psychological or physical  
10 trauma, or significant stress.

11 (E) The defendant suffers from cognitive limitations due to  
12 mental illness, developmental disabilities, or other factors that did  
13 not constitute a defense, but influenced the defendant's  
14 involvement in the offense.

15 (F) The defendant has performed acts that tend to indicate  
16 rehabilitation or the potential for rehabilitation, including, but not  
17 limited to, availing himself or herself of rehabilitative, educational,  
18 or vocational programs, if those programs have been available at  
19 his or her classification level and facility, using self-study for  
20 self-improvement, or taking action that demonstrates the presence  
21 of remorse.

22 (G) The defendant has maintained family ties or connections  
23 with others through letter writing, calls, or visits, or has eliminated  
24 contact with individuals outside of prison who are currently  
25 involved with crime.

26 (H) The defendant has had no violent disciplinary violations in  
27 the last five years in which the defendant was determined to be  
28 the aggressor.

29 (3) The court shall have the discretion to recall the sentence and  
30 commitment previously ordered and to resentence the defendant  
31 in the same manner as if the defendant had not previously been  
32 sentenced, provided that the new sentence, if any, is not greater  
33 than the initial sentence. The discretion of the court shall be  
34 exercised in consideration of the criteria in paragraph (2). Victims,  
35 or victim family members if the victim is deceased, shall be notified  
36 of the resentencing hearing and shall retain their rights to  
37 participate in the hearing.

38 (4) If the sentence is not recalled, the defendant may submit  
39 another petition for recall and resentencing to the sentencing court  
40 when the defendant has been committed to the custody of the

1 department for at least 15 years. If recall and resentencing is not  
2 granted under that petition, the defendant may file another petition  
3 after having served 20 years. If recall and resentencing is not  
4 granted under that petition, the defendant may file another petition  
5 after having served 24 years. The final petition may be submitted,  
6 and the response to that petition shall be determined, during the  
7 25th year of the defendant's sentence.

8 (5) In addition to the criteria in paragraph (2), the court may  
9 consider any other criteria that the court deems relevant to its  
10 decision, so long as the court identifies them on the record,  
11 provides a statement of reasons for adopting them, and states why  
12 the defendant does or does not satisfy the criteria.

13 (6) This subdivision shall have retroactive application.

14 (f) (1) Notwithstanding any other law and consistent with  
15 paragraph (1) of subdivision (a), if the secretary or the Board of  
16 Parole Hearings or both determine that a prisoner satisfies the  
17 criteria set forth in paragraph (2), the secretary or the board may  
18 recommend to the court that the prisoner's sentence be recalled.

19 (2) The court shall have the discretion to resentence or recall if  
20 the court finds that the facts described in subparagraphs (A) and  
21 (B) or subparagraphs (B) and (C) exist:

22 (A) The prisoner is terminally ill with an incurable condition  
23 caused by an illness or disease that would produce death within  
24 six months, as determined by a physician employed by the  
25 department.

26 (B) The conditions under which the prisoner would be released  
27 or receive treatment do not pose a threat to public safety.

28 (C) The prisoner is permanently medically incapacitated with  
29 a medical condition that renders him or her permanently unable  
30 to perform activities of basic daily living, and results in the prisoner  
31 requiring 24-hour total care, including, but not limited to, coma,  
32 persistent vegetative state, brain death, ventilator-dependency, loss  
33 of control of muscular or neurological function, and that  
34 incapacitation did not exist at the time of the original sentencing.

35 The Board of Parole Hearings shall make findings pursuant to  
36 this subdivision before making a recommendation for resentence  
37 or recall to the court. This subdivision does not apply to a prisoner  
38 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by  
2 the secretary or the board, the court shall hold a hearing to consider  
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines  
5 that a prisoner has six months or less to live shall notify the chief  
6 medical officer of the prognosis. If the chief medical officer  
7 concurs with the prognosis, he or she shall notify the warden.  
8 Within 48 hours of receiving notification, the warden or the  
9 warden's representative shall notify the prisoner of the recall and  
10 resentencing procedures, and shall arrange for the prisoner to  
11 designate a family member or other outside agent to be notified  
12 as to the prisoner's medical condition and prognosis, and as to the  
13 recall and resentencing procedures. If the inmate is deemed  
14 mentally unfit, the warden or the warden's representative shall  
15 contact the inmate's emergency contact and provide the information  
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the  
18 prisoner and his or her family member, agent, or emergency  
19 contact, as described in paragraph (4), updated information  
20 throughout the recall and resentencing process with regard to the  
21 prisoner's medical condition and the status of the prisoner's recall  
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the  
24 prisoner or his or her family member or designee may  
25 independently request consideration for recall and resentencing  
26 by contacting the chief medical officer at the prison or the  
27 secretary. Upon receipt of the request, the chief medical officer  
28 and the warden or the warden's representative shall follow the  
29 procedures described in paragraph (4). If the secretary determines  
30 that the prisoner satisfies the criteria set forth in paragraph (2), the  
31 secretary or board may recommend to the court that the prisoner's  
32 sentence be recalled. The secretary shall submit a recommendation  
33 for release within 30 days in the case of inmates sentenced to  
34 determinate terms and, in the case of inmates sentenced to  
35 indeterminate terms, the secretary shall make a recommendation  
36 to the Board of Parole Hearings with respect to the inmates who  
37 have applied under this section. The board shall consider this  
38 information and make an independent judgment pursuant to  
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action  
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by  
4 the secretary or the Board of Parole Hearings shall include one or  
5 more medical evaluations, a postrelease plan, and findings pursuant  
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge  
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,  
10 the prisoner shall be released by the department within 48 hours  
11 of receipt of the court's order, unless a longer time period is agreed  
12 to by the inmate. At the time of release, the warden or the warden's  
13 representative shall ensure that the prisoner has each of the  
14 following in his or her possession: a discharge medical summary,  
15 full medical records, state identification, parole medications, and  
16 all property belonging to the prisoner. After discharge, any  
17 additional records shall be sent to the prisoner's forwarding  
18 address.

19 (10) The secretary shall issue a directive to medical and  
20 correctional staff employed by the department that details the  
21 guidelines and procedures for initiating a recall and resentencing  
22 procedure. The directive shall clearly state that any prisoner who  
23 is given a prognosis of six months or less to live is eligible for  
24 recall and resentencing consideration, and that recall and  
25 resentencing procedures shall be initiated upon that prognosis.

26 (g) Any sentence imposed under this article shall be subject to  
27 the provisions of Sections 3000 and 3057 and any other applicable  
28 provisions of law.

29 (h) A sentence to state prison for a determinate term for which  
30 only one term is specified, is a sentence to state prison under this  
31 section.

32 (i) This section shall become operative on January 1, 2011.