

AMENDED IN ASSEMBLY MAY 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 520

Introduced by Assembly Member Ammiano

February 15, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 520, as amended, Ammiano. Sentencing.

Existing law, operative *until* January 1, 2012, provides that when a judgment of imprisonment is to be imposed and the statute specifies 3 possible terms, ~~the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime the choice of the appropriate term shall rest within the sound discretion of the court.~~ Existing law, operative January 1, 2012, provides that the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. Existing law, operative January 1, 2012, provides that the court shall state the reasons for its sentence choice on the record at the time of sentencing.

~~This bill would additionally provide that the court may not impose an upper term based on aggravating facts unless the facts were first presented to the factfinder and the factfinder found the facts to be true. The bill would require the court to state the reasons for its sentence choice on the record at the time of sentencing, including the specific facts in aggravation, if any, the court relied upon to impose an upper term.~~

This bill would extend the operative date of the current provision allowing the choice of the appropriate term to rest within the sound discretion of the court until January 1, 2013.

This bill would incorporate additional changes in Section 1170 of the Penal Code, proposed by A.B. 109, operative only if certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: no.
 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 5 of Chapter 256 of the Statutes of 2010, 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

1 imprisonment specified unless the convicted person is given any
2 other disposition provided by law, including a fine, jail, probation,
3 or the suspension of imposition or execution of sentence or is
4 sentenced pursuant to subdivision (b) of Section 1168 because he
5 or she had committed his or her crime prior to July 1, 1977. In
6 sentencing the convicted person, the court shall apply the
7 sentencing rules of the Judicial Council. The court, unless it
8 determines that there are circumstances in mitigation of the
9 punishment prescribed, shall also impose any other term that it is
10 required by law to impose as an additional term. Nothing in this
11 article shall affect any provision of law that imposes the death
12 penalty, that authorizes or restricts the granting of probation or
13 suspending the execution or imposition of sentence, or expressly
14 provides for imprisonment in the state prison for life. In any case
15 in which the amount of preimprisonment credit under Section
16 2900.5 or any other provision of law is equal to or exceeds any
17 sentence imposed pursuant to this chapter, the entire sentence shall
18 be deemed to have been served and the defendant shall not be
19 actually delivered to the custody of the secretary. The court shall
20 advise the defendant that he or she shall serve a period of parole
21 and order the defendant to report to the parole office closest to the
22 defendant's last legal residence, unless the in-custody credits equal
23 the total sentence, including both confinement time and the period
24 of parole. The sentence shall be deemed a separate prior prison
25 term under Section 667.5, and a copy of the judgment and other
26 necessary documentation shall be forwarded to the secretary.

27 (b) When a judgment of imprisonment is to be imposed and the
28 statute specifies three possible terms, the choice of the appropriate
29 term shall rest within the sound discretion of the court. At least
30 four days prior to the time set for imposition of judgment, either
31 party or the victim, or the family of the victim if the victim is
32 deceased, may submit a statement in aggravation or mitigation. In
33 determining the appropriate term, the court may consider the record
34 in the case, the probation officer's report, other reports, including
35 reports received pursuant to Section 1203.03, and statements in
36 aggravation or mitigation submitted by the prosecution, the
37 defendant, or the victim, or the family of the victim if the victim
38 is deceased, and any further evidence introduced at the sentencing
39 hearing. The court shall select the term which, in the court's
40 discretion, best serves the interests of justice. The court shall set

1 forth on the record the reasons for imposing the term selected and
2 the court may not impose an upper term by using the fact of any
3 enhancement upon which sentence is imposed under any provision
4 of law. A term of imprisonment shall not be specified if imposition
5 of sentence is suspended.

6 (c) The court shall state the reasons for its sentence choice on
7 the record at the time of sentencing. The court shall also inform
8 the defendant that as part of the sentence after expiration of the
9 term he or she may be on parole for a period as provided in Section
10 3000.

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

24 (e) (1) Notwithstanding any other law and consistent with
25 paragraph (1) of subdivision (a), if the secretary or the Board of
26 Parole Hearings or both determine that a prisoner satisfies the
27 criteria set forth in paragraph (2), the secretary or the board may
28 recommend to the court that the prisoner's sentence be recalled.

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

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

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

38 (C) The prisoner is permanently medically incapacitated with
39 a medical condition that renders him or her permanently unable
40 to perform activities of basic daily living, and results in the prisoner

1 requiring 24-hour total care, including, but not limited to, coma,
2 persistent vegetative state, brain death, ventilator-dependency, loss
3 of control of muscular or neurological function, and that
4 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

31 (6) Notwithstanding any other provisions of this section, the
32 prisoner or his or her family member or designee may
33 independently request consideration for recall and resentencing
34 by contacting the chief medical officer at the prison or the
35 secretary. Upon receipt of the request, the chief medical officer
36 and the warden or the warden's representative shall follow the
37 procedures described in paragraph (4). If the secretary determines
38 that the prisoner satisfies the criteria set forth in paragraph (2), the
39 secretary or board may recommend to the court that the prisoner's
40 sentence be recalled. The secretary shall submit a recommendation

1 for release within 30 days in the case of inmates sentenced to
2 determinate terms and, in the case of inmates sentenced to
3 indeterminate terms, the secretary shall make a recommendation
4 to the Board of Parole Hearings with respect to the inmates who
5 have applied under this section. The board shall consider this
6 information and make an independent judgment pursuant to
7 paragraph (2) and make findings related thereto before rejecting
8 the request or making a recommendation to the court. This action
9 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

33 (f) Any sentence imposed under this article shall be subject to
34 the provisions of Sections 3000 and 3057 and any other applicable
35 provisions of law.

36 (g) A sentence to state prison for a determinate term for which
37 only one term is specified, is a sentence to state prison under this
38 section.

1 (h) This section shall remain in effect only until January 1, ~~2012~~
2 2013, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before that date, deletes or extends that date.

4 *SEC. 1.5. Section 1170 of the Penal Code, as amended by*
5 *Section 450 of Chapter 15 of the Statutes of 2011, is amended to*
6 *read:*

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

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

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

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

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

38 (c) The court shall state the reasons for its sentence choice on
39 the record at the time of sentencing. The court shall also inform
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section
2 3000.

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

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

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

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

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

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

37 The Board of Parole Hearings shall make findings pursuant to
38 this subdivision before making a recommendation for resentence
39 or recall to the court. This subdivision does not apply to a prisoner
40 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 (f) 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 (g) 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 (h) (1) Except as provided in paragraph (3), a felony punishable
33 pursuant to this subdivision where the term is not specified in the
34 underlying offense shall be punishable by a term of imprisonment
35 in a county jail for 16 months, or two or three years.

36 (2) Except as provided in paragraph (3), a felony punishable
37 pursuant to this subdivision shall be punishable by imprisonment
38 in a county jail for the term described in the underlying offense.

39 (3) Notwithstanding paragraphs (1) and (2), where the defendant
40 has a prior or current felony conviction for a serious felony

1 described in subdivision (c) of Section 1192.7, a violent felony
2 described in subdivision (c) of Section 667.5, is required to register
3 as a sex offender pursuant to Chapter 5.5 (commencing with
4 Section 290) of Title 9 of Part 1, or is convicted of a crime and as
5 part of the sentence an enhancement pursuant to Section 186.11
6 is imposed, an executed sentence for a felony punishable pursuant
7 to this subdivision shall be served in state prison.

8 (4) Nothing in this subdivision shall be construed to prevent
9 other dispositions authorized by law, including pretrial diversion,
10 deferred entry of judgment, or an order granting probation pursuant
11 to Section 1203.1.

12 (5) The sentencing changes made by the act that added this
13 subdivision shall be applied prospectively to any person sentenced
14 on or after July 1, 2011.

15 (i) This section shall remain in effect only until January 1, ~~2012~~
16 ~~2013~~, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before that date, deletes or extends that date.

18 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
19 *6 of Chapter 256 of the Statutes of 2010, is amended to read:*

20 1170. (a) (1) The Legislature finds and declares that the
21 purpose of imprisonment for crime is punishment. This purpose
22 is best served by terms proportionate to the seriousness of the
23 offense with provision for uniformity in the sentences of offenders
24 committing the same offense under similar circumstances. The
25 Legislature further finds and declares that the elimination of
26 disparity and the provision of uniformity of sentences can best be
27 achieved by determinate sentences fixed by statute in proportion
28 to the seriousness of the offense as determined by the Legislature
29 to be imposed by the court with specified discretion.

30 (2) Notwithstanding paragraph (1), the Legislature further finds
31 and declares that programs should be available for inmates,
32 including, but not limited to, educational programs, that are
33 designed to prepare nonviolent felony offenders for successful
34 reentry into the community. The Legislature encourages the
35 development of policies and programs designed to educate and
36 rehabilitate nonviolent felony offenders. In implementing this
37 section, the Department of Corrections and Rehabilitation is
38 encouraged to give priority enrollment in programs to promote
39 successful return to the community to an inmate with a short

1 remaining term of commitment and a release date that would allow
2 him or her adequate time to complete the program.

3 (3) In any case in which the punishment prescribed by statute
4 for a person convicted of a public offense is a term of imprisonment
5 in the state prison of any specification of three time periods, the
6 court shall sentence the defendant to one of the terms of
7 imprisonment specified unless the convicted person is given any
8 other disposition provided by law, including a fine, jail, probation,
9 or the suspension of imposition or execution of sentence or is
10 sentenced pursuant to subdivision (b) of Section 1168 because he
11 or she had committed his or her crime prior to July 1, 1977. In
12 sentencing the convicted person, the court shall apply the
13 sentencing rules of the Judicial Council. The court, unless it
14 determines that there are circumstances in mitigation of the
15 punishment prescribed, shall also impose any other term that it is
16 required by law to impose as an additional term. Nothing in this
17 article shall affect any provision of law that imposes the death
18 penalty, that authorizes or restricts the granting of probation or
19 suspending the execution or imposition of sentence, or expressly
20 provides for imprisonment in the state prison for life. In any case
21 in which the amount of preimprisonment credit under Section
22 2900.5 or any other provision of law is equal to or exceeds any
23 sentence imposed pursuant to this chapter, the entire sentence shall
24 be deemed to have been served and the defendant shall not be
25 actually delivered to the custody of the secretary. The court shall
26 advise the defendant that he or she shall serve a period of parole
27 and order the defendant to report to the parole office closest to the
28 defendant's last legal residence, unless the in-custody credits equal
29 the total sentence, including both confinement time and the period
30 of parole. The sentence shall be deemed a separate prior prison
31 term under Section 667.5, and a copy of the judgment and other
32 necessary documentation shall be forwarded to the secretary.

33 (b) When a judgment of imprisonment is to be imposed and the
34 statute specifies three possible terms, the court shall order
35 imposition of the middle term, unless there are circumstances in
36 aggravation or mitigation of the crime. At least four days prior to
37 the time set for imposition of judgment, either party or the victim,
38 or the family of the victim if the victim is deceased, may submit
39 a statement in aggravation or mitigation to dispute facts in the
40 record or the probation officer's report, or to present additional

1 facts. In determining whether there are circumstances that justify
2 imposition of the upper or lower term, the court may consider the
3 record in the case, the probation officer's report, other reports,
4 including reports received pursuant to Section 1203.03, and
5 statements in aggravation or mitigation submitted by the
6 prosecution, the defendant, or the victim, or the family of the victim
7 if the victim is deceased, and any further evidence introduced at
8 the sentencing hearing. The court shall set forth on the record the
9 facts and reasons for imposing the upper or lower term. The court
10 may not impose an upper term by using the fact of any
11 enhancement upon which sentence is imposed under any provision
12 of law. A term of imprisonment shall not be specified if imposition
13 of sentence is suspended.

14 (c) The court shall state the reasons for its sentence choice on
15 the record at the time of sentencing. The court shall also inform
16 the defendant that as part of the sentence after expiration of the
17 term he or she may be on parole for a period as provided in Section
18 3000.

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

32 (e) (1) Notwithstanding any other law and consistent with
33 paragraph (1) of subdivision (a), if the secretary or the Board of
34 Parole Hearings or both determine that a prisoner satisfies the
35 criteria set forth in paragraph (2), the secretary or the board may
36 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

14 The Board of Parole Hearings shall make findings pursuant to
15 this subdivision before making a recommendation for resentencing
16 or recall to the court. This subdivision does not apply to a prisoner
17 sentenced to death or a term of life without the possibility of parole.

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

21 (4) Any physician employed by the department who determines
22 that a prisoner has six months or less to live shall notify the chief
23 medical officer of the prognosis. If the chief medical officer
24 concurs with the prognosis, he or she shall notify the warden.
25 Within 48 hours of receiving notification, the warden or the
26 warden's representative shall notify the prisoner of the recall and
27 resentencing procedures, and shall arrange for the prisoner to
28 designate a family member or other outside agent to be notified
29 as to the prisoner's medical condition and prognosis, and as to the
30 recall and resentencing procedures. If the inmate is deemed
31 mentally unfit, the warden or the warden's representative shall
32 contact the inmate's emergency contact and provide the information
33 described in paragraph (2).

34 (5) The warden or the warden's representative shall provide the
35 prisoner and his or her family member, agent, or emergency
36 contact, as described in paragraph (4), updated information
37 throughout the recall and resentencing process with regard to the
38 prisoner's medical condition and the status of the prisoner's recall
39 and resentencing proceedings.

1 (6) Notwithstanding any other provisions of this section, the
2 prisoner or his or her family member or designee may
3 independently request consideration for recall and resentencing
4 by contacting the chief medical officer at the prison or the
5 secretary. Upon receipt of the request, the chief medical officer
6 and the warden or the warden's representative shall follow the
7 procedures described in paragraph (4). If the secretary determines
8 that the prisoner satisfies the criteria set forth in paragraph (2), the
9 secretary or board may recommend to the court that the prisoner's
10 sentence be recalled. The secretary shall submit a recommendation
11 for release within 30 days in the case of inmates sentenced to
12 determinate terms and, in the case of inmates sentenced to
13 indeterminate terms, the secretary shall make a recommendation
14 to the Board of Parole Hearings with respect to the inmates who
15 have applied under this section. The board shall consider this
16 information and make an independent judgment pursuant to
17 paragraph (2) and make findings related thereto before rejecting
18 the request or making a recommendation to the court. This action
19 shall be taken at the next lawfully noticed board meeting.

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

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

26 (9) If the court grants the recall and resentencing application,
27 the prisoner shall be released by the department within 48 hours
28 of receipt of the court's order, unless a longer time period is agreed
29 to by the inmate. At the time of release, the warden or the warden's
30 representative shall ensure that the prisoner has each of the
31 following in his or her possession: a discharge medical summary,
32 full medical records, state identification, parole medications, and
33 all property belonging to the prisoner. After discharge, any
34 additional records shall be sent to the prisoner's forwarding
35 address.

36 (10) The secretary shall issue a directive to medical and
37 correctional staff employed by the department that details the
38 guidelines and procedures for initiating a recall and resentencing
39 procedure. The directive shall clearly state that any prisoner who
40 is given a prognosis of six months or less to live is eligible for

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

3 (f) Any sentence imposed under this article shall be subject to
4 the provisions of Sections 3000 and 3057 and any other applicable
5 provisions of law.

6 (g) A sentence to state prison for a determinate term for which
7 only one term is specified, is a sentence to state prison under this
8 section.

9 (h) This section shall become operative on January 1, ~~2012~~
10 2013.

11 *SEC. 2.5. Section 1170 of the Penal Code, as amended by*
12 *Section 451 of Chapter 15 of the Statutes of 2011, is amended to*
13 *read:*

14 1170. (a) (1) The Legislature finds and declares that the
15 purpose of imprisonment for crime is punishment. This purpose
16 is best served by terms proportionate to the seriousness of the
17 offense with provision for uniformity in the sentences of offenders
18 committing the same offense under similar circumstances. The
19 Legislature further finds and declares that the elimination of
20 disparity and the provision of uniformity of sentences can best be
21 achieved by determinate sentences fixed by statute in proportion
22 to the seriousness of the offense as determined by the Legislature
23 to be imposed by the court with specified discretion.

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

36 (3) In any case in which the punishment prescribed by statute
37 for a person convicted of a public offense is a term of imprisonment
38 in the state prison of any specification of three time periods, the
39 court shall sentence the defendant to one of the terms of
40 imprisonment specified unless the convicted person is given any

1 other disposition provided by law, including a fine, jail, probation,
2 or the suspension of imposition or execution of sentence or is
3 sentenced pursuant to subdivision (b) of Section 1168 because he
4 or she had committed his or her crime prior to July 1, 1977. In
5 sentencing the convicted person, the court shall apply the
6 sentencing rules of the Judicial Council. The court, unless it
7 determines that there are circumstances in mitigation of the
8 punishment prescribed, shall also impose any other term that it is
9 required by law to impose as an additional term. Nothing in this
10 article shall affect any provision of law that imposes the death
11 penalty, that authorizes or restricts the granting of probation or
12 suspending the execution or imposition of sentence, or expressly
13 provides for imprisonment in the state prison for life. In any case
14 in which the amount of preimprisonment credit under Section
15 2900.5 or any other provision of law is equal to or exceeds any
16 sentence imposed pursuant to this chapter, the entire sentence shall
17 be deemed to have been served and the defendant shall not be
18 actually delivered to the custody of the secretary. The court shall
19 advise the defendant that he or she shall serve a period of parole
20 and order the defendant to report to the parole office closest to the
21 defendant's last legal residence, unless the in-custody credits equal
22 the total sentence, including both confinement time and the period
23 of parole. The sentence shall be deemed a separate prior prison
24 term under Section 667.5, and a copy of the judgment and other
25 necessary documentation shall be forwarded to the secretary.

26 (b) When a judgment of imprisonment is to be imposed and the
27 statute specifies three possible terms, the court shall order
28 imposition of the middle term, unless there are circumstances in
29 aggravation or mitigation of the crime. At least four days prior to
30 the time set for imposition of judgment, either party or the victim,
31 or the family of the victim if the victim is deceased, may submit
32 a statement in aggravation or mitigation to dispute facts in the
33 record or the probation officer's report, or to present additional
34 facts. In determining whether there are circumstances that justify
35 imposition of the upper or lower term, the court may consider the
36 record in the case, the probation officer's report, other reports,
37 including reports received pursuant to Section 1203.03, and
38 statements in aggravation or mitigation submitted by the
39 prosecution, the defendant, or the victim, or the family of the victim
40 if the victim is deceased, and any further evidence introduced at

1 the sentencing hearing. The court shall set forth on the record the
2 facts and reasons for imposing the upper or lower term. The court
3 may not impose an upper term by using the fact of any
4 enhancement upon which sentence is imposed under any provision
5 of law. A term of imprisonment shall not be specified if imposition
6 of sentence is suspended.

7 (c) The court shall state the reasons for its sentence choice on
8 the record at the time of sentencing. The court shall also inform
9 the defendant that as part of the sentence after expiration of the
10 term he or she may be on parole for a period as provided in Section
11 3000.

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

25 (e) (1) Notwithstanding any other law and consistent with
26 paragraph (1) of subdivision (a), if the secretary or the Board of
27 Parole Hearings or both determine that a prisoner satisfies the
28 criteria set forth in paragraph (2), the secretary or the board may
29 recommend to the court that the prisoner's sentence be recalled.

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

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

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

39 (C) The prisoner is permanently medically incapacitated with
40 a medical condition that renders him or her permanently unable

1 to perform activities of basic daily living, and results in the prisoner
2 requiring 24-hour total care, including, but not limited to, coma,
3 persistent vegetative state, brain death, ventilator-dependency, loss
4 of control of muscular or neurological function, and that
5 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

32 (6) Notwithstanding any other provisions of this section, the
33 prisoner or his or her family member or designee may
34 independently request consideration for recall and resentencing
35 by contacting the chief medical officer at the prison or the
36 secretary. Upon receipt of the request, the chief medical officer
37 and the warden or the warden's representative shall follow the
38 procedures described in paragraph (4). If the secretary determines
39 that the prisoner satisfies the criteria set forth in paragraph (2), the
40 secretary or board may recommend to the court that the prisoner's

1 sentence be recalled. The secretary shall submit a recommendation
2 for release within 30 days in the case of inmates sentenced to
3 determinate terms and, in the case of inmates sentenced to
4 indeterminate terms, the secretary shall make a recommendation
5 to the Board of Parole Hearings with respect to the inmates who
6 have applied under this section. The board shall consider this
7 information and make an independent judgment pursuant to
8 paragraph (2) and make findings related thereto before rejecting
9 the request or making a recommendation to the court. This action
10 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

34 (f) Any sentence imposed under this article shall be subject to
35 the provisions of Sections 3000 and 3057 and any other applicable
36 provisions of law.

37 (g) A sentence to state prison for a determinate term for which
38 only one term is specified, is a sentence to state prison under this
39 section.

1 (h) (1) Except as provided in paragraph (3), a felony punishable
 2 pursuant to this subdivision where the term is not specified in the
 3 underlying offense shall be punishable by a term of imprisonment
 4 in a county jail for 16 months, or two or three years.

5 (2) Except as provided in paragraph (3), a felony punishable
 6 pursuant to this subdivision shall be punishable by imprisonment
 7 in a county jail for the term described in the underlying offense.

8 (3) Notwithstanding paragraphs (1) and (2), where the defendant
 9 has a prior or current felony conviction for a serious felony
 10 described in subdivision (c) of Section 1192.7, a violent felony
 11 described in subdivision (c) of Section 667.5, is required to register
 12 as a sex offender pursuant to Chapter 5.5 (commencing with
 13 Section 290) of Title 9 of Part 1, or is convicted of a crime and as
 14 part of the sentence an enhancement pursuant to Section 186.11
 15 is imposed, an executed sentence for a felony punishable pursuant
 16 to this subdivision shall be served in state prison.

17 (4) Nothing in this subdivision shall be construed to prevent
 18 other dispositions authorized by law, including pretrial diversion,
 19 deferred entry of judgment, or an order granting probation pursuant
 20 to Section 1203.1.

21 (5) The sentencing changes made by the act that added this
 22 subdivision shall be applied prospectively to any person sentenced
 23 on or after July 1, 2011.

24 (i) This section shall become operative on January 1, ~~2012~~ 2013.

25 *SEC. 3. Sections 1.5 and 2.5 of this bill incorporate*
 26 *amendments to Section 1170 of the Penal Code proposed by both*
 27 *this bill and AB 109, which has been chaptered but is not operative.*
 28 *Sections 1.5 and 2.5 shall become operative only if (1) this bill is*
 29 *enacted and becomes effective on or before January 1, 2012, (2)*
 30 *this bill amends Section 1170 of the Penal Code, and (3) AB 109*
 31 *becomes operative, in which case Section 1170 of the Penal Code,*
 32 *as amended by Sections 1 and 2 of this bill, shall remain operative*
 33 *only until the operative date of AB 109, at which time Sections 1.5*
 34 *and 2.5 shall become operative.*

35 ~~SECTION 1. Section 1170 of the Penal Code, as amended by~~
 36 ~~Section 6 of Chapter 256 of the Statutes of 2010, is amended to~~
 37 ~~read:~~

38 ~~1170. (a) (1) The Legislature finds and declares that the~~
 39 ~~purpose of imprisonment for crime is punishment. This purpose~~
 40 ~~is best served by terms proportionate to the seriousness of the~~

1 offense with provision for uniformity in the sentences of offenders
2 committing the same offense under similar circumstances. The
3 Legislature further finds and declares that, to ensure proportionality
4 in sentencing, upper terms should be reserved for individual cases
5 in which aggravating facts exist and have been proven to be true.
6 The 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. In any case

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

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

37 (c) The court shall state the reasons for its sentence choice on
38 the record at the time of sentencing, including the specific facts in
39 aggravation, if any, the court relied upon to impose an upper term.
40 The court shall also inform the defendant that as part of the

1 sentence after expiration of the term he or she may be on parole
2 for a period as provided in Section 3000.

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

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

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

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

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

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

37 ~~The Board of Parole Hearings shall make findings pursuant to~~
38 ~~this subdivision before making a recommendation for resentence~~
39 ~~or recall to the court. This subdivision does not apply to a prisoner~~
40 ~~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 ~~(f) 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 ~~(g) 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 ~~(h) This section shall become operative on January 1, 2012.~~

O