

AMENDED IN SENATE MAY 27, 2011

SENATE BILL

No. 9

Introduced by Senator Yee

(Principal coauthors: Senators Steinberg and Vargas)

(Coauthors: Assembly Members Fuentes and Bonnie Lowenthal)

December 6, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 9, 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, and to the prosecuting agency, as specified. *The bill would require the petition to include a statement from the defendant that includes, among other things, his or her remorse and work towards rehabilitation.* The bill would establish certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. The bill would require the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified. The bill would apply retroactively, as specified.

The bill would incorporate additional changes to Section 1170 of the Penal Code, made by AB 109, which has been chaptered but is inoperative until the occurrence of events specified therein.

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~~

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

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

1 enhancement upon which sentence is imposed under any provision
2 of law. A term of imprisonment shall not be specified if imposition
3 of sentence is suspended.

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

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

22 ~~(e) (1) When a defendant who was under 18 years of age at the
23 time of the commission of the offense for which the defendant was
24 sentenced to imprisonment for life without the possibility of parole
25 has served at least 10 years of that sentence, the defendant may
26 submit to the sentencing court a petition for recall and resentencing,
27 provided that defendants who have served 10 years but not more
28 than 15 years as of January 1, 2012, shall not be permitted to
29 submit a petition for recall and resentencing pursuant to this
30 subdivision until they have served 15 years. Defendants who have
31 served 15 or more years but less than 25 years as of January 1,
32 2012, shall be permitted to submit a petition for recall and
33 resentencing as follows:~~

34 ~~(A) Those defendants who entered custody prior to July 1, 1993,
35 may submit a petition in 2012.~~

36 ~~(B) Those defendants who entered custody on or after July 1,
37 1993, but prior to January 1, 1994, may submit a petition in 2013.~~

38 ~~(C) Those defendants who entered custody on or after January
39 1, 1994, but prior to July 1, 1994, may submit a petition in 2014.~~

1 ~~(D) Those defendants who entered custody on or after July 1,~~
2 ~~1994, but prior to January 1, 1996, may submit a petition in 2015.~~

3 ~~(2) The defendant shall file the original petition with the~~
4 ~~sentencing court. A copy of the petition shall be served on the~~
5 ~~agency that prosecuted the case. The petition shall include the~~
6 ~~defendant's statement that he or she was under 18 years of age at~~
7 ~~the time of the crime, was sentenced to life in prison without the~~
8 ~~possibility of parole, and that one of the following is true:~~

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

11 ~~(B) The defendant does not have juvenile felony adjudications~~
12 ~~for assault or other felony crimes with a significant potential for~~
13 ~~personal harm to victims prior to the offense for which the sentence~~
14 ~~is being considered for recall.~~

15 ~~(C) The defendant committed the offense with at least one adult~~
16 ~~codefendant.~~

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

23 ~~(3) If any of the information required in paragraph (2) is missing~~
24 ~~from the petition, or if proof of service on the prosecuting agency~~
25 ~~is not provided, the court shall return the petition to the defendant~~
26 ~~and advise the defendant that the matter cannot be considered~~
27 ~~without the missing information. The defendant may resubmit a~~
28 ~~petition with the information or proof of service.~~

29 ~~(4) A reply to the petition, if any, shall be filed with the court~~
30 ~~within 60 days of the date on which the prosecuting agency was~~
31 ~~served with the petition, unless a continuance is granted for good~~
32 ~~cause.~~

33 ~~(5) If the court finds by a preponderance of the evidence that~~
34 ~~the statements in the petition are true, the court shall hold a hearing~~
35 ~~to consider whether to recall the sentence and commitment~~
36 ~~previously ordered and to resentence the defendant in the same~~
37 ~~manner as if the defendant had not previously been sentenced,~~
38 ~~provided that the new sentence, if any, is not greater than the initial~~
39 ~~sentence. Victims, or victim family members if the victim is~~
40 ~~deceased, shall retain the right to participate in the hearing.~~

1 ~~(6) The factors that the court may consider when determining~~
2 ~~whether to recall and resentence include, but are not limited to,~~
3 ~~the following:~~
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 showing evidence of remorse.~~
26 ~~(G) The defendant has maintained family ties or connections~~
27 ~~with others through letter writing, calls, or visits, or has eliminated~~
28 ~~contact with individuals outside of prison who are currently~~
29 ~~involved with crime.~~
30 ~~(H) The defendant has had no disciplinary actions for violent~~
31 ~~activities in the last five years in which the defendant was~~
32 ~~determined to be the aggressor.~~
33 ~~(7) The court shall have the discretion to recall the sentence and~~
34 ~~commitment previously ordered and to resentence the defendant~~
35 ~~in the same manner as if the defendant had not previously been~~
36 ~~sentenced, provided that the new sentence, if any, is not greater~~
37 ~~than the initial sentence. The discretion of the court shall be~~
38 ~~exercised in consideration of the criteria in paragraph (6). Victims,~~
39 ~~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 (8) 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 (9) In addition to the criteria in paragraph (6), 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 (10) 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 subparagraphs (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, 2012,~~
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.~~

1 ~~SEC. 2.~~

2 ~~SECTION 1.~~ Section 1170 of the Penal Code, as amended by
3 ~~Section 2 of Chapter 416 of the Statutes of 2008 6 of Chapter 256~~
4 ~~of the Statutes of 2010~~, is amended to read:

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

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

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

1 article shall affect any provision of law that imposes the death
2 penalty, that authorizes or restricts the granting of probation or
3 suspending the execution or imposition of sentence, or expressly
4 provides for imprisonment in the state prison for life, except as
5 provided in *paragraph (2) of subdivision-(e) (d)*. In any case in
6 which the amount of preimprisonment credit under Section 2900.5
7 or any other provision of law is equal to or exceeds any sentence
8 imposed pursuant to this chapter, the entire sentence shall be
9 deemed to have been served and the defendant shall not be actually
10 delivered to the custody of the secretary. The court shall advise
11 the defendant that he or she shall serve a period of parole and order
12 the defendant to report to the parole office closest to the defendant's
13 last legal residence, unless the in-custody credits equal the total
14 sentence, including both confinement time and the period of parole.
15 The sentence shall be deemed a separate prior prison term under
16 Section 667.5, and a copy of the judgment and other necessary
17 documentation shall be forwarded to the secretary.

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

39 (c) The court shall state the reasons for its sentence choice on
40 the record at the time of sentencing. The court shall also inform

1 the defendant that as part of the sentence after expiration of the
2 term he or she may be on parole for a period as provided in Section
3 3000.

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

17 ~~(e)-(1)~~

18 (2) (A) When a defendant who was under 18 years of age at
19 the time of the commission of the offense for which the defendant
20 was sentenced to imprisonment for life without the possibility of
21 parole has served at least ~~10~~ 15 years of that sentence, the defendant
22 may submit to the sentencing court a petition for recall and
23 resentencing, ~~provided that defendants who have served 10 or~~
24 ~~more years as of January 1, 2012, shall not be permitted to submit~~
25 ~~a petition for recall and resentencing pursuant to this subdivision~~
26 ~~until they have served 15 years. Defendants who have served 15~~
27 ~~or more years but less than 25 years as of January 1, 2012, shall~~
28 ~~resentencing provided that defendants who entered custody on or~~
29 ~~after January 1, 1992, but prior to July 1, 2002, shall be permitted~~
30 to submit a petition for recall and resentencing *only* as follows:

31 ~~(A)~~

32 (i) Those defendants who entered custody prior to ~~July 1, 1993~~
33 ~~January 1, 1994~~, may submit a petition in ~~2012~~ *the 2011–12 fiscal*
34 *year*.

35 ~~(B)~~

36 (ii) Those defendants who entered custody on or after ~~July 1,~~
37 ~~1993 January 1, 1994~~, but prior to January 1, ~~1994~~ 1995, may
38 submit a petition in ~~2013~~ *the 2012–13 fiscal year*.

39 ~~(C)~~

1 (iii) Those defendants who entered custody on or after January
2 1, ~~1994~~ 1995, but prior to ~~July 1, 1994~~ January 1, 1996, and those
3 who entered custody on or after January 1, 2000, but prior to
4 January 1, 2001, may submit a petition in ~~2014~~ the 2013–14 fiscal
5 year.

6 (⊕)

7 (iv) Those defendants who entered custody on or after ~~July 1,~~
8 ~~1994,~~ but prior to January 1, 1996, may submit a petition in 2015.
9 January 1, 1996, but prior to July 1, 1996, and those who entered
10 custody on or after January 1, 2001, but prior to May 1, 2001,
11 may submit a petition in the 2014–15 fiscal year.

12 (v) Those defendants who entered custody on or after July 1,
13 1996, but prior to January 1, 1997, and those who entered custody
14 on or after May 1, 2001, but prior to January 1, 2002, may submit
15 a petition in the 2015–16 fiscal year.

16 (vi) Those defendants who entered custody on or after January
17 1, 1997, but prior to July 1, 1997, and those who entered custody
18 on or after January 1, 2002, but prior to July 1, 2002, may submit
19 a petition in the 2016–17 fiscal year.

20 (vii) Those defendants who entered custody on or after July 1,
21 1997, but prior to January 1, 1998, may submit a petition in the
22 2017–18 fiscal year.

23 (viii) Those defendants who entered custody on or after January
24 1, 1998, but prior to July 1, 1998, may submit a petition in the
25 2018–19 fiscal year.

26 (ix) Those defendants who entered custody on or after July 1,
27 1998, but prior to January 1, 1999, may submit a petition in the
28 2019–20 fiscal year.

29 (x) Those defendants who entered custody on or after January
30 1, 1999, but prior to July 1, 1999, may submit a petition in the
31 2020–21 fiscal year.

32 (xi) Those defendants who entered custody on or after July 1,
33 1999, but prior to January 1, 2000, may submit a petition in the
34 2021–22 fiscal year.

35 (xii) If recall and resentencing is not granted under petitions
36 permitted in clauses (i) to (xi), inclusive, defendants who entered
37 custody on or after January 1, 1992, but prior to January 1, 2000,
38 may submit a second and final petition after having served 24
39 years. The final petition may be submitted, and the response to
40 that petition shall be determined, during the 25th year of the

1 *defendant's sentence. If recall and resentencing is not granted*
2 *under petitions permitted in clauses (i) to (vi), inclusive, defendants*
3 *who entered custody on or after January 1, 2000, but prior to July*
4 *1, 2002, may submit petitions as described in subparagraph (H).*

5 ~~(2)~~

6 (B) The defendant shall file the original petition with the
7 sentencing court. A copy of the petition shall be served on the
8 agency that prosecuted the case. The petition shall include the
9 defendant's statement that he or she was under 18 years of age at
10 the time of the crime; *and* was sentenced to life in prison without
11 the possibility of parole, ~~and the defendant's statement describing~~
12 *his or her remorse and work towards rehabilitation, and the*
13 *defendant's statement that one of the following is true:*

14 ~~(A)~~

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

17 ~~(B)~~

18 (ii) The defendant does not have juvenile felony adjudications
19 for assault or other felony crimes with a significant potential for
20 personal harm to victims prior to the offense for which the sentence
21 is being considered for recall.

22 ~~(C)~~

23 (iii) The defendant committed the offense with at least one adult
24 codefendant.

25 ~~(D)~~

26 (iv) The defendant has performed acts that tend to indicate
27 rehabilitation or the potential for rehabilitation, including, but not
28 limited to, availing himself or herself of rehabilitative, educational,
29 or vocational programs, if those programs have been available at
30 his or her classification level and facility, using self-study for
31 self-improvement, or showing evidence of remorse.

32 ~~(3)~~

33 (C) If any of the information required in ~~paragraph (2)~~
34 *subparagraph (B)* is missing from the petition, or if proof of service
35 on the prosecuting agency is not provided, the court shall return
36 the petition to the defendant and advise the defendant that the
37 matter cannot be considered without the missing information.

38 ~~(4)~~

39 (D) A reply to the petition, if any, shall be filed with the court
40 within 60 days of the date on which the prosecuting agency was

1 served with the petition, unless a continuance is granted for good
2 cause.

3 ~~(5)~~

4 (E) If the court finds by a preponderance of the evidence that
5 the statements in the petition are true, the court shall hold a hearing
6 to consider whether to recall the sentence and commitment
7 previously ordered and to resentence the defendant in the same
8 manner as if the defendant had not previously been sentenced,
9 provided that the new sentence, if any, is not greater than the initial
10 sentence. Victims, or victim family members if the victim is
11 deceased, shall retain the rights to participate in the hearing.

12 ~~(6)~~

13 (F) The factors that the court may consider when determining
14 whether to recall and resentence include, but are not limited to,
15 the following:

16 ~~(A)~~

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

19 ~~(B)~~

20 (ii) The defendant does not have juvenile felony adjudications
21 for assault or other felony crimes with a significant potential for
22 personal harm to victims prior to the offense for which the sentence
23 is being considered for recall.

24 ~~(C)~~

25 (iii) The defendant committed the offense with at least one adult
26 codefendant.

27 ~~(D)~~

28 (iv) Prior to the offense for which the sentence is being
29 considered for recall, the defendant had insufficient adult support
30 or supervision and had suffered from psychological or physical
31 trauma, or significant stress.

32 ~~(E)~~

33 (v) The defendant suffers from cognitive limitations due to
34 mental illness, developmental disabilities, or other factors that did
35 not constitute a defense, but influenced the defendant's
36 involvement in the offense.

37 ~~(F)~~

38 (vi) The defendant has performed acts that tend to indicate
39 rehabilitation or the potential for rehabilitation, including, but not
40 limited to, availing himself or herself of rehabilitative, educational,

1 or vocational programs, if those programs have been available at
2 his or her classification level and facility, using self-study for
3 self-improvement, or showing evidence of remorse.

4 (G)

5 (vii) The defendant has maintained family ties or connections
6 with others through letter writing, calls, or visits, or has eliminated
7 contact with individuals outside of prison who are currently
8 involved with crime.

9 (H)

10 (viii) The defendant has had no disciplinary actions for violent
11 activities in the last five years in which the defendant was
12 determined to be the aggressor.

13 (7)

14 (G) The court shall have the discretion to recall the sentence
15 and commitment previously ordered and to resentence the
16 defendant in the same manner as if the defendant had not
17 previously been sentenced, provided that the new sentence, if any,
18 is not greater than the initial sentence. The discretion of the court
19 shall be exercised in consideration of the criteria in ~~paragraph (2)~~
20 *subparagraph (B)*. Victims, or victim family members if the victim
21 is deceased, shall be notified of the resentencing hearing and shall
22 retain their rights to participate in the hearing.

23 (8)

24 (H) If the sentence is not recalled, the defendant may submit
25 another petition for recall and resentencing to the sentencing court
26 when the defendant has been committed to the custody of the
27 department for at least 15 years. ~~If recall and resentencing is not~~
28 ~~granted under that petition, the defendant may file another petition~~
29 ~~after having served 20 years. If recall and resentencing is not~~
30 ~~granted under that petition, the defendant may file another petition~~
31 ~~after having served 24 years. The final petition may be submitted,~~
32 ~~and the response to that petition shall be determined, during the~~
33 ~~25th year of the defendant's sentence.~~

34 (9)

35 (I) In addition to the criteria in ~~paragraph (6)~~ *subparagraph (F)*,
36 the court may consider any other criteria that the court deems
37 relevant to its decision, so long as the court identifies them on the
38 record, provides a statement of reasons for adopting them, and
39 states why the defendant does or does not satisfy the criteria.

40 (10)

1 (J) This subdivision shall have retroactive application.

2 (~~f~~)

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

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

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

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

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

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

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

31 (4) Any physician employed by the department who determines
32 that a prisoner has six months or less to live shall notify the chief
33 medical officer of the prognosis. If the chief medical officer
34 concurs with the prognosis, he or she shall notify the warden.
35 Within 48 hours of receiving notification, the warden or the
36 warden's representative shall notify the prisoner of the recall and
37 resentencing procedures, and shall arrange for the prisoner to
38 designate a family member or other outside agent to be notified
39 as to the prisoner's medical condition and prognosis, and as to the
40 recall and resentencing procedures. If the inmate is deemed

1 mentally unfit, the warden or the warden’s representative shall
2 contact the inmate’s emergency contact and provide the information
3 described in paragraph (2).

4 (5) The warden or the warden’s representative shall provide the
5 prisoner and his or her family member, agent, or emergency
6 contact, as described in paragraph (4), updated information
7 throughout the recall and resentencing process with regard to the
8 prisoner’s medical condition and the status of the prisoner’s recall
9 and resentencing proceedings.

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

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

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

35 (9) If the court grants the recall and resentencing application,
36 the prisoner shall be released by the department within 48 hours
37 of receipt of the court’s order, unless a longer time period is agreed
38 to by the inmate. At the time of release, the warden or the warden’s
39 representative shall ensure that the prisoner has each of the
40 following in his or her possession: a discharge medical summary,

1 full medical records, state identification, parole medications, and
2 all property belonging to the prisoner. After discharge, any
3 additional records shall be sent to the prisoner's forwarding
4 address.

5 (10) The secretary shall issue a directive to medical and
6 correctional staff employed by the department that details the
7 guidelines and procedures for initiating a recall and resentencing
8 procedure. The directive shall clearly state that any prisoner who
9 is given a prognosis of six months or less to live is eligible for
10 recall and resentencing consideration, and that recall and
11 resentencing procedures shall be initiated upon that prognosis.

12 ~~(g)~~

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

16 ~~(h)~~

17 (g) A sentence to state prison for a determinate term for which
18 only one term is specified, is a sentence to state prison under this
19 section.

20 ~~(i)~~

21 (h) This section shall become operative on January 1, 2012.

22 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
23 *451 of Chapter 15 of the Statutes of 2011, is amended to read:*

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

34 (2) Notwithstanding paragraph (1), the Legislature further finds
35 and declares that programs should be available for inmates,
36 including, but not limited to, educational programs, that are
37 designed to prepare nonviolent felony offenders for successful
38 reentry into the community. The Legislature encourages the
39 development of policies and programs designed to educate and
40 rehabilitate nonviolent felony offenders. In implementing this

1 section, the Department of Corrections and Rehabilitation is
2 encouraged to give priority enrollment in programs to promote
3 successful return to the community to an inmate with a short
4 remaining term of commitment and a release date that would allow
5 him or her adequate time to complete the program.

6 (3) In any case in which the punishment prescribed by statute
7 for a person convicted of a public offense is a term of imprisonment
8 in the state prison of any specification of three time periods, the
9 court shall sentence the defendant to one of the terms of
10 imprisonment specified unless the convicted person is given any
11 other disposition provided by law, including a fine, jail, probation,
12 or the suspension of imposition or execution of sentence or is
13 sentenced pursuant to subdivision (b) of Section 1168 because he
14 or she had committed his or her crime prior to July 1, 1977. In
15 sentencing the convicted person, the court shall apply the
16 sentencing rules of the Judicial Council. The court, unless it
17 determines that there are circumstances in mitigation of the
18 punishment prescribed, shall also impose any other term that it is
19 required by law to impose as an additional term. Nothing in this
20 article shall affect any provision of law that imposes the death
21 penalty, that authorizes or restricts the granting of probation or
22 suspending the execution or imposition of sentence, or expressly
23 provides for imprisonment in the state prison for life, *except as*
24 *provided in paragraph (2) of subdivision (d)*. In any case in which
25 the amount of preimprisonment credit under Section 2900.5 or any
26 other provision of law is equal to or exceeds any sentence imposed
27 pursuant to this chapter, the entire sentence shall be deemed to
28 have been served and the defendant shall not be actually delivered
29 to the custody of the secretary. The court shall advise the defendant
30 that he or she shall serve a period of parole and order the defendant
31 to report to the parole office closest to the defendant's last legal
32 residence, unless the in-custody credits equal the total sentence,
33 including both confinement time and the period of parole. The
34 sentence shall be deemed a separate prior prison term under Section
35 667.5, and a copy of the judgment and other necessary
36 documentation shall be forwarded to the secretary.

37 (b) When a judgment of imprisonment is to be imposed and the
38 statute specifies three possible terms, the court shall order
39 imposition of the middle term, unless there are circumstances in
40 aggravation or mitigation of the crime. At least four days prior to

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

18 (c) The court shall state the reasons for its sentence choice on
19 the record at the time of sentencing. The court shall also inform
20 the defendant that as part of the sentence after expiration of the
21 term he or she may be on parole for a period as provided in Section
22 3000.

23 (d) (1) When a defendant subject to this section or subdivision
24 (b) of Section 1168 has been sentenced to be imprisoned in the
25 state prison and has been committed to the custody of the secretary,
26 the court may, within 120 days of the date of commitment on its
27 own motion, or at any time upon the recommendation of the
28 secretary or the Board of Parole Hearings, recall the sentence and
29 commitment previously ordered and resentence the defendant in
30 the same manner as if he or she had not previously been sentenced,
31 provided the new sentence, if any, is no greater than the initial
32 sentence. The resentence under this subdivision shall apply the
33 sentencing rules of the Judicial Council so as to eliminate disparity
34 of sentences and to promote uniformity of sentencing. Credit shall
35 be given for time served.

36 (2) (A) *When a defendant who was under 18 years of age at*
37 *the time of the commission of the offense for which the defendant*
38 *was sentenced to imprisonment for life without the possibility of*
39 *parole has served at least 15 years of that sentence, the defendant*
40 *may submit to the sentencing court a petition for recall and*

1 *resentencing provided that defendants who entered custody on or*
2 *after January 1, 1992, but prior to July 1, 2002, shall be permitted*
3 *to submit a petition for recall and resentencing only as follows:*

4 (i) *Those defendants who entered custody prior to January 1,*
5 *1994, may submit a petition in the 2011–12 fiscal year.*

6 (ii) *Those defendants who entered custody on or after July 1,*
7 *1994, but prior to January 1, 1995, may submit a petition in the*
8 *2012–13 fiscal year.*

9 (iii) *Those defendants who entered custody on or after January*
10 *1, 1995, but prior to January 1, 1996, and those who entered*
11 *custody on or after January 1, 2000, but prior to January 1, 2001,*
12 *may submit a petition in the 2013–14 fiscal year.*

13 (iv) *Those defendants who entered custody on or after January*
14 *1, 1996, but prior to July 1, 1996, and those who entered custody*
15 *on or after January 1, 2001, but prior to May 1, 2001, may submit*
16 *a petition in the 2014–15 fiscal year.*

17 (v) *Those defendants who entered custody on or after July 1,*
18 *1996, but prior to January 1, 1997, and those who entered custody*
19 *on or after May 1, 2001, but prior to January 1, 2002, may submit*
20 *a petition in the 2015–16 fiscal year.*

21 (vi) *Those defendants who entered custody on or after January*
22 *1, 1997, but prior to July 1, 1997, and those who entered custody*
23 *on or after January 1, 2002, but prior to July 1, 2002, may submit*
24 *a petition in the 2016–17 fiscal year.*

25 (vii) *Those defendants who entered custody on or after July 1,*
26 *1997, but prior to January 1, 1998, may submit a petition in the*
27 *2017–18 fiscal year.*

28 (viii) *Those defendants who entered custody on or after January*
29 *1, 1998, but prior to July 1, 1998, may submit a petition in the*
30 *2018–19 fiscal year.*

31 (ix) *Those defendants who entered custody on or after July 1,*
32 *1998, but prior to January 1, 1999, may submit a petition in the*
33 *2019–20 fiscal year.*

34 (x) *Those defendants who entered custody on or after January*
35 *1, 1999, but prior to July 1, 1999, may submit a petition in the*
36 *2020–21 fiscal year.*

37 (xi) *Those defendants who entered custody on or after July 1,*
38 *1999, but prior to January 1, 2000, may submit a petition in the*
39 *2021–22 fiscal year.*

1 *(xii) If recall and resentencing is not granted under petitions*
2 *permitted in clauses (i) to (xi), inclusive, defendants who entered*
3 *custody on or after January 1, 1992, but prior to January 1, 2000,*
4 *may submit a second and final petition after having served 24*
5 *years. The final petition may be submitted, and the response to*
6 *that petition shall be determined, during the 25th year of the*
7 *defendant’s sentence. If recall and resentencing is not granted*
8 *under petitions permitted in clauses (i) to (vi), inclusive, defendants*
9 *who entered custody on or after January 1, 2000, but prior to July*
10 *1, 2002, may submit petitions as described in subparagraph (H).*

11 *(B) The defendant shall file the original petition with the*
12 *sentencing court. A copy of the petition shall be served on the*
13 *agency that prosecuted the case. The petition shall include the*
14 *defendant’s statement that he or she was under 18 years of age at*
15 *the time of the crime and was sentenced to life in prison without*
16 *the possibility of parole, the defendant’s statement describing his*
17 *or her remorse and work towards rehabilitation, and the*
18 *defendant’s statement that one of the following is true:*

19 *(i) The defendant was convicted pursuant to felony murder or*
20 *aiding and abetting murder provisions of law.*

21 *(ii) The defendant does not have juvenile felony adjudications*
22 *for assault or other felony crimes with a significant potential for*
23 *personal harm to victims prior to the offense for which the sentence*
24 *is being considered for recall.*

25 *(iii) The defendant committed the offense with at least one adult*
26 *codefendant.*

27 *(iv) The defendant has performed acts that tend to indicate*
28 *rehabilitation or the potential for rehabilitation, including, but*
29 *not limited to, availing himself or herself of rehabilitative,*
30 *educational, or vocational programs, if those programs have been*
31 *available at his or her classification level and facility, using*
32 *self-study for self-improvement, or showing evidence of remorse.*

33 *(C) If any of the information required in subparagraph (B) is*
34 *missing from the petition, or if proof of service on the prosecuting*
35 *agency is not provided, the court shall return the petition to the*
36 *defendant and advise the defendant that the matter cannot be*
37 *considered without the missing information. The defendant may*
38 *resubmit a petition with the information or proof of service.*

39 *(D) A reply to the petition, if any, shall be filed with the court*
40 *within 60 days of the date on which the prosecuting agency was*

1 served with the petition, unless a continuance is granted for good
2 cause.

3 (E) If the court finds by a preponderance of the evidence that
4 the statements in the petition are true, the court shall hold a
5 hearing to consider whether to recall the sentence and commitment
6 previously ordered and to resentence the defendant in the same
7 manner as if the defendant had not previously been sentenced,
8 provided that the new sentence, if any, is not greater than the initial
9 sentence. Victims, or victim family members if the victim is
10 deceased, shall retain the right to participate in the hearing.

11 (F) The factors that the court may consider when determining
12 whether to recall and resentence include, but are not limited to,
13 the following:

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

16 (ii) The defendant does not have juvenile felony adjudications
17 for assault or other felony crimes with a significant potential for
18 personal harm to victims prior to the offense for which the sentence
19 is being considered for recall.

20 (iii) The defendant committed the offense with at least one adult
21 codefendant.

22 (iv) Prior to the offense for which the sentence is being
23 considered for recall, the defendant had insufficient adult support
24 or supervision and had suffered from psychological or physical
25 trauma, or significant stress.

26 (v) The defendant suffers from cognitive limitations due to
27 mental illness, developmental disabilities, or other factors that did
28 not constitute a defense, but influenced the defendant's involvement
29 in the offense.

30 (vi) The defendant has performed acts that tend to indicate
31 rehabilitation or the potential for rehabilitation, including, but
32 not limited to, availing himself or herself of rehabilitative,
33 educational, or vocational programs, if those programs have been
34 available at his or her classification level and facility, using
35 self-study for self-improvement, or showing evidence of remorse.

36 (vii) The defendant has maintained family ties or connections
37 with others through letter writing, calls, or visits, or has eliminated
38 contact with individuals outside of prison who are currently
39 involved with crime.

1 (viii) *The defendant has had no disciplinary actions for violent*
2 *activities in the last five years in which the defendant was*
3 *determined to be the aggressor.*

4 (G) *The court shall have the discretion to recall the sentence*
5 *and commitment previously ordered and to resentence the*
6 *defendant in the same manner as if the defendant had not*
7 *previously been sentenced, provided that the new sentence, if any,*
8 *is not greater than the initial sentence. The discretion of the court*
9 *shall be exercised in consideration of the criteria in subparagraph*
10 *(F). Victims, or victim family members if the victim is deceased,*
11 *shall be notified of the resentencing hearing and shall retain their*
12 *rights to participate in the hearing.*

13 (H) *If the sentence is not recalled, the defendant may submit*
14 *another petition for recall and resentencing to the sentencing court*
15 *when the defendant has been committed to the custody of the*
16 *department for at least 20 years. If recall and resentencing is not*
17 *granted under that petition, the defendant may file another petition*
18 *after having served 24 years. The final petition may be submitted,*
19 *and the response to that petition shall be determined, during the*
20 *25th year of the defendant's sentence.*

21 (I) *In addition to the criteria in subparagraph (F), the court*
22 *may consider any other criteria that the court deems relevant to*
23 *its decision, so long as the court identifies them on the record,*
24 *provides a statement of reasons for adopting them, and states why*
25 *the defendant does or does not satisfy the criteria.*

26 (J) *This paragraph shall have retroactive application.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (g) A sentence to state prison for a determinate term for which
2 only one term is specified, is a sentence to state prison under this
3 section.

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

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

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

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

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

27 (i) This section shall become operative on January 1, 2012.

28 *SEC. 3. Section 2 of this bill incorporates amendments to*
29 *Section 1170 of the Penal Code proposed by both this bill and AB*
30 *109, which has been chaptered but is not operative. Section 2 shall*
31 *become operative only if (a) this bill is enacted and becomes*
32 *effective on or before January 1, 2012, (b) this bill amends Section*
33 *1170 of the Penal Code, and (c) AB 109 becomes operative, in*
34 *which case Section 1170 of the Penal Code, as amended by Section*
35 *1 of this bill, shall remain operative only until the operative date*
36 *of AB 109, at which time Section 2 of this bill shall become*
37 *operative.*