

AMENDED IN ASSEMBLY AUGUST 15, 2011

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-409 116, which has been chaptered but is inoperative until the occurrence of events specified therein, and SB 576.

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 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
30 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, *except as*
14 *provided in paragraph (2) of subdivision (d)*. In any case in which
15 the amount of preimprisonment credit under Section 2900.5 or any
16 other provision of law is equal to or exceeds any sentence imposed
17 pursuant to this chapter, the entire sentence shall be deemed to
18 have been served and the defendant shall not be actually delivered
19 to the custody of the secretary. The court shall advise the defendant
20 that he or she shall serve a period of parole and order the defendant
21 to report to the parole office closest to the defendant's last legal
22 residence, unless the in-custody credits equal the total sentence,
23 including both confinement time and the period of parole. The
24 sentence shall be deemed a separate prior prison term under Section
25 667.5, and a copy of the judgment and other necessary
26 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) (1) When a defendant subject to this section or subdivision
12 (b) of Section 1168 has been sentenced to be imprisoned in the
13 state prison and has been committed to the custody of the secretary,
14 the court may, within 120 days of the date of commitment on its
15 own motion, or at any time upon the recommendation of the
16 secretary 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 court resentencing~~ under this subdivision
21 shall apply the sentencing rules of the Judicial Council so as to
22 eliminate disparity of sentences and to promote uniformity of
23 sentencing. Credit shall be given for time served.

24 (2) (A) *When a defendant who was under 18 years of age at*
25 *the time of the commission of the offense for which the defendant*
26 *was sentenced to imprisonment for life without the possibility of*
27 *parole has served at least 15 years of that sentence, the defendant*
28 *may submit to the sentencing court a petition for recall and*
29 *resentencing.*

30 (B) *The defendant shall file the original petition with the*
31 *sentencing court. A copy of the petition shall be served on the*
32 *agency that prosecuted the case. The petition shall include the*
33 *defendant's statement that he or she was under 18 years of age at*
34 *the time of the crime and was sentenced to life in prison without*
35 *the possibility of parole, the defendant's statement describing his*
36 *or her remorse and work towards rehabilitation, and the*
37 *defendant's statement that one of the following is true:*

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

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

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

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

13 (C) If any of the information required in subparagraph (B) is
14 missing from the petition, or if proof of service on the prosecuting
15 agency is not provided, the court shall return the petition to the
16 defendant and advise the defendant that the matter cannot be
17 considered without the missing information.

18 (D) A reply to the petition, if any, shall be filed with the court
19 within 60 days of the date on which the prosecuting agency was
20 served with the petition, unless a continuance is granted for good
21 cause.

22 (E) If the court finds by a preponderance of the evidence that
23 the statements in the petition are true, the court shall hold a
24 hearing to consider whether to recall the sentence and commitment
25 previously ordered and to resentence the defendant in the same
26 manner as if the defendant had not previously been sentenced,
27 provided that the new sentence, if any, is not greater than the initial
28 sentence. Victims, or victim family members if the victim is
29 deceased, shall retain the rights to participate in the hearing.

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

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

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

39 (iii) The defendant committed the offense with at least one adult
40 codefendant.

1 (iv) Prior to the offense for which the sentence is being
2 considered for recall, the defendant had insufficient adult support
3 or supervision and had suffered from psychological or physical
4 trauma, or significant stress.

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

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

15 (vii) The defendant has maintained family ties or connections
16 with others through letter writing, calls, or visits, or has eliminated
17 contact with individuals outside of prison who are currently
18 involved with crime.

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

22 (G) The court shall have the discretion to recall the sentence
23 and commitment previously ordered and to resentence the
24 defendant in the same manner as if the defendant had not
25 previously been sentenced, provided that the new sentence, if any,
26 is not greater than the initial sentence. The discretion of the court
27 shall be exercised in consideration of the criteria in subparagraph
28 (B). Victims, or victim family members if the victim is deceased,
29 shall be notified of the resentencing hearing and shall retain their
30 rights to participate in the hearing.

31 (H) If the sentence is not recalled, the defendant may submit
32 another petition for recall and resentencing to the sentencing court
33 when the defendant has been committed to the custody of the
34 department for at least 20 years. If recall and resentencing is not
35 granted under that petition, the defendant may file another petition
36 after having served 24 years. The final petition may be submitted,
37 and the response to that petition shall be determined, during the
38 25th year of the defendant's sentence.

39 (I) In addition to the criteria in subparagraph (F), the court
40 may consider any other criteria that the court deems relevant to

1 *its decision, so long as the court identifies them on the record,*
2 *provides a statement of reasons for adopting them, and states why*
3 *the defendant does or does not satisfy the criteria.*

4 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

1 as to the prisoner's medical condition and prognosis, and as to the
2 recall and resentencing procedures. If the inmate is deemed
3 mentally unfit, the warden or the warden's representative shall
4 contact the inmate's emergency contact and provide the information
5 described in paragraph (2).

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

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

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

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

37 (9) If the court grants the recall and resentencing application,
38 the prisoner shall be released by the department within 48 hours
39 of receipt of the court's order, unless a longer time period is agreed
40 to by the inmate. At the time of release, the warden or the warden's

1 representative shall ensure that the prisoner has each of the
2 following in his or her possession: a discharge medical summary,
3 full medical records, state identification, parole medications, and
4 all property belonging to the prisoner. After discharge, any
5 additional records shall be sent to the prisoner's forwarding
6 address.

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

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

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 (h) This section shall remain in effect only until January 1, ~~2012~~
21 ~~2014~~, and as of that date is repealed, unless a later enacted statute,
22 that is enacted before that date, deletes or extends that date.

23 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
24 *3 of Chapter 136 of the Statutes of 2011, is amended to read:*

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

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

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

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

38 (b) When a judgment of imprisonment is to be imposed and the
39 statute specifies three possible terms, the choice of the appropriate
40 term shall rest within the sound discretion of the court. At least

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

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

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

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

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

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

11 (ii) 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 (iii) The defendant committed the offense with at least one adult
16 codefendant.

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

23 (C) If any of the information required in subparagraph (B) is
24 missing from the petition, or if proof of service on the prosecuting
25 agency is not provided, the court shall return the petition to the
26 defendant and advise the defendant that the matter cannot be
27 considered without the missing information.

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

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

1 (F) 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 (i) The defendant was convicted pursuant to felony murder or
5 aiding and abetting murder provisions of law.

6 (ii) 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 (iii) The defendant committed the offense with at least one adult
11 codefendant.

12 (iv) 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 (v) 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 involvement
19 in the offense.

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

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

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

3 (H) 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 20 years. If recall and resentencing is not
7 granted under that petition, the defendant may file another petition
8 after having served 24 years. The final petition may be submitted,
9 and the response to that petition shall be determined, during the
10 25th year of the defendant's sentence.

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

16 (J) This subdivision shall have retroactive application.

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

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

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

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

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

38 The Board of Parole Hearings shall make findings pursuant to
39 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner
2 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

1 paragraph (2) and make findings related thereto before rejecting
2 the request or making a recommendation to the court. This action
3 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

27 (f) Notwithstanding any other provision of this section, for
28 purposes of paragraph (3) of subdivision (h), any allegation that
29 a defendant is eligible for state prison due to a prior or current
30 conviction, sentence enhancement, or because he or she is required
31 to register as a sex offender shall not be subject to dismissal
32 pursuant to Section 1385.

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

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

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

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

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

17 (5) A judge, when imposing a sentence pursuant to paragraph
18 (1), may order the defendant to serve a term in a county jail for a
19 period not to exceed the maximum possible term of confinement
20 or may impose a sentence that includes a period of county jail time
21 and a period of mandatory probation not to exceed the maximum
22 possible sentence.

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

26 (i) This section shall remain in effect only until January 1, ~~2012~~
27 ~~2014~~, and as of that date is repealed, unless a later enacted statute,
28 that is enacted before that date, deletes or extends that date.

29 **SECTION 1.**

30 **SEC. 3.** Section 1170 of the Penal Code, as amended by Section
31 6 of Chapter 256 of the Statutes of 2010, is amended to read:

32 1170. (a) (1) The Legislature finds and declares that the
33 purpose of imprisonment for crime is punishment. This purpose
34 is best served by terms proportionate to the seriousness of the
35 offense with provision for uniformity in the sentences of offenders
36 committing the same offense under similar circumstances. The
37 Legislature further finds and declares that the elimination of
38 disparity and the provision of uniformity of sentences can best be
39 achieved by determinate sentences fixed by statute in proportion

1 to the seriousness of the offense as determined by the Legislature
2 to be imposed by the court with specified discretion.

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

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

1 residence, unless the in-custody credits equal the total sentence,
2 including both confinement time and the period of parole. The
3 sentence shall be deemed a separate prior prison term under Section
4 667.5, and a copy of the judgment and other necessary
5 documentation shall be forwarded to the secretary.

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

27 (c) The court shall state the reasons for its sentence choice on
28 the record at the time of sentencing. The court shall also inform
29 the defendant that as part of the sentence after expiration of the
30 term he or she may be on parole for a period as provided in Section
31 3000.

32 (d) (1) When a defendant subject to this section or subdivision
33 (b) of Section 1168 has been sentenced to be imprisoned in the
34 state prison and has been committed to the custody of the secretary,
35 the court may, within 120 days of the date of commitment on its
36 own motion, or at any time upon the recommendation of the
37 secretary or the Board of Parole Hearings, recall the sentence and
38 commitment previously ordered and resentence the defendant in
39 the same manner as if he or she had not previously been sentenced,
40 provided the new sentence, if any, is no greater than the initial

1 sentence. The court resentencing under this subdivision shall apply
2 the sentencing rules of the Judicial Council so as to eliminate
3 disparity of sentences and to promote uniformity of sentencing.
4 Credit shall be given for time served.

5 (2) (A) When a defendant who was under 18 years of age at
6 the time of the commission of the offense for which the defendant
7 was sentenced to imprisonment for life without the possibility of
8 parole has served at least 15 years of that sentence, the defendant
9 may submit to the sentencing court a petition for recall and
10 ~~resentencing. resentencing provided that defendants who entered~~
11 ~~custody on or after January 1, 1992, but prior to July 1, 2002, shall~~
12 ~~be permitted to submit a petition for recall and resentencing only~~
13 ~~as follows:~~

14 (i) ~~Those defendants who entered custody prior to January 1,~~
15 ~~1994, may submit a petition in the 2011–12 fiscal year.~~

16 (ii) ~~Those defendants who entered custody on or after January~~
17 ~~1, 1994, but prior to January 1, 1995, may submit a petition in the~~
18 ~~2012–13 fiscal year.~~

19 (iii) ~~Those defendants who entered custody on or after January~~
20 ~~1, 1995, but prior to January 1, 1996, and those who entered~~
21 ~~custody on or after January 1, 2000, but prior to January 1, 2001,~~
22 ~~may submit a petition in the 2013–14 fiscal year.~~

23 (iv) ~~Those defendants who entered custody on or after January~~
24 ~~1, 1996, but prior to July 1, 1996, and those who entered custody~~
25 ~~on or after January 1, 2001, but prior to May 1, 2001, may submit~~
26 ~~a petition in the 2014–15 fiscal year.~~

27 (v) ~~Those defendants who entered custody on or after July 1,~~
28 ~~1996, but prior to January 1, 1997, and those who entered custody~~
29 ~~on or after May 1, 2001, but prior to January 1, 2002, may submit~~
30 ~~a petition in the 2015–16 fiscal year.~~

31 (vi) ~~Those defendants who entered custody on or after January~~
32 ~~1, 1997, but prior to July 1, 1997, and those who entered custody~~
33 ~~on or after January 1, 2002, but prior to July 1, 2002, may submit~~
34 ~~a petition in the 2016–17 fiscal year.~~

35 (vii) ~~Those defendants who entered custody on or after July 1,~~
36 ~~1997, but prior to January 1, 1998, may submit a petition in the~~
37 ~~2017–18 fiscal year.~~

38 (viii) ~~Those defendants who entered custody on or after January~~
39 ~~1, 1998, but prior to July 1, 1998, may submit a petition in the~~
40 ~~2018–19 fiscal year.~~

1 ~~(ix) Those defendants who entered custody on or after July 1,~~
2 ~~1998, but prior to January 1, 1999, may submit a petition in the~~
3 ~~2019–20 fiscal year.~~

4 ~~(x) Those defendants who entered custody on or after January~~
5 ~~1, 1999, but prior to July 1, 1999, may submit a petition in the~~
6 ~~2020–21 fiscal year.~~

7 ~~(xi) Those defendants who entered custody on or after July 1,~~
8 ~~1999, but prior to January 1, 2000, may submit a petition in the~~
9 ~~2021–22 fiscal year.~~

10 ~~(xii) If recall and resentencing is not granted under petitions~~
11 ~~permitted in clauses (i) to (xi), inclusive, defendants who entered~~
12 ~~custody on or after January 1, 1992, but prior to January 1, 2000,~~
13 ~~may submit a second and final petition after having served 24~~
14 ~~years. The final petition may be submitted, and the response to~~
15 ~~that petition shall be determined, during the 25th year of the~~
16 ~~defendant’s sentence. If recall and resentencing is not granted~~
17 ~~under petitions permitted in clauses (i) to (vi), inclusive, defendants~~
18 ~~who entered custody on or after January 1, 2000, but prior to July~~
19 ~~1, 2002, may submit petitions as described in subparagraph (H).~~

20 (B) The defendant shall file the original petition with the
21 sentencing court. A copy of the petition shall be served on the
22 agency that prosecuted the case. The petition shall include the
23 defendant’s statement that he or she was under 18 years of age at
24 the time of the crime and was sentenced to life in prison without
25 the possibility of parole, the defendant’s statement describing his
26 or her remorse and work towards rehabilitation, and the defendant’s
27 statement that one of the following is true:

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

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

34 (iii) The defendant committed the offense with at least one adult
35 codefendant.

36 (iv) The defendant has performed acts that tend to indicate
37 rehabilitation or the potential for rehabilitation, including, but not
38 limited to, availing himself or herself of rehabilitative, educational,
39 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

3 (C) If any of the information required in subparagraph (B) is
4 missing from the petition, or if proof of service on the prosecuting
5 agency is not provided, the court shall return the petition to the
6 defendant and advise the defendant that the matter cannot be
7 considered without the missing information.

8 (D) A reply to the petition, if any, shall be filed with the court
9 within 60 days of the date on which the prosecuting agency was
10 served with the petition, unless a continuance is granted for good
11 cause.

12 (E) If the court finds by a preponderance of the evidence that
13 the statements in the petition are true, the court shall hold a hearing
14 to consider whether to recall the sentence and commitment
15 previously ordered and to resentence the defendant in the same
16 manner as if the defendant had not previously been sentenced,
17 provided that the new sentence, if any, is not greater than the initial
18 sentence. Victims, or victim family members if the victim is
19 deceased, shall retain the rights to participate in the hearing.

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

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

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

29 (iii) The defendant committed the offense with at least one adult
30 codefendant.

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

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

39 (vi) The defendant has performed acts that tend to indicate
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,
2 or vocational programs, if those programs have been available at
3 his or her classification level and facility, using self-study for
4 self-improvement, or showing evidence of remorse.

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

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

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

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

34 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall
2 and resentencing proceedings.

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

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

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

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

38 (10) The secretary shall issue a directive to medical and
39 correctional staff employed by the department that details the
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who
2 is given a prognosis of six months or less to live is eligible for
3 recall and resentencing consideration, and that recall and
4 resentencing procedures shall be initiated upon that prognosis.

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

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

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

12 SEC. 2. ~~Section 1170 of the Penal Code, as amended by Section~~
13 ~~451 of Chapter 15 of the Statutes of 2011, is amended to 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, except as
14 provided in paragraph (2) of subdivision (d). In any case in which
15 the amount of preimprisonment credit under Section 2900.5 or any
16 other provision of law is equal to or exceeds any sentence imposed
17 pursuant to this chapter, the entire sentence shall be deemed to
18 have been served and the defendant shall not be actually delivered
19 to the custody of the secretary. The court shall advise the defendant
20 that he or she shall serve a period of parole and order the defendant
21 to report to the parole office closest to the defendant's last legal
22 residence, unless the in-custody credits equal the total sentence,
23 including both confinement time and the period of parole. The
24 sentence shall be deemed a separate prior prison term under Section
25 667.5, and a copy of the judgment and other necessary
26 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 court shall order
29 imposition of the middle term, unless there are circumstances in
30 aggravation or mitigation of the crime. At least four days prior to
31 the time set for imposition of judgment, either party or the victim,
32 or the family of the victim if the victim is deceased, may submit
33 a statement in aggravation or mitigation to dispute facts in the
34 record or the probation officer's report, or to present additional
35 facts. In determining whether there are circumstances that justify
36 imposition of the upper or lower term, the court may consider the
37 record in the case, the probation officer's report, other reports,
38 including reports received pursuant to Section 1203.03, and
39 statements in aggravation or mitigation submitted by the
40 prosecution, the defendant, or the victim, or the family of the victim

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

8 (c) The court shall state the reasons for its sentence choice on
9 the record at the time of sentencing. The court shall also inform
10 the defendant that as part of the sentence after expiration of the
11 term he or she may be on parole for a period as provided in Section
12 3000.

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

26 (2) (A) When a defendant who was under 18 years of age at
27 the time of the commission of the offense for which the defendant
28 was sentenced to imprisonment for life without the possibility of
29 parole has served at least 15 years of that sentence, the defendant
30 may submit to the sentencing court a petition for recall and
31 resentencing provided that defendants who entered custody on or
32 after January 1, 1992, but prior to July 1, 2002, shall be permitted
33 to submit a petition for recall and resentencing only as follows:

34 (i) Those defendants who entered custody prior to January 1,
35 1994, may submit a petition in the 2011–12 fiscal year.

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

39 (iii) Those defendants who entered custody on or after January
40 1, 1995, but prior to January 1, 1996, and those who entered

1 custody on or after January 1, 2000, but prior to January 1, 2001,
2 may submit a petition in the 2013–14 fiscal year.

3 (iv) Those defendants who entered custody on or after January
4 1, 1996, but prior to July 1, 1996, and those who entered custody
5 on or after January 1, 2001, but prior to May 1, 2001, may submit
6 a petition in the 2014–15 fiscal year.

7 (v) Those defendants who entered custody on or after July 1,
8 1996, but prior to January 1, 1997, and those who entered custody
9 on or after May 1, 2001, but prior to January 1, 2002, may submit
10 a petition in the 2015–16 fiscal year.

11 (vi) Those defendants who entered custody on or after January
12 1, 1997, but prior to July 1, 1997, and those who entered custody
13 on or after January 1, 2002, but prior to July 1, 2002, may submit
14 a petition in the 2016–17 fiscal year.

15 (vii) Those defendants who entered custody on or after July 1,
16 1997, but prior to January 1, 1998, may submit a petition in the
17 2017–18 fiscal year.

18 (viii) Those defendants who entered custody on or after January
19 1, 1998, but prior to July 1, 1998, may submit a petition in the
20 2018–19 fiscal year.

21 (ix) Those defendants who entered custody on or after July 1,
22 1998, but prior to January 1, 1999, may submit a petition in the
23 2019–20 fiscal year.

24 (x) Those defendants who entered custody on or after January
25 1, 1999, but prior to July 1, 1999, may submit a petition in the
26 2020–21 fiscal year.

27 (xi) Those defendants who entered custody on or after July 1,
28 1999, but prior to January 1, 2000, may submit a petition in the
29 2021–22 fiscal year.

30 (xii) If recall and resentencing is not granted under petitions
31 permitted in clauses (i) to (xi), inclusive, defendants who entered
32 custody on or after January 1, 1992, but prior to January 1, 2000,
33 may submit a second and final petition after having served 24
34 years. The final petition may be submitted, and the response to
35 that petition shall be determined, during the 25th year of the
36 defendant's sentence. If recall and resentencing is not granted
37 under petitions permitted in clauses (i) to (vi), inclusive, defendants
38 who entered custody on or after January 1, 2000, but prior to July
39 1, 2002, may submit petitions as described in subparagraph (H).

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

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

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

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

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

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

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

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

1 ~~(F) 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 ~~(i) The defendant was convicted pursuant to felony murder or~~
5 ~~aiding and abetting murder provisions of law.~~

6 ~~(ii) 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 ~~(iii) The defendant committed the offense with at least one adult~~
11 ~~codefendant.~~

12 ~~(iv) 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 ~~(v) 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 ~~(vi) 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 ~~(vii) 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 ~~(viii) 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 ~~(G) The court shall have the discretion to recall the sentence~~
34 ~~and commitment previously ordered and to resentence the~~
35 ~~defendant in the same manner as if the defendant had not~~
36 ~~previously been sentenced, provided that the new sentence, if any,~~
37 ~~is not greater than the initial sentence. The discretion of the court~~
38 ~~shall be exercised in consideration of the criteria in subparagraph~~
39 ~~(F). Victims, or victim family members if the victim is deceased,~~

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

3 (H) 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 20 years. If recall and resentencing is not
7 granted under that petition, the defendant may file another petition
8 after having served 24 years. The final petition may be submitted;
9 and the response to that petition shall be determined, during the
10 25th year of the defendant's sentence.

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

16 (J) This paragraph shall have retroactive application.

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

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

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

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

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

38 The Board of Parole Hearings shall make findings pursuant to
39 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner
2 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

1 paragraph (2) and make findings related thereto before rejecting
2 the request or making a recommendation to the court. This action
3 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

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

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

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

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

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

18 ~~SEC. 3. Section 2 of this bill incorporates amendments to~~
19 ~~Section 1170 of the Penal Code proposed by both this bill and AB~~
20 ~~109, which has been chaptered but is not operative. Section 2 shall~~
21 ~~become operative only if (a) this bill is enacted and becomes~~
22 ~~effective on or before January 1, 2012, (b) this bill amends Section~~
23 ~~1170 of the Penal Code, and (c) AB 109 becomes operative, in~~
24 ~~which case Section 1170 of the Penal Code, as amended by Section~~
25 ~~1 of this bill, shall remain operative only until the operative date~~
26 ~~of AB 109, at which time Section 2 of this bill shall become~~
27 ~~operative.~~

28 ~~SEC. 3.3. Section 1170 of the Penal Code, as amended by~~
29 ~~Section 4 of Chapter 136 of the Statutes of 2011, is amended to~~
30 ~~read:~~

31 ~~1170. (a) (1) The Legislature finds and declares that the~~
32 ~~purpose of imprisonment for crime is punishment. This purpose~~
33 ~~is best served by terms proportionate to the seriousness of the~~
34 ~~offense with provision for uniformity in the sentences of offenders~~
35 ~~committing the same offense under similar circumstances. The~~
36 ~~Legislature further finds and declares that the elimination of~~
37 ~~disparity and the provision of uniformity of sentences can best be~~
38 ~~achieved by determinate sentences fixed by statute in proportion~~
39 ~~to the seriousness of the offense as determined by the Legislature~~
40 ~~to be imposed by the court with specified discretion.~~

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

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, *except as provided in paragraph (2) of subdivision (d)*. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The

1 sentence shall be deemed a separate prior prison term under Section
2 667.5, and a copy of the judgment and other necessary
3 documentation shall be forwarded to the secretary.

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

25 (c) The court shall state the reasons for its sentence choice on
26 the record at the time of sentencing. The court shall also inform
27 the defendant that as part of the sentence after expiration of the
28 term he or she may be on parole for a period as provided in Section
29 3000.

30 (d) (1) When a defendant subject to this section or subdivision
31 (b) of Section 1168 has been sentenced to be imprisoned in the
32 state prison and has been committed to the custody of the secretary,
33 the court may, within 120 days of the date of commitment on its
34 own motion, or at any time upon the recommendation of the
35 secretary or the Board of Parole Hearings, recall the sentence and
36 commitment previously ordered and resentence the defendant in
37 the same manner as if he or she had not previously been sentenced,
38 provided the new sentence, if any, is no greater than the initial
39 sentence. ~~The sentence~~ *court resentencing* under this subdivision
40 shall apply the sentencing rules of the Judicial Council so as to

1 eliminate disparity of sentences and to promote uniformity of
2 sentencing. Credit shall be given for time served.

3 (2) (A) *When a defendant who was under 18 years of age at*
4 *the time of the commission of the offense for which the defendant*
5 *was sentenced to imprisonment for life without the possibility of*
6 *parole has served at least 15 years of that sentence, the defendant*
7 *may submit to the sentencing court a petition for recall and*
8 *resentencing.*

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

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

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

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

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

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

36 (D) *A reply to the petition, if any, shall be filed with the court*
37 *within 60 days of the date on which the prosecuting agency was*
38 *served with the petition, unless a continuance is granted for good*
39 *cause.*

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

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

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

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

18 (iii) The defendant committed the offense with at least one adult
19 codefendant.

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

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

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

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

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

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

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

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

23 (J) *This subdivision shall have retroactive application.*

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) Notwithstanding any other provision of this section, for
34 purposes of paragraph (3) of subdivision (h), any allegation that
35 a defendant is eligible for state prison due to a prior or current
36 conviction, sentence enhancement, or because he or she is required
37 to register as a sex offender shall not be subject to dismissal
38 pursuant to Section 1385.

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) A judge, when imposing a sentence pursuant to paragraph
25 (1), may order the defendant to serve a term in a county jail for a
26 period not to exceed the maximum possible term of confinement
27 or may impose a sentence which includes a period of county jail
28 time and a period of mandatory probation not to exceed the
29 maximum possible sentence.

30 (6) The sentencing changes made by the act that added this
31 subdivision shall be applied prospectively to any person sentenced
32 on or after October 1, 2011.

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

34 *SEC. 3.5 Section 1170 of the Penal Code, as amended by*
35 *Section 6 of Chapter 256 of the Statutes of 2010, is amended to*
36 *read:*

37 1170. (a) (1) The Legislature finds and declares that the
38 purpose of imprisonment for crime is punishment. This purpose
39 is best served by terms proportionate to the seriousness of the
40 offense with provision for uniformity in the sentences of offenders

1 committing the same offense under similar circumstances. The
2 Legislature further finds and declares that the elimination of
3 disparity and the provision of uniformity of sentences can best be
4 achieved by determinate sentences fixed by statute in proportion
5 to the seriousness of the offense as determined by the Legislature
6 to be imposed by the court with specified discretion.

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

19 (3) In any case in which the punishment prescribed by statute
20 for a person convicted of a public offense is a term of imprisonment
21 in the state prison of any specification of three time periods, the
22 court shall sentence the defendant to one of the terms of
23 imprisonment specified unless the convicted person is given any
24 other disposition provided by law, including a fine, jail, probation,
25 or the suspension of imposition or execution of sentence or is
26 sentenced pursuant to subdivision (b) of Section 1168 because he
27 or she had committed his or her crime prior to July 1, 1977. In
28 sentencing the convicted person, the court shall apply the
29 sentencing rules of the Judicial Council. The court, unless it
30 determines that there are circumstances in mitigation of the
31 punishment prescribed, shall also impose any other term that it is
32 required by law to impose as an additional term. Nothing in this
33 article shall affect any provision of law that imposes the death
34 penalty, that authorizes or restricts the granting of probation or
35 suspending the execution or imposition of sentence, or expressly
36 provides for imprisonment in the state prison for life, *except as*
37 *provided in paragraph (2) of subdivision (d)*. In any case in which
38 the amount of preimprisonment credit under Section 2900.5 or any
39 other provision of law is equal to or exceeds any sentence imposed
40 pursuant to this chapter, the entire sentence shall be deemed to

1 have been served and the defendant shall not be actually delivered
2 to the custody of the secretary. The court shall advise the defendant
3 that he or she shall serve a period of parole and order the defendant
4 to report to the parole office closest to the defendant's last legal
5 residence, unless the in-custody credits equal the total sentence,
6 including both confinement time and the period of parole. The
7 sentence shall be deemed a separate prior prison term under Section
8 667.5, and a copy of the judgment and other necessary
9 documentation shall be forwarded to the secretary.

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

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

36 (d) (1) When a defendant subject to this section or subdivision
37 (b) of Section 1168 has been sentenced to be imprisoned in the
38 state prison and has been committed to the custody of the secretary,
39 the court may, within 120 days of the date of commitment on its
40 own motion, or at any time upon the recommendation of the

1 secretary or the Board of Parole Hearings, recall the sentence and
2 commitment previously ordered and resentence the defendant in
3 the same manner as if he or she had not previously been sentenced,
4 provided the new sentence, if any, is no greater than the initial
5 sentence. The ~~resentence~~ *court resentencing* under this subdivision
6 shall apply the sentencing rules of the Judicial Council so as to
7 eliminate disparity of sentences and to promote uniformity of
8 sentencing. Credit shall be given for time served.

9 (2) (A) *When a defendant who was under 18 years of age at*
10 *the time of the commission of the offense for which the defendant*
11 *was sentenced to imprisonment for life without the possibility of*
12 *parole has served at least 15 years of that sentence, the defendant*
13 *may submit to the sentencing court a petition for recall and*
14 *resentencing.*

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

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

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

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

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

37 (C) *If any of the information required in subparagraph (B) is*
38 *missing from the petition, or if proof of service on the prosecuting*
39 *agency is not provided, the court shall return the petition to the*

1 defendant and advise the defendant that the matter cannot be
2 considered without the missing information.

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

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

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

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

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

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

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

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

1 (vii) *The defendant has maintained family ties or connections*
2 *with others through letter writing, calls, or visits, or has eliminated*
3 *contact with individuals outside of prison who are currently*
4 *involved with crime.*

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

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

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

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

30 (J) *This subdivision shall have retroactive application.*

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

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

39 (A) *The prisoner is terminally ill with an incurable condition*
40 *caused by an illness or disease that would produce death within*

1 six months, as determined by a physician employed by the
2 department.

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

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

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

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

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

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

38 (6) Notwithstanding any other provisions of this section, the
39 prisoner or his or her family member or designee may
40 independently request consideration for recall and resentencing

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

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

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

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

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

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

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

7 (h) This section shall become operative on January 1, ~~2012~~
8 2014.

9 *SEC. 3.7. Section 1170 of the Penal Code, as amended by*
10 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*
11 *read:*

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

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

34 (3) In any case in which the punishment prescribed by statute
35 for a person convicted of a public offense is a term of imprisonment
36 in the state prison of any specification of three time periods, the
37 court shall sentence the defendant to one of the terms of
38 imprisonment specified unless the convicted person is given any
39 other disposition provided by law, including a fine, jail, probation,
40 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 paragraph (2) of subdivision (d)*. In any case in which
13 the amount of preimprisonment credit under Section 2900.5 or any
14 other provision of law is equal to or exceeds any sentence imposed
15 pursuant to this chapter, the entire sentence shall be deemed to
16 have been served and the defendant shall not be actually delivered
17 to the custody of the secretary. The court shall advise the defendant
18 that he or she shall serve a period of parole and order the defendant
19 to 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 court shall order
27 imposition of the middle term, unless there are circumstances in
28 aggravation or mitigation of the crime. At least four days prior to
29 the time set for imposition of judgment, either party or the victim,
30 or the family of the victim if the victim is deceased, may submit
31 a statement in aggravation or mitigation to dispute facts in the
32 record or the probation officer's report, or to present additional
33 facts. In determining whether there are circumstances that justify
34 imposition of the upper or lower term, the court may consider the
35 record in the case, the probation officer's report, other reports,
36 including reports received pursuant to Section 1203.03, and
37 statements in aggravation or mitigation submitted by the
38 prosecution, the defendant, or the victim, or the family of the victim
39 if the victim is deceased, and any further evidence introduced at
40 the sentencing hearing. The court shall set forth on the record the

1 facts and reasons for imposing the upper or lower term. The court
2 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) (1) When a defendant subject to this section or subdivision
12 (b) of Section 1168 has been sentenced to be imprisoned in the
13 state prison and has been committed to the custody of the secretary,
14 the court may, within 120 days of the date of commitment on its
15 own motion, or at any time upon the recommendation of the
16 secretary 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 court resentencing~~ under this subdivision
21 shall apply the sentencing rules of the Judicial Council so as to
22 eliminate disparity of sentences and to promote uniformity of
23 sentencing. Credit shall be given for time served.

24 (2) (A) *When a defendant who was under 18 years of age at*
25 *the time of the commission of the offense for which the defendant*
26 *was sentenced to imprisonment for life without the possibility of*
27 *parole has served at least 15 years of that sentence, the defendant*
28 *may submit to the sentencing court a petition for recall and*
29 *resentencing.*

30 (B) *The defendant shall file the original petition with the*
31 *sentencing court. A copy of the petition shall be served on the*
32 *agency that prosecuted the case. The petition shall include the*
33 *defendant's statement that he or she was under 18 years of age at*
34 *the time of the crime and was sentenced to life in prison without*
35 *the possibility of parole, the defendant's statement describing his*
36 *or her remorse and work towards rehabilitation, and the*
37 *defendant's statement that one of the following is true:*

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

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

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

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

13 (C) If any of the information required in subparagraph (B) is
14 missing from the petition, or if proof of service on the prosecuting
15 agency is not provided, the court shall return the petition to the
16 defendant and advise the defendant that the matter cannot be
17 considered without the missing information.

18 (D) A reply to the petition, if any, shall be filed with the court
19 within 60 days of the date on which the prosecuting agency was
20 served with the petition, unless a continuance is granted for good
21 cause.

22 (E) If the court finds by a preponderance of the evidence that
23 the statements in the petition are true, the court shall hold a
24 hearing to consider whether to recall the sentence and commitment
25 previously ordered and to resentence the defendant in the same
26 manner as if the defendant had not previously been sentenced,
27 provided that the new sentence, if any, is not greater than the initial
28 sentence. Victims, or victim family members if the victim is
29 deceased, shall retain the rights to participate in the hearing.

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

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

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

39 (iii) The defendant committed the offense with at least one adult
40 codefendant.

1 (iv) Prior to the offense for which the sentence is being
2 considered for recall, the defendant had insufficient adult support
3 or supervision and had suffered from psychological or physical
4 trauma, or significant stress.

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

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

15 (vii) The defendant has maintained family ties or connections
16 with others through letter writing, calls, or visits, or has eliminated
17 contact with individuals outside of prison who are currently
18 involved with crime.

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

22 (G) The court shall have the discretion to recall the sentence
23 and commitment previously ordered and to resentence the
24 defendant in the same manner as if the defendant had not
25 previously been sentenced, provided that the new sentence, if any,
26 is not greater than the initial sentence. The discretion of the court
27 shall be exercised in consideration of the criteria in subparagraph
28 (B). Victims, or victim family members if the victim is deceased,
29 shall be notified of the resentencing hearing and shall retain their
30 rights to participate in the hearing.

31 (H) If the sentence is not recalled, the defendant may submit
32 another petition for recall and resentencing to the sentencing court
33 when the defendant has been committed to the custody of the
34 department for at least 20 years. If recall and resentencing is not
35 granted under that petition, the defendant may file another petition
36 after having served 24 years. The final petition may be submitted,
37 and the response to that petition shall be determined, during the
38 25th year of the defendant's sentence.

39 (I) In addition to the criteria in subparagraph (F), the court
40 may consider any other criteria that the court deems relevant to

1 *its decision, so long as the court identifies them on the record,*
2 *provides a statement of reasons for adopting them, and states why*
3 *the defendant does or does not satisfy the criteria.*

4 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

1 as to the prisoner's medical condition and prognosis, and as to the
2 recall and resentencing procedures. If the inmate is deemed
3 mentally unfit, the warden or the warden's representative shall
4 contact the inmate's emergency contact and provide the information
5 described in paragraph (2).

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

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

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

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

37 (9) If the court grants the recall and resentencing application,
38 the prisoner shall be released by the department within 48 hours
39 of receipt of the court's order, unless a longer time period is agreed
40 to by the inmate. At the time of release, the warden or the warden's

1 representative shall ensure that the prisoner has each of the
2 following in his or her possession: a discharge medical summary,
3 full medical records, state identification, parole medications, and
4 all property belonging to the prisoner. After discharge, any
5 additional records shall be sent to the prisoner's forwarding
6 address.

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

14 (f) Notwithstanding any other provision of this section, for
15 purposes of paragraph (3) of subdivision (h), any allegation that
16 a defendant is eligible for state prison due to a prior or current
17 conviction, sentence enhancement, or because he or she is required
18 to register as a sex offender shall not be subject to dismissal
19 pursuant to Section 1385.

20 (g) A sentence to state prison for a determinate term for which
21 only one term is specified, is a sentence to state prison under this
22 section.

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

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

30 (3) Notwithstanding paragraphs (1) and (2), where the defendant
31 has a prior or current felony conviction for a serious felony
32 described in subdivision (c) of Section 1192.7, a violent felony
33 described in subdivision (c) of Section 667.5, is required to register
34 as a sex offender pursuant to Chapter 5.5 (commencing with
35 Section 290) of Title 9 of Part 1, or is convicted of a crime and as
36 part of the sentence an enhancement pursuant to Section 186.11
37 is imposed, an executed sentence for a felony punishable pursuant
38 to this subdivision shall be served in state prison.

39 (4) Nothing in this subdivision shall be construed to prevent
40 other dispositions authorized by law, including pretrial diversion,

1 deferred entry of judgment, or an order granting probation pursuant
2 to Section 1203.1.

3 (5) A judge, when imposing a sentence pursuant to paragraph
4 (1), may order the defendant to serve a term in a county jail for a
5 period not to exceed the maximum possible term of confinement
6 or may impose a sentence which includes a period of county jail
7 time and a period of mandatory probation not to exceed the
8 maximum possible sentence.

9 (6) The sentencing changes made by the act that added this
10 subdivision shall be applied prospectively to any person sentenced
11 on or after October 1, 2011.

12 (i) This section shall become operative on January 1, ~~2012~~ 2014.

13 *SEC. 4. (a) Section 1 of this bill incorporates amendments to*
14 *Section 1170 of the Penal Code proposed by both this bill and SB*
15 *576. It shall only become operative if (1) both bills are enacted*
16 *and become effective on or before January 1, 2012, (2) each bill*
17 *amends Section 1170 of the Penal Code, and (3) AB 116, which*
18 *has been chaptered but is not operative, does not become operative,*
19 *and (4) this bill is enacted after SB 576, in which case Section 1*
20 *of this bill shall remain operative only until the operative date of*
21 *AB 116, at which time Section 2 shall become operative.*

22 *(b) Section 2 of this bill incorporates amendments to Section*
23 *1170 of the Penal Code proposed by this bill, SB 576, and AB 116,*
24 *which is chaptered but is not operative. It shall only become*
25 *operative if (1) this bill and SB 576 are enacted and become*
26 *effective on or before January 1, 2012, (2) AB 116 becomes*
27 *operative, (3) all three bills amend Section 1170 of the Penal Code,*
28 *and (3) this bill is enacted after SB 576, in which case Section 1*
29 *of this bill shall not become operative or shall cease to be operative*
30 *upon the operative date of AB 116.*

31 *SEC. 5. (a) Section 3.3 of this bill incorporates amendments*
32 *to Section 1170 of the Penal Code proposed by both this bill and*
33 *AB 116, which has been chaptered but is not operative. It shall*
34 *only become operative if (1) this bill is enacted and becomes*
35 *effective on or before January 1, 2012, (2) each bill amends Section*
36 *1170 of the Penal Code, and (3) SB 576 is not enacted or as*
37 *enacted does not amend that section, and (4) AB 116 becomes*
38 *operative, in which case Sections 3.5 and 3.7 of this bill shall not*
39 *become operative and Section 3 of this bill shall remain operative*

1 only until the operative date of AB 116, at which time Section 3.3
2 of this bill shall become operative.

3 (b) Section 3.5 of this bill incorporates amendments to Section
4 1170 of the Penal Code proposed by both this bill and SB 576. It
5 shall only become operative if (1) both bills are enacted and
6 become effective on or before January 1, 2012, (2) each bill
7 amends Section 1170 of the Penal Code, (3) AB 116 does not
8 become operative, and (4) this bill is enacted after SB 9 in which
9 case Sections 3, 3.3 and 3.7 of this bill shall not become operative.

10 (c) Section 3.7 of this bill incorporates amendments to Section
11 1170 of the Penal Code proposed by this bill, SB 576, and AB 116,
12 which has been chaptered but is not operative. It shall only become
13 operative if (1) this bill and SB 576 are enacted and become
14 effective on or before January 1, 2012, (2) AB 116 becomes
15 operative, (3) all three bills amend Section 1170 of the Penal Code,
16 and (4) this bill is enacted after SB 576, in which case Sections 3,
17 3.3 and 3.5 of this bill shall not become operative.