

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

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 prohibit a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from filing a petition for recall and resentencing.* 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 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.

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

32 (b) When a judgment of imprisonment is to be imposed and the
33 statute specifies three possible terms, the choice of the appropriate
34 term shall rest within the sound discretion of the court. At least
35 four days prior to the time set for imposition of judgment, either
36 party or the victim, or the family of the victim if the victim is
37 deceased, may submit a statement in aggravation or mitigation. In
38 determining the appropriate term, the court may consider the record
39 in the case, the probation officer's report, other reports, including
40 reports received pursuant to Section 1203.03, and statements in

1 aggravation or mitigation submitted by the prosecution, the
2 defendant, or the victim, or the family of the victim if the victim
3 is deceased, and any further evidence introduced at the sentencing
4 hearing. The court shall select the term which, in the court's
5 discretion, best serves the interests of justice. The court shall set
6 forth on the record the reasons for imposing the term selected and
7 the court may not impose an upper term by using the fact of any
8 enhancement upon which sentence is imposed under any provision
9 of law. A term of imprisonment shall not be specified if imposition
10 of sentence is suspended.

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

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

29 (2) (A) (i) When a defendant who was under 18 years of age
30 at the time of the commission of the offense for which the
31 defendant was sentenced to imprisonment for life without the
32 possibility of parole has served at least 15 years of that sentence,
33 the defendant may submit to the sentencing court a petition for
34 recall and resentencing.

35 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
36 *to defendants sentenced to life without parole for an offense where*
37 *the defendant tortured, as described in Section 206, his or her*
38 *victim or the victim was a public safety official, including any law*
39 *enforcement personnel mentioned in Chapter 4.5 (commencing*
40 *with Section 830) of Title 3, or any firefighter as described in*

1 *Section 245.1, as well as any other officer in any segment of law*
2 *enforcement who is employed by the federal government, the state,*
3 *or any of its political subdivisions.*

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

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

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

35 (E) If the court finds by a preponderance of the evidence that
36 the statements in the petition are true, the court shall hold a hearing
37 to consider whether to recall the sentence and commitment
38 previously ordered and to resentence the defendant in the same
39 manner as if the defendant had not previously been sentenced,
40 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

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

1 (B). Victims, or victim family members if the victim is deceased,
2 shall be notified of the resentencing hearing and shall retain their
3 rights to participate in the hearing.

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

39 The Board of Parole Hearings shall make findings pursuant to
40 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) This section shall remain in effect only until January 1, 2014,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before that date, deletes or extends that date.

36 SEC. 2. Section 1170 of the Penal Code, as amended by Section
37 3 of Chapter 136 of the Statutes of 2011, is amended to read:

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

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

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

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

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

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

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

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

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

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

14 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
15 *to defendants sentenced to life without parole for an offense where*
16 *the defendant tortured, as described in Section 206, his or her*
17 *victim or the victim was a public safety official, including any law*
18 *enforcement personnel mentioned in Chapter 4.5 (commencing*
19 *with Section 830) of Title 3, or any firefighter as described in*
20 *Section 245.1, as well as any other officer in any segment of law*
21 *enforcement who is employed by the federal government, the state,*
22 *or any of its political subdivisions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (J) This subdivision shall have retroactive application.

37 (e) (1) Notwithstanding any other law and consistent with
38 paragraph (1) of subdivision (a), if the secretary or the Board of
39 Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may
2 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

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

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

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

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

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

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

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

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

14 (g) A sentence to state prison for a determinate term for which
15 only one term is specified, is a sentence to state prison under this
16 section.

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

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

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

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

37 (5) A judge, when imposing a sentence pursuant to paragraph
38 (1), may order the defendant to serve a term in a county jail for a
39 period not to exceed the maximum possible term of confinement
40 or may impose a sentence that includes a period of county jail time

1 and a period of mandatory probation not to exceed the maximum
2 possible sentence.

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

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

9 SEC. 3. Section 1170 of the Penal Code, as amended by Section
10 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

33 (3) In any case in which the punishment prescribed by statute
34 for a person convicted of a public offense is a term of imprisonment
35 in the state prison of any specification of three time periods, the
36 court shall sentence the defendant to one of the terms of
37 imprisonment specified unless the convicted person is given any
38 other disposition provided by law, including a fine, jail, probation,
39 or the suspension of imposition or execution of sentence or is
40 sentenced pursuant to subdivision (b) of Section 1168 because he

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

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

1 may not impose an upper term by using the fact of any
2 enhancement upon which sentence is imposed under any provision
3 of law. A term of imprisonment shall not be specified if imposition
4 of sentence is suspended.

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

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

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

29 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
30 *to defendants sentenced to life without parole for an offense where*
31 *the defendant tortured, as described in Section 206, his or her*
32 *victim or the victim was a public safety official, including any law*
33 *enforcement personnel mentioned in Chapter 4.5 (commencing*
34 *with Section 830) of Title 3, or any firefighter as described in*
35 *Section 245.1, as well as any other officer in any segment of law*
36 *enforcement who is employed by the federal government, the state,*
37 *or any of its political subdivisions.*

38 (B) The defendant shall file the original petition with the
39 sentencing court. A copy of the petition shall be served on the
40 agency that prosecuted the case. The petition shall include the

1 defendant's statement that he or she was under 18 years of age at
2 the time of the crime and was sentenced to life in prison without
3 the possibility of parole, the defendant's statement describing his
4 or her remorse and work towards rehabilitation, and the defendant's
5 statement that one of the following is true:

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

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

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

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

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

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

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

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

- 1 (i) The defendant was convicted pursuant to felony murder or
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications
4 for assault or other felony crimes with a significant potential for
5 personal harm to victims prior to the offense for which the sentence
6 is being considered for recall.
- 7 (iii) The defendant committed the offense with at least one adult
8 codefendant.
- 9 (iv) Prior to the offense for which the sentence is being
10 considered for recall, the defendant had insufficient adult support
11 or supervision and had suffered from psychological or physical
12 trauma, or significant stress.
- 13 (v) The defendant suffers from cognitive limitations due to
14 mental illness, developmental disabilities, or other factors that did
15 not constitute a defense, but influenced the defendant's
16 involvement in the offense.
- 17 (vi) The defendant has performed acts that tend to indicate
18 rehabilitation or the potential for rehabilitation, including, but not
19 limited to, availing himself or herself of rehabilitative, educational,
20 or vocational programs, if those programs have been available at
21 his or her classification level and facility, using self-study for
22 self-improvement, or showing evidence of remorse.
- 23 (vii) The defendant has maintained family ties or connections
24 with others through letter writing, calls, or visits, or has eliminated
25 contact with individuals outside of prison who are currently
26 involved with crime.
- 27 (viii) The defendant has had no disciplinary actions for violent
28 activities in the last five years in which the defendant was
29 determined to be the aggressor.
- 30 (G) The court shall have the discretion to recall the sentence
31 and commitment previously ordered and to resentence the
32 defendant in the same manner as if the defendant had not
33 previously been sentenced, provided that the new sentence, if any,
34 is not greater than the initial sentence. The discretion of the court
35 shall be exercised in consideration of the criteria in subparagraph
36 (B). Victims, or victim family members if the victim is deceased,
37 shall be notified of the resentencing hearing and shall retain their
38 rights to participate in the hearing.
- 39 (H) If the sentence is not recalled, the defendant may submit
40 another petition for recall and resentencing to the sentencing court

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

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

12 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

39 (7) Any recommendation for recall submitted to the court by
40 the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant
2 to paragraph (2).

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

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

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

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

25 (g) A sentence to state prison for a determinate term for which
26 only one term is specified, is a sentence to state prison under this
27 section.

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

29 SEC. 3.3. Section 1170 of the Penal Code, as amended by
30 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
31 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) (i) When a defendant who was under 18 years of age
6 at the time of the commission of the offense for which the
7 defendant was sentenced to imprisonment for life without the
8 possibility of parole has served at least 15 years of that sentence,
9 the defendant may submit to the sentencing court a petition for
10 recall and resentencing.

11 *(ii) Notwithstanding clause (i), paragraph (2) shall not apply*
12 *to defendants sentenced to life without parole for an offense where*
13 *the defendant tortured, as described in Section 206, his or her*
14 *victim or the victim was a public safety official, including any law*
15 *enforcement personnel mentioned in Chapter 4.5 (commencing*
16 *with Section 830) of Title 3, or any firefighter as described in*
17 *Section 245.1, as well as any other officer in any segment of law*
18 *enforcement who is employed by the federal government, the state,*
19 *or any of its political subdivisions.*

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.

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

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

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

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

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

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

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

37 (5) The warden or the warden's representative shall provide the
38 prisoner and his or her family member, agent, or emergency
39 contact, as described in paragraph (4), updated information
40 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) Notwithstanding any other provision of this section, for
6 purposes of paragraph (3) of subdivision (h), any allegation that
7 a defendant is eligible for state prison due to a prior or current
8 conviction, sentence enhancement, or because he or she is required
9 to register as a sex offender shall not be subject to dismissal
10 pursuant to Section 1385.

11 (g) A sentence to state prison for a determinate term for which
12 only one term is specified, is a sentence to state prison under this
13 section.

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

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

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

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

34 (5) A judge, when imposing a sentence pursuant to paragraph
35 (1), may order the defendant to serve a term in a county jail for a
36 period not to exceed the maximum possible term of confinement
37 or may impose a sentence which includes a period of county jail
38 time and a period of mandatory probation not to exceed the
39 maximum possible sentence.

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

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

5 SEC. 3.5. Section 1170 of the Penal Code, as amended by
6 Section 6 of Chapter 256 of the Statutes of 2010, is amended to
7 read:

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

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

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

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

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

1 of law. A term of imprisonment shall not be specified if imposition
2 of sentence is suspended.

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

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

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

27 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
28 *to defendants sentenced to life without parole for an offense where*
29 *the defendant tortured, as described in Section 206, his or her*
30 *victim or the victim was a public safety official, including any law*
31 *enforcement personnel mentioned in Chapter 4.5 (commencing*
32 *with Section 830) of Title 3, or any firefighter as described in*
33 *Section 245.1, as well as any other officer in any segment of law*
34 *enforcement who is employed by the federal government, the state,*
35 *or any of its political subdivisions.*

36 (B) The defendant shall file the original petition with the
37 sentencing court. A copy of the petition shall be served on the
38 agency that prosecuted the case. The petition shall include the
39 defendant's statement that he or she was under 18 years of age at
40 the time of the crime and was sentenced to life in prison without

1 the possibility of parole, the defendant’s statement describing his
2 or her remorse and work towards rehabilitation, and the defendant’s
3 statement that one of the following is true:

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

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

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

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

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

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) Prior to the offense for which the sentence is being
8 considered for recall, the defendant had insufficient adult support
9 or supervision and had suffered from psychological or physical
10 trauma, or significant stress.
- 11 (v) The defendant suffers from cognitive limitations due to
12 mental illness, developmental disabilities, or other factors that did
13 not constitute a defense, but influenced the defendant's
14 involvement in the offense.
- 15 (vi) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or showing evidence of remorse.
- 21 (vii) The defendant has maintained family ties or connections
22 with others through letter writing, calls, or visits, or has eliminated
23 contact with individuals outside of prison who are currently
24 involved with crime.
- 25 (viii) The defendant has had no disciplinary actions for violent
26 activities in the last five years in which the defendant was
27 determined to be the aggressor.
- 28 (G) The court shall have the discretion to recall the sentence
29 and commitment previously ordered and to resentence the
30 defendant in the same manner as if the defendant had not
31 previously been sentenced, provided that the new sentence, if any,
32 is not greater than the initial sentence. The discretion of the court
33 shall be exercised in consideration of the criteria in subparagraph
34 (B). Victims, or victim family members if the victim is deceased,
35 shall be notified of the resentencing hearing and shall retain their
36 rights to participate in the hearing.
- 37 (H) If the sentence is not recalled, the defendant may submit
38 another petition for recall and resentencing to the sentencing court
39 when the defendant has been committed to the custody of the
40 department for at least 20 years. If recall and resentencing is not

1 granted under that petition, the defendant may file another petition
2 after having served 24 years. The final petition may be submitted,
3 and the response to that petition shall be determined, during the
4 25th year of the defendant's sentence.

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

10 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

39 (4) Any physician employed by the department who determines
40 that a prisoner has six months or less to live shall notify the chief

1 medical officer of the prognosis. If the chief medical officer
2 concurs with the prognosis, he or she shall notify the warden.
3 Within 48 hours of receiving notification, the warden or the
4 warden’s representative shall notify the prisoner of the recall and
5 resentencing procedures, and shall arrange for the prisoner to
6 designate a family member or other outside agent to be notified
7 as to the prisoner’s medical condition and prognosis, and as to the
8 recall and resentencing procedures. If the inmate is deemed
9 mentally unfit, the warden or the warden’s representative shall
10 contact the inmate’s emergency contact and provide the information
11 described in paragraph (2).

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

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

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

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

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

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

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

23 (g) A sentence to state prison for a determinate term for which
24 only one term is specified, is a sentence to state prison under this
25 section.

26 (h) This section shall become operative on January 1, 2014.

27 SEC. 3.7. Section 1170 of the Penal Code, as amended by
28 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
29 read:

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

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

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

1 disparity of sentences and to promote uniformity of sentencing.

2 Credit shall be given for time served.

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

9 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*
10 *to defendants sentenced to life without parole for an offense where*
11 *the defendant tortured, as described in Section 206, his or her*
12 *victim or the victim was a public safety official, including any law*
13 *enforcement personnel mentioned in Chapter 4.5 (commencing*
14 *with Section 830) of Title 3, or any firefighter as described in*
15 *Section 245.1, as well as any other officer in any segment of law*
16 *enforcement who is employed by the federal government, the state,*
17 *or any of its political subdivisions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (vi) The defendant has performed acts that tend to indicate
38 rehabilitation or the potential for rehabilitation, including, but not
39 limited to, availing himself or herself of rehabilitative, educational,
40 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 (vii) The defendant has maintained family ties or connections
4 with others through letter writing, calls, or visits, or has eliminated
5 contact with individuals outside of prison who are currently
6 involved with crime.

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

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

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

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

32 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (5) A judge, when imposing a sentence pursuant to paragraph
33 (1), may order the defendant to serve a term in a county jail for a
34 period not to exceed the maximum possible term of confinement
35 or may impose a sentence which includes a period of county jail
36 time and a period of mandatory probation not to exceed the
37 maximum possible sentence.

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

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

2 SEC. 4. (a) Section 1 of this bill incorporates amendments to
3 Section 1170 of the Penal Code proposed by both this bill and
4 Senate Bill 576. It shall only become operative if (1) both bills are
5 enacted and become effective on or before January 1, 2012, (2)
6 each bill amends Section 1170 of the Penal Code, and (3) Assembly
7 Bill 116, which has been chaptered but is not operative, does not
8 become operative, and (4) this bill is enacted after Senate Bill 576,
9 in which case Section 1 of this bill shall remain operative only
10 until the operative date of Assembly Bill 116, at which time Section
11 2 shall become operative.

12 (b) Section 2 of this bill incorporates amendments to Section
13 1170 of the Penal Code proposed by this bill, Senate Bill 576, and
14 Assembly Bill 116, which is chaptered but is not operative. It shall
15 only become operative if (1) this bill and Senate Bill 576 are
16 enacted and become effective on or before January 1, 2012, (2)
17 Assembly Bill 116 becomes operative, (3) all three bills amend
18 Section 1170 of the Penal Code, and (3) this bill is enacted after
19 Senate Bill 576, in which case Section 1 of this bill shall not
20 become operative or shall cease to be operative upon the operative
21 date of Assembly Bill 116.

22 SEC. 5. (a) Section 3.3 of this bill incorporates amendments
23 to Section 1170 of the Penal Code proposed by both this bill and
24 Assembly Bill 116, which has been chaptered but is not operative.
25 It shall only become operative if (1) this bill is enacted and
26 becomes effective on or before January 1, 2012, (2) each bill
27 amends Section 1170 of the Penal Code, and (3) Senate Bill 576
28 is not enacted or as enacted does not amend that section, and (4)
29 Assembly Bill 116 becomes operative, in which case Sections 3.5
30 and 3.7 of this bill shall not become operative and Section 3 of
31 this bill shall remain operative only until the operative date of
32 Assembly Bill 116, at which time Section 3.3 of this bill shall
33 become operative.

34 (b) Section 3.5 of this bill incorporates amendments to Section
35 1170 of the Penal Code proposed by both this bill and Senate Bill
36 576. It shall only become operative if (1) both bills are enacted
37 and become effective on or before January 1, 2012, (2) each bill
38 amends Section 1170 of the Penal Code, (3) Assembly Bill 116
39 does not become operative, and (4) this bill is enacted after Senate

1 Bill 9 in which case Sections 3, 3.3 and 3.7 of this bill shall not
2 become operative.

3 (c) Section 3.7 of this bill incorporates amendments to Section
4 1170 of the Penal Code proposed by this bill, Senate Bill 576, and
5 Assembly Bill 116, which has been chaptered but is not operative.
6 It shall only become operative if (1) this bill and Senate Bill 576
7 are enacted and become effective on or before January 1, 2012,
8 (2) Assembly Bill 116 becomes operative, (3) all three bills amend
9 Section 1170 of the Penal Code, and (4) this bill is enacted after
10 Senate Bill 576, in which case Sections 3, 3.3 and 3.5 of this bill
11 shall not become operative.

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