

AMENDED IN ASSEMBLY SEPTEMBER 6, 2011

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, *made by either Assembly Bill 17 of the First Extraordinary Session or Senate Bill 5 of the First Extraordinary Session*, and *made by 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

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

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

34 (b) When a judgment of imprisonment is to be imposed and the
35 statute specifies three possible terms, the choice of the appropriate
36 term shall rest within the sound discretion of the court. At least
37 four days prior to the time set for imposition of judgment, either
38 party or the victim, or the family of the victim if the victim is
39 deceased, may submit a statement in aggravation or mitigation. In
40 determining the appropriate term, the court may consider the record

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

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

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

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

37 (ii) Notwithstanding clause (i), paragraph (2) shall not apply to
38 defendants sentenced to life without parole for an offense where
39 the defendant tortured, as described in Section 206, his or her
40 victim or the victim was a public safety official, including any law

1 enforcement personnel mentioned in Chapter 4.5 (commencing
2 with Section 830) of Title 3, or any firefighter as described in
3 Section 245.1, as well as any other officer in any segment of law
4 enforcement who is employed by the federal government, the state,
5 or any of its political subdivisions.

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

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

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

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

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

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

37 (E) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a hearing
39 to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,
2 provided that the new sentence, if any, is not greater than the initial
3 sentence. Victims, or victim family members if the victim is
4 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

37 (G) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant in the same manner as if the defendant had not
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court
2 shall be exercised in consideration of the criteria in subparagraph
3 (B). Victims, or victim family members if the victim is deceased,
4 shall be notified of the resentencing hearing and shall retain their
5 rights to participate in the hearing.

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

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

19 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 SEC. 2. Section 1170 of the Penal Code, as amended by Section
39 3 of Chapter 136 of the Statutes of 2011, is amended to read:

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

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

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

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

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

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

38 (d) (1) When a defendant subject to this section or subdivision
39 (b) of Section 1168 has been sentenced to be imprisoned in the
40 state prison and has been committed to the custody of the secretary,

1 the court may, within 120 days of the date of commitment on its
2 own motion, or at any time upon the recommendation of the
3 secretary or the Board of Parole Hearings, recall the sentence and
4 commitment previously ordered and resentence the defendant in
5 the same manner as if he or she had not previously been sentenced,
6 provided the new sentence, if any, is no greater than the initial
7 sentence. The court resentencing under this subdivision shall apply
8 the sentencing rules of the Judicial Council so as to eliminate
9 disparity of sentences and to promote uniformity of sentencing.
10 Credit shall be given for time served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (iv) Prior to the offense for which the sentence is being
38 considered for recall, the defendant had insufficient adult support
39 or supervision and had suffered from psychological or physical
40 trauma, or significant stress.

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

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

11 (vii) The defendant has maintained family ties or connections
12 with others through letter writing, calls, or visits, or has eliminated
13 contact with individuals outside of prison who are currently
14 involved with crime.

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

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

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

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

40 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

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

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

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

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

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

1 all property belonging to the prisoner. After discharge, any
2 additional records shall be sent to the prisoner's forwarding
3 address.

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

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

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

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

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

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

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

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

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

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

13 *SEC. 2.5. Section 1170 of the Penal Code, as amended by*
14 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*
15 *read:*

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

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

38 (3) In any case in which the punishment prescribed by statute
39 for a person convicted of a public offense is a term of imprisonment
40 in the state prison of any specification of three time periods, the

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

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

1 hearing. The court shall select the term which, in the court's
2 discretion, best serves the interests of justice. The court shall set
3 forth on the record the reasons for imposing the term selected and
4 the court may not impose an upper term by using the fact of any
5 enhancement upon which sentence is imposed under any provision
6 of law. A term of imprisonment shall not be specified if imposition
7 of sentence is suspended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (5) *The court, when imposing a sentence pursuant to paragraphs*
28 *(1) or (2) of this subdivision, may commit the defendant to county*
29 *jail as follows:*

30 (A) *For a full term in custody as determined in accordance with*
31 *the applicable sentencing law.*

32 (B) *For a term as determined in accordance with the applicable*
33 *sentencing law, but suspend execution of a concluding portion of*
34 *the term selected in the court's discretion, during which time the*
35 *defendant shall be supervised by the county probation officer in*
36 *accordance with the terms, conditions, and procedures generally*
37 *applicable to persons placed on probation, for the remaining*
38 *unserved portion of the sentence imposed by the court. The period*
39 *of supervision shall be mandatory, and may not be earlier*
40 *terminated except by court order. During the period when the*

1 *defendant is under such supervision, unless in actual custody*
2 *related to the sentence imposed by the court, the defendant shall*
3 *be entitled to only actual time credit against the term of*
4 *imprisonment imposed by the court.*

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

8 (i) This section shall remain in effect only until January 1, ~~2012,~~
9 ~~2014,~~ and as of that date is repealed, unless a later enacted statute,
10 that is enacted before that date, deletes or extends that date.

11 SEC. 3. Section 1170 of the Penal Code, as amended by Section
12 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (iv) The defendant has performed acts that tend to indicate
18 rehabilitation or the potential for rehabilitation, including, but 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 (C) If any of the information required in subparagraph (B) is
24 missing from the petition, or if proof of service on the prosecuting
25 agency is not provided, the court shall return the petition to the
26 defendant and advise the defendant that the matter cannot be
27 considered without the missing information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (f) 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 become operative on January 1, 2012.

34 SEC. 3.3. Section 1170 of the Penal Code, as amended by
35 Section 4 of Chapter 136 of the Statutes of 2011, is amended to
36 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (v) The defendant suffers from cognitive limitations due to
40 mental illness, developmental disabilities, or other factors that did

1 not constitute a defense, but influenced the defendant's
2 involvement in the offense.

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

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

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

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

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

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

38 (J) This subdivision shall have retroactive application.

39 (e) (1) Notwithstanding any other law and consistent with
40 paragraph (1) of subdivision (a), if the secretary or the Board of

1 Parole Hearings or both determine that a prisoner satisfies the
2 criteria set forth in paragraph (2), the secretary or the board may
3 recommend to the court that the prisoner’s sentence be recalled.
4 (2) The court shall have the discretion to resentence or recall if
5 the court finds that the facts described in subparagraphs (A) and
6 (B) or subparagraphs (B) and (C) exist:
7 (A) The prisoner is terminally ill with an incurable condition
8 caused by an illness or disease that would produce death within
9 six months, as determined by a physician employed by the
10 department.
11 (B) The conditions under which the prisoner would be released
12 or receive treatment do not pose a threat to public safety.
13 (C) The prisoner is permanently medically incapacitated with
14 a medical condition that renders him or her permanently unable
15 to perform activities of basic daily living, and results in the prisoner
16 requiring 24-hour total care, including, but not limited to, coma,
17 persistent vegetative state, brain death, ventilator-dependency, loss
18 of control of muscular or neurological function, and that
19 incapacitation did not exist at the time of the original sentencing.
20 The Board of Parole Hearings shall make findings pursuant to
21 this subdivision before making a recommendation for resentence
22 or recall to the court. This subdivision does not apply to a prisoner
23 sentenced to death or a term of life without the possibility of parole.
24 (3) Within 10 days of receipt of a positive recommendation by
25 the secretary or the board, the court shall hold a hearing to consider
26 whether the prisoner’s sentence should be recalled.
27 (4) Any physician employed by the department who determines
28 that a prisoner has six months or less to live shall notify the chief
29 medical officer of the prognosis. If the chief medical officer
30 concurs with the prognosis, he or she shall notify the warden.
31 Within 48 hours of receiving notification, the warden or the
32 warden’s representative shall notify the prisoner of the recall and
33 resentencing procedures, and shall arrange for the prisoner to
34 designate a family member or other outside agent to be notified
35 as to the prisoner’s medical condition and prognosis, and as to the
36 recall and resentencing procedures. If the inmate is deemed
37 mentally unfit, the warden or the warden’s representative shall
38 contact the inmate’s emergency contact and provide the information
39 described in paragraph (2).

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

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

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

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

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

1 additional records shall be sent to the prisoner’s forwarding
2 address.

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

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

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

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

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

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

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

39 (5) A judge, when imposing a sentence pursuant to paragraph
40 (1), may order the defendant to serve a term in a county jail for a

1 period not to exceed the maximum possible term of confinement
2 or may impose a sentence which includes a period of county jail
3 time and a period of mandatory probation not to exceed the
4 maximum possible sentence.

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

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

9 *SEC. 3.4. Section 1170 of the Penal Code, as amended by*
10 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*
11 *read:*

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

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

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

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

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

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

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

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

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

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

39 *(B) The defendant shall file the original petition with the*
40 *sentencing court. A copy of the petition shall be served on the*

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

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

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

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

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

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

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

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

38 (F) The factors that the court may consider when determining
39 whether to recall and resentence include, but are not limited to,
40 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 involvement
16 in the offense.
- 17 (vi) The defendant has performed acts that tend to indicate
18 rehabilitation or the potential for rehabilitation, including, but
19 not limited to, availing himself or herself of rehabilitative,
20 educational, or vocational programs, if those programs have been
21 available at his or her classification level and facility, using
22 self-study for self-improvement, or showing evidence of remorse.
- 23 (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
8 may consider any other criteria that the court deems relevant to
9 its 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) Notwithstanding any other provision of this section, for
23 purposes of paragraph (3) of subdivision (h), any allegation that
24 a defendant is eligible for state prison due to a prior or current
25 conviction, sentence enhancement, or because he or she is required
26 to register as a sex offender shall not be subject to dismissal
27 pursuant to Section 1385.

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

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

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

38 (3) Notwithstanding paragraphs (1) and (2), where the defendant
39 (A) has a prior or current felony conviction for a serious felony
40 described in subdivision (c) of Section 1192.7 *or a prior or current*

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

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

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

21 (5) *The court, when imposing a sentence pursuant to paragraphs*
22 *(1) or (2) of this subdivision, may commit the defendant to county*
23 *jail as follows:*

24 (A) *For a full term in custody as determined in accordance with*
25 *the applicable sentencing law.*

26 (B) *For a term as determined in accordance with the applicable*
27 *sentencing law, but suspend execution of a concluding portion of*
28 *the term selected in the court's discretion, during which time the*
29 *defendant shall be supervised by the county probation officer in*
30 *accordance with the terms, conditions, and procedures generally*
31 *applicable to persons placed on probation, for the remaining*
32 *unserved portion of the sentence imposed by the court. The period*
33 *of supervision shall be mandatory, and may not be earlier*
34 *terminated except by court order. During the period when the*
35 *defendant is under such supervision, unless in actual custody*
36 *related to the sentence imposed by the court, the defendant shall*
37 *be entitled to only actual time credit against the term of*
38 *imprisonment imposed by the court.*

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 to
28 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 to
10 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 resentencing
16 or recall to the court. This subdivision does not apply to a prisoner
17 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

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

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

3 (f) 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. 3.9. Section 1170 of the Penal Code, as amended by*
3 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*
4 *read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (H) *If the sentence is not recalled, the defendant may submit*
34 *another petition for recall and resentencing to the sentencing court*
35 *when the defendant has been committed to the custody of the*
36 *department for at least 20 years. If recall and resentencing is not*
37 *granted under that petition, the defendant may file another petition*
38 *after having served 24 years. The final petition may be submitted,*
39 *and the response to that petition shall be determined, during the*
40 *25th year of the defendant's sentence.*

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

6 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

35 (4) Any physician employed by the department who determines
36 that a prisoner has six months or less to live shall notify the chief
37 medical officer of the prognosis. If the chief medical officer
38 concurs with the prognosis, he or she shall notify the warden.
39 Within 48 hours of receiving notification, the warden or the
40 warden's representative shall notify the prisoner of the recall and

1 resentencing procedures, and shall arrange for the prisoner to
2 designate a family member or other outside agent to be notified
3 as to the prisoner's medical condition and prognosis, and as to the
4 recall and resentencing procedures. If the inmate is deemed
5 mentally unfit, the warden or the warden's representative shall
6 contact the inmate's emergency contact and provide the information
7 described in paragraph (2).

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

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

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

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

39 (9) If the court grants the recall and resentencing application,
40 the prisoner shall be released by the department within 48 hours

1 of receipt of the court's order, unless a longer time period is agreed
2 to by the inmate. At the time of release, the warden or the warden's
3 representative shall ensure that the prisoner has each of the
4 following in his or her possession: a discharge medical summary,
5 full medical records, state identification, parole medications, and
6 all property belonging to the prisoner. After discharge, any
7 additional records shall be sent to the prisoner's forwarding
8 address.

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

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

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

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

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

32 (3) Notwithstanding paragraphs (1) and (2), where the defendant
33 (A) has a prior or current felony conviction for a serious felony
34 described in subdivision (c) of Section 1192.7 *or a prior or current*
35 *conviction for a violent felony described in subdivision (c) of*
36 *Section 667.5, (B) has a prior felony conviction in another*
37 *jurisdiction for an offense that has all of the elements of a serious*
38 *felony described in subdivision (c) of Section 1192.7 or a violent*
39 *felony described in subdivision (c) of Section 667.5, (C) is required*
40 to register as a sex offender pursuant to Chapter 5.5 (commencing

1 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
2 and as part of the sentence an enhancement pursuant to Section
3 186.11 is imposed, an executed sentence for a felony punishable
4 pursuant to this subdivision shall be served in state prison.

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

9 ~~(5) A judge, when imposing a sentence pursuant to paragraph
10 (1), may order the defendant to serve a term in a county jail for a
11 period not to exceed the maximum possible term of confinement
12 or may impose a sentence which includes a period of county jail
13 time and a period of mandatory probation not to exceed the
14 maximum possible sentence.~~

15 (5) *The court, when imposing a sentence pursuant to paragraphs
16 (1) or (2) of this subdivision, may commit the defendant to county
17 jail as follows:*

18 (A) *For a full term in custody as determined in accordance with
19 the applicable sentencing law.*

20 (B) *For a term as determined in accordance with the applicable
21 sentencing law, but suspend execution of a concluding portion of
22 the term selected in the court's discretion, during which time the
23 defendant shall be supervised by the county probation officer in
24 accordance with the terms, conditions, and procedures generally
25 applicable to persons placed on probation, for the remaining
26 unserved portion of the sentence imposed by the court. The period
27 of supervision shall be mandatory, and may not be earlier
28 terminated except by court order. During the period when the
29 defendant is under such supervision, unless in actual custody
30 related to the sentence imposed by the court, the defendant shall
31 be entitled to only actual time credit against the term of
32 imprisonment imposed by the court.*

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

36 (i) This section shall become operative on January 1, ~~2012.~~
37 2014.

38 SEC. 4. (a) Section 1 of this bill incorporates amendments to
39 Section 1170 of the Penal Code proposed by both this bill and
40 Senate Bill 576. It shall only become operative if (1) both bills are

1 enacted and become effective on or before January 1, 2012, (2)
2 each bill amends Section 1170 of the Penal Code, and (3) *neither*
3 *Assembly Bill 17 of the First Extraordinary Session or Senate Bill*
4 *5 of the First Extraordinary Session are enacted, or as enacted*
5 *neither amends that section and Assembly Bill 116, which has*
6 *been chaptered but is not operative, does not become operative,*
7 *and (4) this bill is enacted after Senate Bill 576, in which case*
8 *Section 2.5 of this bill shall not become operative and Section 1*
9 *of this bill shall remain operative only until the operative date of*
10 *Assembly Bill 116, at which time Section 2 shall become operative.*

11 (b) Section 2 of this bill incorporates amendments to Section
12 1170 of the Penal Code proposed by this bill, Senate Bill 576, and
13 Assembly Bill 116, which is chaptered but is not operative. It shall
14 only become operative if (1) this bill and Senate Bill 576 are
15 enacted and become effective on or before January 1, 2012, (2)
16 Assembly Bill 116 becomes operative, (3) all three bills amend
17 Section 1170 of the Penal Code, (4) *neither Assembly Bill 17 of*
18 *the First Extraordinary Session or Senate Bill 5 of the First*
19 *Extraordinary Session are enacted, or as enacted neither amends*
20 *that section, and*~~(3)~~ (5) this bill is enacted after Senate Bill 576,
21 in which case *Section 2.5 of this bill shall not become operative*
22 *and Section 1 of this bill shall not become operative or shall cease*
23 *to be operative upon the operative date of Assembly Bill 116.*

24 (c) *Section 2.5 of this bill incorporates amendments to Section*
25 *1170 of the Penal Code proposed by this bill, either Assembly Bill*
26 *17 of the First Extraordinary Session or Senate Bill 5 of the First*
27 *Extraordinary Session, Senate Bill 576, and Assembly Bill 116,*
28 *which is chaptered but not operative. It shall only become operative*
29 *if (1) this bill and either Assembly Bill 17 of the First Extraordinary*
30 *Session or Senate Bill 5 of the First Extraordinary Session, and*
31 *Senate Bill 576 are enacted and become effective on or before*
32 *January 1, 2012, (2) Assembly Bill 116 becomes operative, (3) the*
33 *bills, as enacted, amend Section 1170 of the Penal Code, and (4)*
34 *this bill is enacted after either Assembly Bill 17 of the First*
35 *Extraordinary Session or Senate Bill 5 of the First Extraordinary*
36 *Session, and enacted after Senate Bill 576, in which case Sections*
37 *1 and 2 shall not become operative.*

38 SEC. 5. (a) Section 3.3 of this bill incorporates amendments
39 to Section 1170 of the Penal Code proposed by both this bill and
40 Assembly Bill 116, which has been chaptered but is not operative.

1 It shall only become operative if (1) this bill is enacted and
2 becomes effective on or before January 1, 2012, (2) each bill
3 amends Section 1170 of the Penal Code, and (3) *neither Assembly
4 Bill 17 of the First Extraordinary Session or Senate Bill 5 of the
5 First Extraordinary Session are enacted, or as enacted do not
6 amend that section and Senate Bill 576 is not enacted or as enacted
7 does not amend that section, and (4) Assembly Bill 116 becomes
8 operative, in which case Sections 3.4, 3.5 ~~and 3.7~~, 3.7, and 3.9 of
9 this bill shall not become operative and Section 3 of this bill shall
10 remain operative only until the operative date of Assembly Bill
11 116, at which time Section 3.3 of this bill shall become operative.*

12 *(b) Section 3.4 of this bill incorporates amendments to Section
13 1170 of the Penal Code proposed by this bill, either Assembly Bill
14 17 of the First Extraordinary Session or Senate Bill 5 of the First
15 Extraordinary Session, and Assembly Bill 116, which is chaptered
16 but not operative. It shall only become operative if (1) this bill and
17 either Assembly Bill 17 of the First Extraordinary Session or Senate
18 Bill 5 of the First Extraordinary Session are enacted and become
19 effective on or before January 1, 2012, (2) Assembly Bill 116
20 becomes operative, (3) Senate Bill 576 is not enacted, or as enacted
21 does not amend that section (4) the bills, as enacted, amend Section
22 1170 of the Penal Code, and (5) this bill is enacted after either
23 Assembly Bill 17 of the First Extraordinary Session or Senate Bill
24 5 of the First Extraordinary Session, in which case Sections 3.3,
25 3.5, 3.7, and 3.9 shall not become operative and Section 3 of this
26 bill shall remain operative only until the operative date of Assembly
27 Bill 116, at which time Section 3.4 of this bill shall become
28 operative.*

29 ~~(b)~~

30 *(c) Section 3.5 of this bill incorporates amendments to Section
31 1170 of the Penal Code proposed by both this bill and Senate Bill
32 576. It shall only become operative if (1) both bills are enacted
33 and become effective on or before January 1, 2012, (2) each bill
34 amends Section 1170 of the Penal Code, (3) *neither Assembly Bill
35 17 of the First Extraordinary Session or Senate Bill 5 of the First
36 Extraordinary Session are enacted, or as enacted do not amend
37 that section and Assembly Bill 116 does not become operative,
38 and (4) this bill is enacted after Senate Bill-9 576 in which case
39 Sections 3, 3.3 ~~and 3.7~~, 3.4, 3.7, and 3.9 of this bill shall not
40 become operative.**

1 (e)

2 (d) Section 3.7 of this bill incorporates amendments to Section
3 1170 of the Penal Code proposed by this bill, Senate Bill 576, and
4 Assembly Bill 116, which has been chaptered but is not operative.
5 It shall only become operative if (1) this bill and Senate Bill 576
6 are enacted and become effective on or before January 1, 2012,
7 (2) Assembly Bill 116 becomes operative, (3) all three bills amend
8 Section 1170 of the Penal Code, (4) *neither Assembly Bill 17 of*
9 *the First Extraordinary Session or Senate Bill 5 of the First*
10 *Extraordinary Session are enacted, or as enacted neither amends*
11 *that section, and* ~~(4)~~ (5) this bill is enacted after Senate Bill 576,
12 in which case Sections 3, 3.3 ~~and 3.5~~, 3.4, 3.5, and 3.9 of this bill
13 shall not become operative.

14 (e) Section 3.9 of this bill incorporates amendments to Section
15 1170 of the Penal Code proposed by this bill, either Assembly Bill
16 17 of the First Extraordinary Session or Senate Bill 5 of the First
17 Extraordinary Session, Senate Bill 576, and Assembly Bill 116,
18 which is chaptered but not operative. It shall only become operative
19 if (1) this bill, either Assembly Bill 17 of the First Extraordinary
20 Session or Senate Bill 5 of the First Extraordinary Session, and
21 SB 576 are enacted and become effective on or before January 1,
22 2012, (2) Assembly Bill 116 becomes operative, (3) the bills, as
23 enacted, amend Section 1170 of the Penal Code, and (4) this bill
24 is enacted after either Assembly Bill 17 of the First Extraordinary
25 Session or Senate Bill 5 of the First Extraordinary Session, and
26 enacted after Senate Bill 576, in which case Sections 3.3, 3.4, 3.5,
27 and 3.7 shall not become operative and Section 3 of this bill shall
28 remain operative only until the operative date of Assembly Bill
29 116, at which time Section 3.9 of this bill shall become operative.

O