

AMENDED IN ASSEMBLY FEBRUARY 2, 2012

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**

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**Introduced by Senator Yee**

**(Principal coauthors: Senators Steinberg and Vargas)**

(Coauthors: Assembly Members Fuentes and Bonnie Lowenthal)

December 6, 2010

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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 6.7 of Chapter 361 of the Statutes of 2011, 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

1 successful return to the community to an inmate with a short  
2 remaining term of commitment and a release date that would allow  
3 him or her adequate time to complete the program.

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

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

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

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

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

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

38 (ii) *Notwithstanding clause (i), this paragraph shall not apply*  
39 *to defendants sentenced to life without parole for an offense where*  
40 *the defendant tortured, as described in Section 206, his or her*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 *(G) The court shall have the discretion to recall the sentence*  
39 *and commitment previously ordered and to resentence the*  
40 *defendant in the same manner as if the defendant had not*

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

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

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

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

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

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

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

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

35 (C) The prisoner is permanently medically incapacitated with  
36 a medical condition that renders him or her permanently unable  
37 to perform activities of basic daily living, and results in the prisoner  
38 requiring 24-hour total care, including, but not limited to, coma,  
39 persistent vegetative state, brain death, ventilator-dependency, loss

1 of control of muscular or neurological function, and that  
2 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

28 (A) For a full term in custody as determined in accordance with  
29 the applicable sentencing law.

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

1 be entitled to only actual time credit against the term of  
2 imprisonment imposed by the court.

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

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

9 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*  
10 *7.7 of Chapter 361 of the Statutes of 2011, is amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (v) The defendant suffers from cognitive limitations due to  
14 mental illness, developmental disabilities, or other factors that did  
15 not constitute a defense, but influenced the defendant's 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) The court, when imposing a sentence pursuant to paragraph  
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, 2014.

37 ~~SECTION 1. Section 1170 of the Penal Code, as amended by~~  
38 ~~Section 5 of Chapter 256 of the Statutes of 2010, is amended to~~  
39 ~~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 ~~concurrs 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) Any sentence imposed under this article shall be subject to~~  
12 ~~the provisions of Sections 3000 and 3057 and any other applicable~~  
13 ~~provisions of law.~~

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

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

20 ~~SEC. 2. Section 1170 of the Penal Code, as amended by Section~~  
21 ~~3 of Chapter 136 of the Statutes of 2011, is amended to read:~~

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

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

1 successful return to the community to an inmate with a short  
2 remaining term of commitment and a release date that would allow  
3 him or her adequate time to complete the program.

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

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

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

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

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

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

38 (ii) Notwithstanding clause (i), paragraph (2) shall not apply to  
39 defendants sentenced to life without parole for an offense where  
40 the defendant tortured, as described in Section 206, his or her

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(G) The court shall have the discretion to recall the sentence~~  
39 ~~and commitment previously ordered and to resentence the~~  
40 ~~defendant in the same manner as if the defendant had not~~

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

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

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

20 (J) This subdivision shall have retroactive application.

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

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

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

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

35 (C) The prisoner is permanently medically incapacitated with  
36 a medical condition that renders him or her permanently unable  
37 to perform activities of basic daily living, and results in the prisoner  
38 requiring 24-hour total care, including, but not limited to, coma,  
39 persistent vegetative state, brain death, ventilator-dependency, loss



1 of control of muscular or neurological function, and that  
2 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(5) 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 ~~(6) The sentencing changes made by the act that added this~~  
28 ~~subdivision shall be applied prospectively to any person sentenced~~  
29 ~~on or after October 1, 2011.~~

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

33 ~~SEC. 2.5. Section 1170 of the Penal Code, as amended by~~  
34 ~~Section 3 of Chapter 136 of the Statutes of 2011, is amended to~~  
35 ~~read:~~

36 ~~1170. (a) (1) The Legislature finds and declares that the~~  
37 ~~purpose of imprisonment for crime is punishment. This purpose~~  
38 ~~is best served by terms proportionate to the seriousness of the~~  
39 ~~offense with provision for uniformity in the sentences of offenders~~  
40 ~~committing the same offense under similar circumstances. The~~

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

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

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

1 to the custody of the secretary. The court shall advise the defendant  
2 that he or she shall serve a period of parole and order the defendant  
3 to report to the parole office closest to the defendant's last legal  
4 residence, unless the in-custody credits equal the total sentence,  
5 including both confinement time and the period of parole. The  
6 sentence shall be deemed a separate prior prison term under Section  
7 667.5, and a copy of the judgment and other necessary  
8 documentation shall be forwarded to the secretary.

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

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

33 (d) (1) ~~When a defendant subject to this section or subdivision~~  
34 ~~(b) of Section 1168 has been sentenced to be imprisoned in the~~  
35 ~~state prison and has been committed to the custody of the secretary,~~  
36 ~~the court may, within 120 days of the date of commitment on its~~  
37 ~~own motion, or at any time upon the recommendation of the~~  
38 ~~secretary or the Board of Parole Hearings, recall the sentence and~~  
39 ~~commitment previously ordered and resentence the defendant in~~  
40 ~~the same manner as if he or she had not previously been sentenced,~~

1 provided the new sentence, if any, is no greater than the initial  
 2 sentence. The court resentencing under this subdivision shall apply  
 3 the sentencing rules of the Judicial Council so as to eliminate  
 4 disparity of sentences and to promote uniformity of sentencing.  
 5 Credit shall be given for time served.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (J) This subdivision shall have retroactive application.

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) For a full term in custody as determined in accordance with  
2 the applicable sentencing law.

3 (B) For a term as determined in accordance with the applicable  
4 sentencing law, but suspend execution of a concluding portion of  
5 the term selected in the court's discretion, during which time the  
6 defendant shall be supervised by the county probation officer in  
7 accordance with the terms, conditions, and procedures generally  
8 applicable to persons placed on probation, for the remaining  
9 unserved portion of the sentence imposed by the court. The period  
10 of supervision shall be mandatory, and may not be earlier  
11 terminated except by court order. During the period when the  
12 defendant is under such supervision, unless in actual custody  
13 related to the sentence imposed by the court, the defendant shall  
14 be entitled to only actual time credit against the term of  
15 imprisonment imposed by the court.

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

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

22 SEC. 3. Section 1170 of the Penal Code, as amended by Section  
23 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

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

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

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

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

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

36 ~~(2) (A) (i) When a defendant who was under 18 years of age~~  
37 ~~at the time of the commission of the offense for which the~~  
38 ~~defendant was sentenced to imprisonment for life without the~~  
39 ~~possibility of parole has served at least 15 years of that sentence,~~

1 the defendant may submit to the sentencing court a petition for  
2 recall and resentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

26 ~~(J) This subdivision shall have retroactive application.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 ~~SEC. 3.3. Section 1170 of the Penal Code, as amended by~~  
6 ~~Section 4 of Chapter 136 of the Statutes of 2011, 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 ~~(e) 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) Notwithstanding any other provision of this section, for  
21 purposes of paragraph (3) of subdivision (h), any allegation that  
22 a defendant is eligible for state prison due to a prior or current  
23 conviction, sentence enhancement, or because he or she is required  
24 to register as a sex offender shall not be subject to dismissal  
25 pursuant to Section 1385.

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

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

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

36 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
37 has a prior or current felony conviction for a serious felony  
38 described in subdivision (c) of Section 1192.7, a violent felony  
39 described in subdivision (c) of Section 667.5, is required to register  
40 as a sex offender pursuant to Chapter 5.5 (commencing with

1 Section 290) of Title 9 of Part 1, or is convicted of a crime and as  
2 part of the sentence an enhancement pursuant to Section 186.11  
3 is imposed, an executed sentence for a felony punishable pursuant  
4 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 (6) The sentencing changes made by the act that added this  
16 subdivision shall be applied prospectively to any person sentenced  
17 on or after October 1, 2011.

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

19 SEC. 3.4. Section 1170 of the Penal Code, as amended by  
20 Section 4 of Chapter 136 of the Statutes of 2011, is amended to  
21 read:

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

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

1 successful return to the community to an inmate with a short  
2 remaining term of commitment and a release date that would allow  
3 him or her adequate time to complete the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~(3) Notwithstanding paragraphs (1) and (2), where the defendant~~  
12 ~~(A) has a prior or current felony conviction for a serious felony~~  
13 ~~described in subdivision (c) of Section 1192.7 or a prior or current~~  
14 ~~conviction for a violent felony described in subdivision (c) of~~  
15 ~~Section 667.5, (B) has a prior felony conviction in another~~  
16 ~~jurisdiction for an offense that has all of the elements of a serious~~  
17 ~~felony described in subdivision (c) of Section 1192.7 or a violent~~  
18 ~~felony described in subdivision (c) of Section 667.5, (C) is required~~  
19 ~~to register as a sex offender pursuant to Chapter 5.5 (commencing~~  
20 ~~with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime~~  
21 ~~and as part of the sentence an enhancement pursuant to Section~~  
22 ~~186.11 is imposed, an executed sentence for a felony punishable~~  
23 ~~pursuant to this subdivision shall be served in state prison.~~

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

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

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

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

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

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

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

10 SEC. 3.5. ~~Section 1170 of the Penal Code, as amended by~~  
11 ~~Section 6 of Chapter 256 of the Statutes of 2010, is amended to~~  
12 ~~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 (e) ~~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, 2014.

34 SEC. 3.7. 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 (e) 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, 2014.

9 SEC. 3.9. Section 1170 of the Penal Code, as amended by  
10 Section 4 of Chapter 136 of the Statutes of 2011, is amended to  
11 read:

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

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

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

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

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

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

6 (e) ~~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 court resentencing under this subdivision shall apply  
21 the sentencing rules of the Judicial Council so as to eliminate  
22 disparity of sentences and to promote uniformity of sentencing.  
23 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  
26 defendant was sentenced to imprisonment for life without the  
27 possibility of parole has served at least 15 years of that sentence,  
28 the defendant may submit to the sentencing court a petition for  
29 recall and resentencing.~~

30 (ii) ~~Notwithstanding clause (i), paragraph (2) shall not apply to  
31 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 defendant’s  
6 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 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 (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 hearing  
32 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~~  
16 ~~involvement in the offense.~~
- 17 (vi) ~~The defendant has performed acts that tend to indicate~~  
18 ~~rehabilitation or the potential for rehabilitation, including, but not~~  
19 ~~limited to, availing himself or herself of rehabilitative, educational,~~  
20 ~~or vocational programs, if those programs have been available at~~  
21 ~~his or her classification level and facility, using self-study for~~  
22 ~~self-improvement, or showing evidence of remorse.~~
- 23 (vii) ~~The defendant has maintained family ties or connections~~  
24 ~~with others through letter writing, calls, or visits, or has eliminated~~  
25 ~~contact with individuals outside of prison who are currently~~  
26 ~~involved with crime.~~
- 27 (viii) ~~The defendant has had no disciplinary actions for violent~~  
28 ~~activities in the last five years in which the defendant was~~  
29 ~~determined to be the aggressor.~~
- 30 (G) ~~The court shall have the discretion to recall the sentence~~  
31 ~~and commitment previously ordered and to resentence the~~  
32 ~~defendant in the same manner as if the defendant had not~~  
33 ~~previously been sentenced, provided that the new sentence, if any,~~  
34 ~~is not greater than the initial sentence. The discretion of the court~~  
35 ~~shall be exercised in consideration of the criteria in subparagraph~~  
36 ~~(B). Victims, or victim family members if the victim is deceased,~~  
37 ~~shall be notified of the resentencing hearing and shall retain their~~  
38 ~~rights to participate in the hearing.~~
- 39 (H) ~~If the sentence is not recalled, the defendant may submit~~  
40 ~~another petition for recall and resentencing to the sentencing court~~

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

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

12 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (f) 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) 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, 2014.

37 SEC. 4. (a) Section 1 of this bill incorporates amendments to  
38 Section 1170 of the Penal Code proposed by both this bill and  
39 Senate Bill 576. It shall only become operative if (1) both bills are  
40 enacted and become effective on or before January 1, 2012, (2)

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

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

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

37 SEC. 5. (a) Section 3.3 of this bill incorporates amendments  
38 to Section 1170 of the Penal Code proposed by both this bill and  
39 Assembly Bill 116, which has been chaptered but is not operative.  
40 It shall only become operative if (1) this bill is enacted and

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

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

28 ~~(c) Section 3.5 of this bill incorporates amendments to Section~~  
29 ~~1170 of the Penal Code proposed by both this bill and Senate Bill~~  
30 ~~576. It shall only become operative if (1) both bills are enacted~~  
31 ~~and become effective on or before January 1, 2012, (2) each bill~~  
32 ~~amends Section 1170 of the Penal Code, (3) neither Assembly Bill~~  
33 ~~17 of the First Extraordinary Session or Senate Bill 5 of the First~~  
34 ~~Extraordinary Session are enacted, or as enacted do not amend~~  
35 ~~that section and Assembly Bill 116 does not become operative,~~  
36 ~~and (4) this bill is enacted after Senate Bill 576 in which case~~  
37 ~~Sections 3, 3.3, 3.4, 3.7, and 3.9 of this bill shall not become~~  
38 ~~operative.~~

39 ~~(d) Section 3.7 of this bill incorporates amendments to Section~~  
40 ~~1170 of the Penal Code proposed by this bill, Senate Bill 576, and~~

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

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

O