

AMENDED IN ASSEMBLY JULY 2, 2012

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

Introduced by Senator Yee

(Principal coauthors: Senators Steinberg and Vargas)

(Coauthors: Assembly Members Fuentes and Bonnie Lowenthal)

December 6, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 9, as amended, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings, or both, may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and resentencing to the sentencing court, and to the prosecuting agency, as specified. The bill would prohibit a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from

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

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 27 of Chapter 43 of the Statutes of 2012, is amended to
3 read:
4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.
14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
22 encouraged to give priority enrollment in programs to promote
23 successful return to the community to an inmate with a short
24 remaining term of commitment and a release date that would allow
25 him or her adequate time to complete the program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (B) (i) For a term as determined in accordance with the
27 applicable sentencing law, but suspend execution of a concluding
28 portion of the term selected in the court's discretion, during which
29 time the defendant shall be supervised by the county probation
30 officer in accordance with the terms, conditions, and procedures
31 generally applicable to persons placed on probation, for the
32 remaining unserved portion of the sentence imposed by the court.
33 The period of supervision shall be mandatory, and may not be
34 earlier terminated except by court order. Any proceeding to revoke
35 or modify mandatory supervision under this subparagraph shall
36 be conducted pursuant to either subdivisions (a) and (b) of Section
37 1203.2 or Section 1203.3. During the period when the defendant
38 is under such supervision, unless in actual custody related to the
39 sentence imposed by the court, the defendant shall be entitled to
40 only actual time credit against the term of imprisonment imposed

1 by the court. Any time period which is suspended because a person
2 has absconded shall not be credited toward the period of
3 supervision.

4 (ii) The portion of a defendant's sentenced term during which
5 time he or she is supervised by the county probation officer
6 pursuant to this subparagraph shall be known as mandatory
7 supervision.

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

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

14 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
15 *28 of Chapter 43 of the Statutes of 2012, is amended to read:*

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

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

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

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

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

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

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

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

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

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

1 enforcement who is employed by the federal government, the state,
2 or any of its political subdivisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (B) (i) For a term as determined in accordance with the
27 applicable sentencing law, but suspend execution of a concluding
28 portion of the term selected in the court's discretion, during which
29 time the defendant shall be supervised by the county probation
30 officer in accordance with the terms, conditions, and procedures
31 generally applicable to persons placed on probation, for the
32 remaining unserved portion of the sentence imposed by the court.
33 The period of supervision shall be mandatory, and may not be
34 earlier terminated except by court order. Any proceeding to revoke
35 or modify mandatory supervision under this subparagraph shall
36 be conducted pursuant to either subdivisions (a) and (b) of Section
37 1203.2 or Section 1203.3. During the period when the defendant
38 is under such supervision, unless in actual custody related to the
39 sentence imposed by the court, the defendant shall be entitled to
40 only actual time credit against the term of imprisonment imposed

1 by the court. Any time period which is suspended because a person
2 has absconded shall not be credited toward the period of
3 supervision.

4 (ii) The portion of a defendant’s sentenced term during which
5 time he or she is supervised by the county probation officer
6 pursuant to this subparagraph shall be known as mandatory
7 supervision.

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

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

12 ~~SECTION 1. Section 1170 of the Penal Code, as amended by~~
13 ~~Section 6.7 of Chapter 361 of the Statutes of 2011, is amended to~~
14 ~~read:~~

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

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

37 ~~(3) In any case in which the punishment prescribed by statute~~
38 ~~for a person convicted of a public offense is a term of imprisonment~~
39 ~~in the state prison of any specification of three time periods, the~~
40 ~~court shall sentence the defendant to one of the terms of~~

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

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

1 discretion, best serves the interests of justice. The court shall set
2 forth on the record the reasons for imposing the term selected and
3 the court 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), this paragraph shall not apply
32 to 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) Notwithstanding any other provision of this section, for
28 purposes of paragraph (3) of subdivision (h), any allegation that
29 a defendant is eligible for state prison due to a prior or current
30 conviction, sentence enhancement, or because he or she is required
31 to register as a sex offender shall not be subject to dismissal
32 pursuant to Section 1385.

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

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

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

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

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

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

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

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

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

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

7 ~~SEC. 2. Section 1170 of the Penal Code, as amended by Section~~
8 ~~7.7 of Chapter 361 of the Statutes of 2011, is amended to read:~~

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

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

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

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

22 (b) When a judgment of imprisonment is to be imposed and the
23 statute specifies three possible terms, the court shall order
24 imposition of the middle term, unless there are circumstances in
25 aggravation or mitigation of the crime. At least four days prior to
26 the time set for imposition of judgment, either party or the victim,
27 or the family of the victim if the victim is deceased, may submit
28 a statement in aggravation or mitigation to dispute facts in the
29 record or the probation officer's report, or to present additional
30 facts. In determining whether there are circumstances that justify
31 imposition of the upper or lower term, the court may consider the
32 record in the case, the probation officer's report, other reports,
33 including reports received pursuant to Section 1203.03, and
34 statements in aggravation or mitigation submitted by the
35 prosecution, the defendant, or the victim, or the family of the victim
36 if the victim is deceased, and any further evidence introduced at
37 the sentencing hearing. The court shall set forth on the record the
38 facts and reasons for imposing the upper or lower term. The court
39 may not impose an upper term by using the fact of any
40 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), this paragraph shall not apply~~
28 ~~to defendants sentenced to life without parole for an offense where~~
29 ~~the defendant tortured, as described in Section 206, his or her~~
30 ~~victim or the victim was a public safety official, including any law~~
31 ~~enforcement personnel mentioned in Chapter 4.5 (commencing~~
32 ~~with Section 830) of Title 3, or any firefighter as described in~~
33 ~~Section 245.1, as well as any other officer in any segment of law~~
34 ~~enforcement who is employed by the federal government, the state,~~
35 ~~or any of its political subdivisions.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 ~~(H) If the sentence is not recalled, the defendant may submit~~
38 ~~another petition for recall and resentencing to the sentencing court~~
39 ~~when the defendant has been committed to the custody of the~~
40 ~~department for at least 20 years. If recall and resentencing is not~~

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

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

10 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (f) 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 (A) has a prior or current felony conviction for a serious felony
38 described in subdivision (c) of Section 1192.7 or a prior or current
39 conviction for a violent felony described in subdivision (c) of
40 Section 667.5, (B) has a prior felony conviction in another

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

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

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

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

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

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

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

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