

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN ASSEMBLY MAY 19, 2016

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2590

Introduced by Assembly Member Weber
(Coauthors: Assembly Members Atkins, Chu, and Mark Stone)
(Coauthor: Senator Beall)

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2590, as amended, Weber. Sentencing: restorative justice.

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment. Existing law further provides that, notwithstanding those provisions, the Legislature finds and declares that programs should be available for inmates, including, but not limited to, educational programs, that are designed to prepare nonviolent felony offenders for successful reentry into the community. Existing law encourages the Department of Corrections and Rehabilitation to give priority to enrollment in programs to promote successful return to the community to inmates with short remaining terms of commitment.

This bill would instead ~~provide~~ *make* legislative findings and declarations that the purpose of sentencing is public safety achieved through ~~accountability~~, *punishment*, rehabilitation, and restorative justice. The bill would amend the above legislative findings to state

that programs should be available to ~~all~~ *eligible* inmates and would encourage the department to allow ~~all~~ *eligible* inmates the opportunity to enroll in programs that promote successful return to the community.

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 1 of Chapter 378 of the Statutes of 2015, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of sentencing is public safety achieved through
6 ~~accountability, punishment,~~ rehabilitation, and restorative justice.
7 ~~When a sentence includes incarceration, of incarceration is~~
8 *imposed, this purpose is best served by (A) providing ongoing*
9 *opportunities for rehabilitation and (B) terms that are proportionate*
10 *to the seriousness of the offense with provision for uniformity in*
11 *the sentences of offenders committing the same offense under*
12 *similar circumstances. The Legislature further finds and declares*
13 *that the elimination of disparity and the provision of uniformity*
14 *of sentences can best be achieved by determinate sentences fixed*
15 *by statute in proportion to the seriousness of the offense as*
16 *determined by the Legislature to be imposed by the court with*
17 *specified discretion.*

18 (2) The Legislature further finds and declares that programs
19 should be available for inmates, including, but not limited to,
20 educational programs that are designed to prepare ~~all~~ *eligible*
21 offenders for successful reentry into the community. The
22 Legislature encourages the development of policies and programs
23 designed to educate and rehabilitate ~~all~~ offenders. In implementing
24 this section, the Department of Corrections and Rehabilitation is
25 encouraged to allow ~~all~~ *eligible* inmates the opportunity to enroll
26 in programs that promote successful return to the community.

27 (3) In any case in which the sentence prescribed by statute for
28 a person convicted of a public offense is a term of imprisonment
29 in the state prison or a term pursuant to subdivision (h) of any
30 specification of three time periods, the court shall sentence the
31 defendant to one of the terms of imprisonment specified unless
32 the convicted person is given any other disposition provided by

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

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

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

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000 or 3000.08 or postrelease community supervision for a period
18 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (11) The provisions of this subdivision shall be available to an
34 inmate who is sentenced to a county jail pursuant to subdivision
35 (h). For purposes of those inmates, "secretary" or "warden" shall
36 mean the county correctional administrator and "chief medical
37 officer" shall mean a physician designated by the county
38 correctional administrator for this purpose.

39 (f) Notwithstanding any other provision of this section, for
40 purposes of paragraph (3) of subdivision (h), any allegation that

1 a defendant is eligible for state prison due to a prior or current
2 conviction, sentence enhancement, or because he or she is required
3 to register as a sex offender shall not be subject to dismissal
4 pursuant to Section 1385.

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

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

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

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

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

32 (5) (A) Unless the court finds that, in the interests of justice, it
33 is not appropriate in a particular case, the court, when imposing a
34 sentence pursuant to paragraph (1) or (2), shall suspend execution
35 of a concluding portion of the term for a period selected at the
36 court's discretion.

37 (B) The portion of a defendant's sentenced term that is
38 suspended pursuant to this paragraph shall be known as mandatory
39 supervision, and, unless otherwise ordered by the court, shall
40 commence upon release from physical custody or an alternative

1 custody program, whichever is later. During the period of
2 mandatory supervision, the defendant shall be supervised by the
3 county probation officer in accordance with the terms, conditions,
4 and procedures generally applicable to persons placed on probation,
5 for the remaining unserved portion of the sentence imposed by the
6 court. The period of supervision shall be mandatory, and may not
7 be earlier terminated except by court order. Any proceeding to
8 revoke or modify mandatory supervision under this subparagraph
9 shall be conducted pursuant to either subdivisions (a) and (b) of
10 Section 1203.2 or Section 1203.3. During the period when the
11 defendant is under that supervision, unless in actual custody related
12 to the sentence imposed by the court, the defendant shall be entitled
13 to only actual time credit against the term of imprisonment imposed
14 by the court. Any time period which is suspended because a person
15 has absconded shall not be credited toward the period of
16 supervision.

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

20 (7) The sentencing changes made to paragraph (5) by the act
21 that added this paragraph shall become effective and operative on
22 January 1, 2015, and shall be applied prospectively to any person
23 sentenced on or after January 1, 2015.

24 (i) This section shall remain in effect only until January 1, 2017,
25 and as of that date is repealed, unless a later enacted statute, that
26 is enacted before January 1, 2017, deletes or extends that date.

27 SEC. 2. Section 1170 of the Penal Code, as amended by Section
28 2 of Chapter 378 of the Statutes of 2015, is amended to read:

29 1170. (a) (1) The Legislature finds and declares that the
30 purpose of sentencing is public safety achieved through
31 ~~accountability, punishment,~~ rehabilitation, and restorative justice.
32 When a sentence ~~includes incarceration,~~ *of incarceration is*
33 *imposed*, this purpose is best served by (A) *providing ongoing*
34 *opportunities for rehabilitation and (B) terms that are proportionate*
35 *to the seriousness of the offense with provision for uniformity in*
36 *the sentences of offenders committing the same offense under*
37 *similar circumstances. The Legislature further finds and declares*
38 *that the elimination of disparity and the provision of uniformity*
39 *of sentences can best be achieved by determinate sentences fixed*
40 *by statute in proportion to the seriousness of the offense as*

1 determined by the Legislature to be imposed by the court with
2 specified discretion.

3 (2) The Legislature further finds and declares that programs
4 should be available for inmates, including, but not limited to,
5 educational programs that are designed to prepare ~~all~~ *eligible*
6 offenders for successful reentry into the community. The
7 Legislature encourages the development of policies and programs
8 designed to educate and rehabilitate ~~all~~ offenders. In implementing
9 this section, the Department of Corrections and Rehabilitation is
10 encouraged to allow ~~all~~ *eligible* inmates the opportunity to enroll
11 in programs that promote a successful return to the community.

12 (3) In any case in which the sentence prescribed by statute for
13 a person convicted of a public offense is a term of imprisonment
14 in the state prison, or a term pursuant to subdivision (h), of any
15 specification of three time periods, the court shall sentence the
16 defendant to one of the terms of imprisonment specified unless
17 the convicted person is given any other disposition provided by
18 law, including a fine, jail, probation, or the suspension of
19 imposition or execution of sentence or is sentenced pursuant to
20 subdivision (b) of Section 1168 because he or she had committed
21 his or her crime prior to July 1, 1977. In sentencing the convicted
22 person, the court shall apply the sentencing rules of the Judicial
23 Council. The court, unless it determines that there are
24 circumstances in mitigation of the sentence prescribed, shall also
25 impose any other term that it is required by law to impose as an
26 additional term. Nothing in this article shall affect any provision
27 of law that imposes the death penalty, that authorizes or restricts
28 the granting of probation or suspending the execution or imposition
29 of sentence, or expressly provides for imprisonment in the state
30 prison for life, except as provided in paragraph (2) of subdivision
31 (d). In any case in which the amount of preimprisonment credit
32 under Section 2900.5 or any other provision of law is equal to or
33 exceeds any sentence imposed pursuant to this chapter, except for
34 a remaining portion of mandatory supervision imposed pursuant
35 to subparagraph (B) of paragraph (5) of subdivision (h), the entire
36 sentence shall be deemed to have been served, except for the
37 remaining period of mandatory supervision, and the defendant
38 shall not be actually delivered to the custody of the secretary or
39 the county correctional administrator. The court shall advise the
40 defendant that he or she shall serve an applicable period of parole,

1 postrelease community supervision, or mandatory supervision and
2 order the defendant to report to the parole or probation office
3 closest to the defendant's last legal residence, unless the in-custody
4 credits equal the total sentence, including both confinement time
5 and the period of parole, postrelease community supervision, or
6 mandatory supervision. The sentence shall be deemed a separate
7 prior prison term or a sentence of imprisonment in a county jail
8 under subdivision (h) for purposes of Section 667.5, and a copy
9 of the judgment and other necessary documentation shall be
10 forwarded to the secretary.

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

32 (c) The court shall state the reasons for its sentence choice on
33 the record at the time of sentencing. The court shall also inform
34 the defendant that as part of the sentence after expiration of the
35 term he or she may be on parole for a period as provided in Section
36 3000 or 3000.08 or postrelease community supervision for a period
37 as provided in Section 3451.

38 (d) (1) When a defendant subject to this section or subdivision
39 (b) of Section 1168 has been sentenced to be imprisoned in the
40 state prison or county jail pursuant to subdivision (h) and has been

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

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

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

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

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

39 (ii) The defendant does not have juvenile felony adjudications
40 for assault or other felony crimes with a significant potential for

1 personal harm to victims prior to the offense for which the sentence
2 is being considered for recall.

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

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

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

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

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

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

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

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

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

39 (iv) Prior to the offense for which the sentence is being
40 considered for recall, the defendant had insufficient adult support

1 or supervision and had suffered from psychological or physical
2 trauma, or significant stress.

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

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

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

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

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

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

37 (I) In addition to the criteria in subparagraph (F), the court may
38 consider any other criteria that the court deems relevant to its
39 decision, so long as the court identifies them on the record,

1 provides a statement of reasons for adopting them, and states why
2 the defendant does or does not satisfy the criteria.

3 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (11) The provisions of this subdivision shall be available to an
14 inmate who is sentenced to a county jail pursuant to subdivision
15 (h). For purposes of those inmates, "secretary" or "warden" shall
16 mean the county correctional administrator and "chief medical
17 officer" shall mean a physician designated by the county
18 correctional administrator for this purpose.

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

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

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

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

35 (3) Notwithstanding paragraphs (1) and (2), where the defendant
36 (A) has a prior or current felony conviction for a serious felony
37 described in subdivision (c) of Section 1192.7 or a prior or current
38 conviction for a violent felony described in subdivision (c) of
39 Section 667.5, (B) has a prior felony conviction in another
40 jurisdiction for an offense that has all the elements of a serious

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

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

12 (5) (A) Unless the court finds, in the interest of justice, that it
13 is not appropriate in a particular case, the court, when imposing a
14 sentence pursuant to paragraph (1) or (2), shall suspend execution
15 of a concluding portion of the term for a period selected at the
16 court's discretion.

17 (B) The portion of a defendant's sentenced term that is
18 suspended pursuant to this paragraph shall be known as mandatory
19 supervision, and, unless otherwise ordered by the court, shall
20 commence upon release from physical custody or an alternative
21 custody program, whichever is later. During the period of
22 mandatory supervision, the defendant shall be supervised by the
23 county probation officer in accordance with the terms, conditions,
24 and procedures generally applicable to persons placed on probation,
25 for the remaining unserved portion of the sentence imposed by the
26 court. The period of supervision shall be mandatory, and may not
27 be earlier terminated except by court order. Any proceeding to
28 revoke or modify mandatory supervision under this subparagraph
29 shall be conducted pursuant to either subdivisions (a) and (b) of
30 Section 1203.2 or Section 1203.3. During the period when the
31 defendant is under that supervision, unless in actual custody related
32 to the sentence imposed by the court, the defendant shall be entitled
33 to only actual time credit against the term of imprisonment imposed
34 by the court. Any time period which is suspended because a person
35 has absconded shall not be credited toward the period of
36 supervision.

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

1 (7) The sentencing changes made to paragraph (5) by the act
2 that added this paragraph shall become effective and operative on
3 January 1, 2015, and shall be applied prospectively to any person
4 sentenced on or after January 1, 2015.

5 (i) This section shall become operative on January 1, 2017.

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