

AMENDED IN SENATE AUGUST 19, 2016

AMENDED IN SENATE AUGUST 15, 2016

AMENDED IN ASSEMBLY MAY 19, 2016

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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**ASSEMBLY BILL**

**No. 2590**

**Introduced by Assembly Member Weber**

*(Principal coauthor: Senator Hancock)*

**(Coauthors: Assembly Members Atkins, Chu, and Mark Stone)**

*(Coauthor: Senator Beall)*

February 19, 2016

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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~~ *punishment and that the elimination of disparity and the provision of uniformity of sentences can best be achieved by determinate sentences fixed by statute in proportion to the seriousness of the offense, as specified*. 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~~. *commitment, as specified.*

This bill would instead make legislative findings and declarations that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. The bill would amend the above legislative findings *and declarations to remove the provision relating to determinate sentences and to state that educational, rehabilitative, and restorative justice programs should be available to eligible inmates available, as specified,* and would encourage the department to allow *all* eligible inmates the opportunity to enroll in programs that promote successful return to the community.

*This bill would also direct the department to establish a mission statement consistent with the principles described in the legislative findings and declarations.*

*Under existing law, most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper lengths of terms. Until January 1, 2017, the choice of the appropriate term that is to best serve the interests of justice rests within the sound discretion of the court. On and after January 1, 2017, existing law requires the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.*

*This bill would extend to January 1, 2022, the authority of the court to, in its sound discretion, impose the appropriate term that best serves the interests of justice. The bill would, on and after January 1, 2022, require the court to impose the middle term, unless there are circumstances in aggravation or mitigation of the crime.*

*This bill would incorporate additional changes to Section 1170 of the Penal Code, proposed by SB 1084, that would become operative only if this bill and SB 1084 are enacted and become effective on or before January 1, 2017, and this bill is chaptered last.*

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

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

13 (2) The Legislature further finds and declares that programs  
14 should be available for inmates, including, but not limited to,  
15 ~~educational~~ *educational, rehabilitative, and restorative justice*  
16 programs that are designed *to promote behavior change and* to  
17 prepare *all* eligible offenders for successful reentry into the  
18 community. The Legislature encourages the development of  
19 policies and programs designed to educate and rehabilitate *all*  
20 *eligible* offenders. In implementing this section, the Department  
21 of Corrections and Rehabilitation is encouraged to allow *all* eligible  
22 inmates the opportunity to enroll in programs that promote  
23 successful return to the community. *The Department of Corrections*  
24 *and Rehabilitation is directed to establish a mission statement*  
25 *consistent with these principles.*

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

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

25 (b) When a judgment of imprisonment is to be imposed and the  
26 statute specifies three possible terms, the choice of the appropriate  
27 term shall rest within the sound discretion of the court. At least  
28 four days prior to the time set for imposition of judgment, either  
29 party or the victim, or the family of the victim if the victim is  
30 deceased, may submit a statement in aggravation or mitigation. In  
31 determining the appropriate term, the court may consider the record  
32 in the case, the probation officer's report, other reports, including  
33 reports received pursuant to Section 1203.03, and statements in  
34 aggravation or mitigation submitted by the prosecution, the  
35 defendant, or the victim, or the family of the victim if the victim  
36 is deceased, and any further evidence introduced at the sentencing  
37 hearing. The court shall select the term which, in the court's  
38 discretion, best serves the interests of justice. The court shall set  
39 forth on the record the reasons for imposing the term selected and  
40 the court may not impose an upper term by using the fact of any

1 enhancement upon which sentence is imposed under any provision  
2 of law. A term of imprisonment shall not be specified if imposition  
3 of sentence is suspended.

4 (c) The court shall state the reasons for its sentence choice on  
5 the record at the time of sentencing. The court shall also inform  
6 the defendant that as part of the sentence after expiration of the  
7 term he or she may be on parole for a period as provided in Section  
8 3000 or 3000.08 or postrelease community supervision for a period  
9 as provided in Section 3451.

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

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

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

1 (B) The defendant shall file the original petition with the  
2 sentencing court. A copy of the petition shall be served on the  
3 agency that prosecuted the case. The petition shall include the  
4 defendant's statement that he or she was under 18 years of age at  
5 the time of the crime and was sentenced to life in prison without  
6 the possibility of parole, the defendant's statement describing his  
7 or her remorse and work towards rehabilitation, and the 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 or postrelease  
17 community supervision medications, and all property belonging  
18 to the prisoner. After discharge, any additional records shall be  
19 sent to the prisoner's forwarding 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 (11) The provisions of this subdivision shall be available to an  
28 inmate who is sentenced to a county jail pursuant to subdivision  
29 (h). For purposes of those inmates, "secretary" or "warden" shall  
30 mean the county correctional administrator and "chief medical  
31 officer" shall mean a physician designated by the county  
32 correctional administrator for this purpose.

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

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

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

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

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

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

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

33 (B) The portion of a defendant's sentenced term that is  
34 suspended pursuant to this paragraph shall be known as mandatory  
35 supervision, and, unless otherwise ordered by the court, shall  
36 commence upon release from physical custody or an alternative  
37 custody program, whichever is later. During the period of  
38 mandatory supervision, the defendant shall be supervised by the  
39 county probation officer in accordance with the terms, conditions,  
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the  
2 court. The period of supervision shall be mandatory, and may not  
3 be earlier terminated except by court order. Any proceeding to  
4 revoke or modify mandatory supervision under this subparagraph  
5 shall be conducted pursuant to either subdivisions (a) and (b) of  
6 Section 1203.2 or Section 1203.3. During the period when the  
7 defendant is under that supervision, unless in actual custody related  
8 to the sentence imposed by the court, the defendant shall be entitled  
9 to only actual time credit against the term of imprisonment imposed  
10 by the court. Any time period which is suspended because a person  
11 has absconded shall not be credited toward the period of  
12 supervision.

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

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

20 (i) This section shall remain in effect only until January 1, 2017,  
21 2022, and as of that date is repealed, unless a later enacted statute,  
22 that is enacted before January 1, 2017, 2022, deletes or extends  
23 that date.

24 *SEC. 1.1. Section 1170 of the Penal Code, as amended by*  
25 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*  
26 *read:*

27 1170. (a) (1) The Legislature finds and declares that the  
28 purpose of imprisonment for crime is punishment. ~~This sentencing~~  
29 ~~is public safety achieved through punishment, rehabilitation, and~~  
30 ~~restorative justice. When a sentence includes incarceration, this~~  
31 ~~purpose is best served by terms that are proportionate to the~~  
32 ~~seriousness of the offense with provision for uniformity in the~~  
33 ~~sentences of offenders committing the same offense under similar~~  
34 ~~circumstances. The Legislature further finds and declares that the~~  
35 ~~elimination of disparity and the provision of uniformity of~~  
36 ~~sentences can best be achieved by determinate sentences fixed by~~  
37 ~~statute in proportion to the seriousness of the offense as determined~~  
38 ~~by the Legislature to be imposed by the court with specified~~  
39 ~~discretion.~~

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

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

1 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
2 sentence shall be deemed to have been served, except for the  
3 remaining period of mandatory supervision, and the defendant  
4 shall not be actually delivered to the custody of the secretary or to  
5 the custody of the county correctional administrator. The court  
6 shall advise the defendant that he or she shall serve an applicable  
7 period of parole, postrelease community supervision, or mandatory  
8 supervision, and order the defendant to report to the parole or  
9 probation office closest to the defendant's last legal residence,  
10 unless the in-custody credits equal the total sentence, including  
11 both confinement time and the period of parole, postrelease  
12 community supervision, or mandatory supervision. The sentence  
13 shall be deemed a separate prior prison term or a sentence of  
14 imprisonment in a county jail under subdivision (h) for purposes  
15 of Section 667.5, and a copy of the judgment and other necessary  
16 documentation shall be forwarded to the secretary.

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

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

1 3000 or 3000.08 or postrelease community supervision for a period  
2 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

36 (F) The factors that the court may consider when determining  
37 whether to ~~recall~~ and resentence *the defendant to a term of*  
38 *imprisonment with the possibility of parole* include, but are not  
39 limited to, the following:

- 1 (i) The defendant was convicted pursuant to felony murder or  
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications  
4 for assault or other felony crimes with a significant potential for  
5 personal harm to victims prior to the offense for which the sentence  
6 ~~is being considered for recall.~~ *defendant was sentenced to life*  
7 *without the possibility of parole.*
- 8 (iii) The defendant committed the offense with at least one adult  
9 codefendant.
- 10 (iv) Prior to the offense for which the ~~sentence is being~~  
11 ~~considered for recall,~~ *defendant was sentenced to life without the*  
12 *possibility of parole,* the defendant had insufficient adult support  
13 or supervision and had suffered from psychological or physical  
14 trauma, or significant stress.
- 15 (v) The defendant suffers from cognitive limitations due to  
16 mental illness, developmental disabilities, or other factors that did  
17 not constitute a defense, but influenced the defendant's  
18 involvement in the offense.
- 19 (vi) The defendant has performed acts that tend to indicate  
20 rehabilitation or the potential for rehabilitation, including, but not  
21 limited to, availing himself or herself of rehabilitative, educational,  
22 or vocational programs, if those programs have been available at  
23 his or her classification level and facility, using self-study for  
24 self-improvement, or showing evidence of remorse.
- 25 (vii) The defendant has maintained family ties or connections  
26 with others through letter writing, calls, or visits, or has eliminated  
27 contact with individuals outside of prison who are currently  
28 involved with crime.
- 29 (viii) The defendant has had no disciplinary actions for violent  
30 activities in the last five years in which the defendant was  
31 determined to be the aggressor.
- 32 (G) The court shall have the discretion ~~to recall the sentence~~  
33 ~~and commitment previously ordered and~~ to resentence the  
34 defendant in the same manner as if the defendant had not  
35 previously been sentenced, provided that the new sentence, if any,  
36 is not greater than the initial sentence. The discretion of the court  
37 shall be exercised in consideration of the criteria in subparagraph  
38 ~~(B)~~: (F). Victims, or victim family members if the victim is  
39 deceased, shall be notified of the resentencing hearing and shall  
40 retain their rights to participate in the hearing.

1 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*  
2 *resentenced to imprisonment for life without the possibility of*  
3 *parole*, the defendant may submit another petition for recall and  
4 resentencing to the sentencing court when the defendant has been  
5 committed to the custody of the department for at least 20 years.  
6 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
7 *or the defendant is resentenced to imprisonment for life without*  
8 *the possibility of parole* under that petition, the defendant may file  
9 another petition after having served 24 years. The final petition  
10 may be submitted, and the response to that petition shall be  
11 determined, during the 25th year of the defendant's sentence.

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

17 (J) This subdivision shall have retroactive application.

18 (K) *Nothing in this paragraph is intended to diminish or*  
19 *abrogate any rights or remedies otherwise available to the*  
20 *defendant.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (f) Notwithstanding any other provision of this section, for  
38 purposes of paragraph (3) of subdivision (h), any allegation that  
39 a defendant is eligible for state prison due to a prior or current  
40 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal  
2 pursuant to Section 1385.

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

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

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

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

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

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

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

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

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

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

22 (i) This section shall remain in effect only until January 1, ~~2017,~~  
23 ~~2022~~, and as of that date is repealed, unless a later enacted statute,  
24 that is enacted before ~~that date~~, *January 1, 2022*, deletes or extends  
25 that date.

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

28 1170. (a) (1) The Legislature finds and declares that the  
29 purpose of sentencing is public safety achieved through  
30 punishment, rehabilitation, and restorative justice. When a sentence  
31 ~~of incarceration is imposed,~~ *includes incarceration*, this purpose  
32 is best served by ~~(A) providing ongoing opportunities for~~  
33 ~~rehabilitation and (B) terms that are proportionate to the seriousness~~  
34 of the offense with provision for uniformity in the sentences of  
35 offenders committing the same offense under similar  
36 circumstances. ~~The Legislature further finds and declares that the~~  
37 ~~elimination of disparity and the provision of uniformity of~~  
38 ~~sentences can best be achieved by determinate sentences fixed by~~  
39 ~~statute in proportion to the seriousness of the offense as determined~~

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

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

16 (3) In any case in which the sentence prescribed by statute for  
17 a person convicted of a public offense is a term of imprisonment  
18 in the state prison, or a term pursuant to subdivision (h), of any  
19 specification of three time periods, the court shall sentence the  
20 defendant to one of the terms of imprisonment specified unless  
21 the convicted person is given any other disposition provided by  
22 law, including a fine, jail, probation, or the suspension of  
23 imposition or execution of sentence or is sentenced pursuant to  
24 subdivision (b) of Section 1168 because he or she had committed  
25 his or her crime prior to July 1, 1977. In sentencing the convicted  
26 person, the court shall apply the sentencing rules of the Judicial  
27 Council. The court, unless it determines that there are  
28 circumstances in mitigation of the sentence prescribed, shall also  
29 impose any other term that it is required by law to impose as an  
30 additional term. Nothing in this article shall affect any provision  
31 of law that imposes the death penalty, that authorizes or restricts  
32 the granting of probation or suspending the execution or imposition  
33 of sentence, or expressly provides for imprisonment in the state  
34 prison for life, except as provided in paragraph (2) of subdivision  
35 (d). In any case in which the amount of preimprisonment credit  
36 under Section 2900.5 or any other provision of law is equal to or  
37 exceeds any sentence imposed pursuant to this chapter, except for  
38 a remaining portion of mandatory supervision imposed pursuant  
39 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
40 sentence shall be deemed to have been served, except for the

1 remaining period of mandatory supervision, and the defendant  
2 shall not be actually delivered to the custody of the secretary or  
3 the county correctional administrator. The court shall advise the  
4 defendant that he or she shall serve an applicable period of parole,  
5 postrelease community supervision, or mandatory supervision and  
6 order the defendant to report to the parole or probation office  
7 closest to the defendant's last legal residence, unless the in-custody  
8 credits equal the total sentence, including both confinement time  
9 and the period of parole, postrelease community supervision, or  
10 mandatory supervision. The sentence shall be deemed a separate  
11 prior prison term or a sentence of imprisonment in a county jail  
12 under subdivision (h) for purposes of Section 667.5, and a copy  
13 of the judgment and other necessary documentation shall be  
14 forwarded to the secretary.

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

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

1 3000 or 3000.08 or postrelease community supervision for a period  
2 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and the response to that petition shall be determined, during the  
2 25th year of the defendant's sentence.

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

8 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

37 (4) Any physician employed by the department who determines  
38 that a prisoner has six months or less to live shall notify the chief  
39 medical officer of the prognosis. If the chief medical officer  
40 concurs with the prognosis, he or she shall notify the warden.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 has absconded shall not be credited toward the period of  
 2 supervision.

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

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

10 (i) This section shall become operative on January 1, ~~2017.~~  
 11 ~~2022.~~

12 *SEC. 2.1. Section 1170 of the Penal Code, as amended by*  
 13 *Section 2 of Chapter 378 of the Statutes of 2015, 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 sentencing~~  
 17 ~~is public safety achieved through punishment, rehabilitation, and~~  
 18 ~~restorative justice. When a sentence includes incarceration, this~~  
 19 ~~purpose is best served by terms that are proportionate to the~~  
 20 ~~seriousness of the offense with provision for uniformity in the~~  
 21 ~~sentences of offenders committing the same offense under similar~~  
 22 ~~circumstances. The Legislature further finds and declares that the~~  
 23 ~~elimination of disparity and the provision of uniformity of~~  
 24 ~~sentences can best be achieved by determinate sentences fixed by~~  
 25 ~~statute in proportion to the seriousness of the offense as determined~~  
 26 ~~by the Legislature to be imposed by the court with specified~~  
 27 ~~discretion.~~

28 (2) ~~Notwithstanding paragraph (1), the~~ The Legislature further  
 29 finds and declares that programs should be available for inmates,  
 30 including, but not limited to, ~~educational programs,~~ *educational,*  
 31 *rehabilitative, and restorative justice programs* that are designed  
 32 *to promote behavior change and to prepare nonviolent felony all*  
 33 *eligible offenders for successful reentry into the community. The*  
 34 *Legislature encourages the development of policies and programs*  
 35 *designed to educate and rehabilitate nonviolent felony all eligible*  
 36 *offenders. In implementing this section, the Department of*  
 37 *Corrections and Rehabilitation is encouraged to give priority*  
 38 *enrollment in programs to allow all eligible inmates the opportunity*  
 39 *to enroll in programs that promote successful return to the*  
 40 *community to an inmate with a short remaining term of*

1 ~~commitment and a release date that would allow him or her~~  
2 ~~adequate time to complete the program.~~ *community. The*  
3 *Department of Corrections and Rehabilitation is directed to*  
4 *establish a mission statement consistent with these principles.*

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

1 sentence of imprisonment in a county jail under subdivision (h)  
2 for purposes of Section 667.5, and a copy of the judgment and  
3 other necessary documentation shall be forwarded to the secretary.

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

25 (c) The court shall state the reasons for its sentence choice on  
26 the record at the time of sentencing. The court shall also inform  
27 the defendant that as part of the sentence after expiration of the  
28 term he or she may be on parole for a period as provided in Section  
29 3000 or 3000.08 or postrelease community supervision for a period  
30 as provided in Section 3451.

31 (d) (1) When a defendant subject to this section or subdivision  
32 (b) of Section 1168 has been sentenced to be imprisoned in the  
33 state prison or county jail pursuant to subdivision (h) and has been  
34 committed to the custody of the secretary or the county correctional  
35 administrator, the court may, within 120 days of the date of  
36 commitment on its own motion, or at any time upon the  
37 recommendation of the secretary or the Board of Parole Hearings  
38 in the case of state prison inmates, or the county correctional  
39 administrator in the case of county jail inmates, recall the sentence  
40 and commitment previously ordered and resentence the defendant

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

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

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

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

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

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

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

38 (iv) The defendant has performed acts that tend to indicate  
39 rehabilitation or the potential for rehabilitation, including, but not  
40 limited to, availing himself or herself of rehabilitative, educational,

1 or vocational programs, if those programs have been available at  
2 his or her classification level and facility, using self-study for  
3 self-improvement, or showing evidence of remorse.

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

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

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

23 (F) The factors that the court may consider when determining  
24 whether to ~~recall and~~ resentence *the defendant to a term of*  
25 *imprisonment with the possibility of parole* include, but are not  
26 limited to, the following:

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

29 (ii) The defendant does not have juvenile felony adjudications  
30 for assault or other felony crimes with a significant potential for  
31 personal harm to victims prior to the offense for which the sentence  
32 ~~is being considered for recall.~~ *defendant was sentenced to life*  
33 *without the possibility of parole.*

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

36 (iv) Prior to the offense for which the ~~sentence is being~~  
37 ~~considered for recall,~~ *defendant was sentenced to life without the*  
38 *possibility of parole,* the defendant had insufficient adult support  
39 or supervision and had suffered from psychological or physical  
40 trauma, or significant stress.

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

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

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

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

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

27 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*  
28 *resentenced to imprisonment for life without the possibility of*  
29 *parole*, the defendant may submit another petition for recall and  
30 resentencing to the sentencing court when the defendant has been  
31 committed to the custody of the department for at least 20 years.  
32 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
33 *or the defendant is resentenced to imprisonment for life without*  
34 *the possibility of parole* under that petition, the defendant may file  
35 another petition after having served 24 years. The final petition  
36 may be submitted, and the response to that petition shall be  
37 determined, during the 25th year of the defendant's sentence.

38 (I) In addition to the criteria in subparagraph (F), the court may  
39 consider any other criteria that the court deems relevant to its  
40 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 (K) *Nothing in this paragraph is intended to diminish or*  
5 *abrogate any rights or remedies otherwise available to the*  
6 *defendant.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (i) This section shall become operative on January 1, ~~2017~~  
9 2022.

10 *SEC. 3. Section 1.1 of this bill incorporates amendments to*  
11 *Section 1170 of the Penal Code, as amended by Section 1 of*  
12 *Chapter 378 of the Statutes of 2015, proposed by both this bill and*  
13 *Senate Bill 1084. It shall only become operative if (1) both bills*  
14 *are enacted and become effective on or before January 1, 2017,*  
15 *(2) each bill amends Section 1170 of the Penal Code, as amended*  
16 *by Section 1 of Chapter 378 of the Statutes of 2015, and (3) this*  
17 *bill is enacted after Senate Bill 1084, in which case Section 1 of*  
18 *this bill shall not become operative.*

19 *SEC. 4. Section 2.1 of this bill incorporates amendments to*  
20 *Section 1170 of the Penal Code, as amended by Section 2 of*  
21 *Chapter 378 of the Statutes of 2015, proposed by both this bill and*  
22 *Senate Bill 1084. It shall only become operative if (1) both bills*  
23 *are enacted and become effective on or before January 1, 2017,*  
24 *(2) each bill amends Section 1170 of the Penal Code, as amended*  
25 *by Section 2 of Chapter 378 of the Statutes of 2015, and (3) this*  
26 *bill is enacted after Senate Bill 1084, in which case Section 2 of*  
27 *this bill shall not become operative.*