

ASSEMBLY BILL

No. 2665

Introduced by Assembly Member Rodriguez
(Principal coauthor: Senator Galgiani)
(Coauthor: Assembly Member Cooley)

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2665, as introduced, Rodriguez. Felons: incarceration in state prison.

Existing law provides that specified felonies are punishable by imprisonment in a county jail, but provides for imprisonment in the state prison for, among other offenses, a prior or current conviction for a serious or violent felony, or a felony requiring registration as a sex offender.

This bill would require imprisonment in the state prison for a 3rd separate felony conviction where the defendant has 2 prior separate felony convictions, and all 3 of the convictions are suffered on or after January 1, 2017. The bill would make additional technical, nonsubstantive changes.

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

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

26 (3) ~~In any~~ a case in which the punishment prescribed by statute
27 for 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 punishment prescribed, shall

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

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

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

6 (c) The court shall state the reasons for its sentence choice on
7 the record at the time of sentencing. The court shall also inform
8 the defendant that as part of the sentence after expiration of the
9 term he or she may be on parole for a period as provided in Section
10 3000 or 3000.08 or postrelease community supervision for a period
11 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 The

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

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

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

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

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

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

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

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

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

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

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

35 (f) Notwithstanding any other provision of this section, for
36 purposes of paragraph (3) of subdivision (h), ~~any~~ an allegation
37 that a defendant is eligible for state prison due to a prior or current
38 conviction, sentence enhancement, or because he or she is required
39 to register as a sex offender shall not be subject to dismissal
40 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, *or (E) upon conviction of a third separate*
23 *felony where the defendant has two prior separate felony*
24 *convictions, and all three of the convictions are suffered on or*
25 *after January 1, 2017*, an executed sentence for a felony punishable
26 pursuant to this subdivision shall be served in state prison.

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

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

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

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

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

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

23 (i) This section shall remain in effect only until January 1, 2017,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before that date, deletes or extends 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 imprisonment for crime is punishment. This purpose
30 is best served by terms proportionate to the seriousness of the
31 offense with provision for uniformity in the sentences of offenders
32 committing the same offense under similar circumstances. The
33 Legislature further finds and declares that the elimination of
34 disparity and the provision of uniformity of sentences ~~can best be~~
35 *is best* achieved by determinate sentences fixed by statute in
36 proportion to the seriousness of the offense as determined by the
37 Legislature to be imposed by the court with specified discretion.

38 (2) Notwithstanding paragraph (1), the Legislature further finds
39 and declares that programs should be available for inmates,
40 including, but not limited to, educational programs, that are

1 designed to prepare nonviolent felony offenders for successful
2 reentry into the community. The Legislature encourages the
3 development of policies and programs designed to educate and
4 rehabilitate nonviolent felony offenders. In implementing this
5 section, the Department of Corrections and Rehabilitation is
6 encouraged to give priority enrollment in programs to promote
7 successful return to the community to an inmate with a short
8 remaining term of commitment and a release date that would allow
9 him or her adequate time to complete the program.

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

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

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

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

36 (d) (1) When a defendant subject to this section or subdivision
37 (b) of Section 1168 has been sentenced to be imprisoned in the
38 state prison or county jail pursuant to subdivision (h) and has been
39 committed to the custody of the secretary or the county correctional
40 administrator, the court may, within 120 days of the date of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (J) This subdivision shall have retroactive application.

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

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

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

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

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

23 ~~The~~

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

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

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

1 mentally unfit, the warden or the warden's representative shall
2 contact the inmate's emergency contact and provide the information
3 described in paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

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

1 felony described in subdivision (c) of Section 667.5, (C) is required
2 to register as a sex offender pursuant to Chapter 5.5 (commencing
3 with Section 290) of Title 9 of Part 1, ~~or~~ (D) is convicted of a crime
4 and as part of the sentence an enhancement pursuant to Section
5 186.11 is imposed, *or (E) upon conviction of a third separate*
6 *felony where the defendant has two prior separate felony*
7 *convictions, and all three of the convictions are suffered on or*
8 *after January 1, 2017, an executed sentence for a felony punishable*
9 pursuant to this subdivision shall be served in state prison.

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

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

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

1 (6) The sentencing changes made by the act that added this
2 subdivision shall be applied prospectively to ~~any~~ a person
3 sentenced 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~~ a person
7 sentenced on or after January 1, 2015.

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

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