

ASSEMBLY BILL

No. 2865

Introduced by Assembly Member O'Donnell

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2865, as introduced, O'Donnell. Sentencing.

Existing law provides for the sentencing and recall and resentencing of persons convicted of crimes.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
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

1 proportion to the seriousness of the offense as determined by the
2 Legislature to be imposed by the court with specified discretion.

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

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

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

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

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

39 (d) (1) When a defendant subject to this section or subdivision
40 (b) of Section 1168 has been sentenced to be imprisoned in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (iii) The defendant committed the offense with at least one adult
40 codefendant.

1 (iv) Prior to the offense for which the sentence is being
2 considered for recall, the defendant had insufficient adult support
3 or supervision and had suffered from psychological or physical
4 trauma, or significant stress.

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

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

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

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

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

31 (H) If the sentence is not recalled, the defendant may submit
32 another petition for recall and resentencing to the sentencing court
33 when the defendant has been committed to the custody of the
34 department for at least 20 years. If recall and resentencing is not
35 granted under that petition, the defendant may file another petition
36 after having served 24 years. The final petition may be submitted,
37 and the response to that petition shall be determined, during the
38 25th year of the defendant's sentence.

39 (I) In addition to the criteria in subparagraph (F), the court may
40 consider any other criteria that the court deems relevant to its

1 decision, so long as the court identifies them on the record,
2 provides a statement of reasons for adopting them, and states why
3 the defendant does or does not satisfy the criteria.

4 (J) This subdivision shall have retroactive application.

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

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

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

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

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

27 ~~The~~

28 (ii) *The* Board of Parole Hearings shall make findings pursuant
29 to 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~~—A physician employed by the department who
36 determines that a prisoner has six months or less to live shall notify
37 the chief medical officer of the prognosis. If the chief medical
38 officer concurs with the prognosis, he or she shall notify the
39 warden. Within 48 hours of receiving notification, the warden or
40 the warden's representative shall notify the prisoner of the recall

1 and 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~~ A 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~~ a 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~~ an allegation
24 that 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 that, in the interests of justice, 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~~ A 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~~ A time period ~~which~~ *that* is suspended because
38 a person 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 remain in effect only until January 1, 2017,
9 and as of that date is repealed, unless a later enacted statute, that
10 is enacted before that date, deletes or extends that date.

11 SEC. 2. Section 1170 of the Penal Code, as amended by Section
12 2 of Chapter 378 of the Statutes of 2015, is amended to read:

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

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

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

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

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

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

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000 or 3000.08 or postrelease community supervision for a period
20 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (J) This subdivision shall have retroactive application.

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

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

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

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

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

9 ~~The~~

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

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

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

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

36 (6) Notwithstanding any other provisions of this section, the
37 prisoner or his or her family member or designee may
38 independently request consideration for recall and resentencing
39 by contacting the chief medical officer at the prison or the
40 secretary. Upon receipt of the request, the chief medical officer

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

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

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

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

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

38 (11) The provisions of this subdivision shall be available to an
39 inmate who is sentenced to a county jail pursuant to subdivision
40 (h). For purposes of those inmates, "secretary" or "warden" shall

1 mean the county correctional administrator and “chief medical
2 officer” shall mean a physician designated by the county
3 correctional administrator for this purpose.

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

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

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

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

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

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

37 (5) (A) Unless the court finds, in the interest of justice, that it
38 is not appropriate in a particular case, the court, when imposing a
39 sentence pursuant to paragraph (1) or (2), shall suspend execution

1 of a concluding portion of the term for a period selected at the
2 court's discretion.

3 (B) The portion of a defendant's sentenced term that is
4 suspended pursuant to this paragraph shall be known as mandatory
5 supervision, and, unless otherwise ordered by the court, shall
6 commence upon release from physical custody or an alternative
7 custody program, whichever is later. During the period of
8 mandatory supervision, the defendant shall be supervised by the
9 county probation officer in accordance with the terms, conditions,
10 and procedures generally applicable to persons placed on probation,
11 for the remaining unserved portion of the sentence imposed by the
12 court. The period of supervision shall be mandatory, and may not
13 be earlier terminated except by court order. ~~Any~~ A proceeding to
14 revoke or modify mandatory supervision under this subparagraph
15 shall be conducted pursuant to either subdivisions (a) and (b) of
16 Section 1203.2 or Section 1203.3. During the period when the
17 defendant is under that supervision, unless in actual custody related
18 to the sentence imposed by the court, the defendant shall be entitled
19 to only actual time credit against the term of imprisonment imposed
20 by the court. ~~Any~~ A time period ~~which~~ *that* is suspended because
21 a person has absconded shall not be credited toward the period of
22 supervision.

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

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

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