

Introduced by Senator Galgiani

December 1, 2014

An act to amend Sections 1170 and 3550 of the Penal Code, relating to parole.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as amended, Galgiani. Parole: medical parole: compassionate release.

Existing law provides that the Board of Parole Hearings or its successor in interest shall be the state's parole authority. Existing law requires that a prisoner who is found to be permanently medically incapacitated, as specified, be granted medical parole, if the Board of Parole Hearings determines that the conditions under which the prisoner would be released would not reasonably pose a threat to public safety. Existing law exempts a prisoner sentenced to death, a prisoner sentenced to life without the possibility of parole, and a prisoner who is serving a sentence for which parole is prohibited by initiative statute, from medical parole eligibility.

Existing law authorizes a court to resentence or recall the sentence of a prisoner if the court finds that the prisoner is terminally ill, as specified, or the prisoner is permanently medically incapacitated, as specified, and, in either case, the conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety. Existing law exempts a prisoner sentenced to death or a term of life without the possibility of parole from eligibility for compassionate release pursuant to these provisions.

This bill would additionally exempt from medical parole eligibility and compassionate release eligibility a prisoner who was convicted of the ~~first degree~~ *first-degree* murder of a peace officer or a person who had been a peace officer, as provided.

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 612 of the Statutes of 2014, is amended to~~
3 ~~read:~~

4 ~~1170. (a) (1) The Legislature finds and declares that the~~
5 ~~purpose of imprisonment for crime is punishment. This purpose~~
6 ~~is best served by terms proportionate to the seriousness of the~~
7 ~~offense with provision for uniformity in the sentences of offenders~~
8 ~~committing the same offense under similar circumstances. The~~
9 ~~Legislature further finds and declares that the elimination of~~
10 ~~disparity and the provision of uniformity of sentences can best be~~
11 ~~achieved by determinate sentences fixed by statute in proportion~~
12 ~~to the seriousness of the offense as determined by the Legislature~~
13 ~~to be imposed by the court with specified discretion.~~

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

26 ~~(3) In any 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 of any specification of three time periods, the~~
29 ~~court shall sentence the defendant to one of the terms of~~
30 ~~imprisonment specified unless the convicted person is given any~~
31 ~~other disposition provided by law, including a fine, jail, probation,~~

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

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

1 the court may not impose an upper term by using the fact of any
2 enhancement upon which sentence is imposed under any provision
3 of law. A term of imprisonment shall not be specified if imposition
4 of sentence is suspended.

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

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

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

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

38 (B) The defendant shall file the original petition with the
39 sentencing court. A copy of the petition shall be served on the
40 agency that prosecuted the case. The petition shall include the

1 defendant's statement that he or she was under 18 years of age at
2 the time of the crime and was sentenced to life in prison without
3 the possibility of parole, the defendant's statement describing his
4 or her remorse and work towards rehabilitation, and the defendant's
5 statement that one of the following is true:

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

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

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

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

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

- 1 (i) ~~The defendant was convicted pursuant to felony murder or~~
2 ~~aiding and abetting murder provisions of law.~~
- 3 (ii) ~~The defendant does not have juvenile felony adjudications~~
4 ~~for assault or other felony crimes with a significant potential for~~
5 ~~personal harm to victims prior to the offense for which the sentence~~
6 ~~is being considered for recall.~~
- 7 (iii) ~~The defendant committed the offense with at least one adult~~
8 ~~codefendant.~~
- 9 (iv) ~~Prior to the offense for which the sentence is being~~
10 ~~considered for recall, the defendant had insufficient adult support~~
11 ~~or supervision and had suffered from psychological or physical~~
12 ~~trauma, or significant stress.~~
- 13 (v) ~~The defendant suffers from cognitive limitations due to~~
14 ~~mental illness, developmental disabilities, or other factors that did~~
15 ~~not constitute a defense, but influenced the defendant's~~
16 ~~involvement in the offense.~~
- 17 (vi) ~~The defendant has performed acts that tend to indicate~~
18 ~~rehabilitation or the potential for rehabilitation, including, but not~~
19 ~~limited to, availing himself or herself of rehabilitative, educational,~~
20 ~~or vocational programs, if those programs have been available at~~
21 ~~his or her classification level and facility, using self-study for~~
22 ~~self-improvement, or showing evidence of remorse.~~
- 23 (vii) ~~The defendant has maintained family ties or connections~~
24 ~~with others through letter writing, calls, or visits, or has eliminated~~
25 ~~contact with individuals outside of prison who are currently~~
26 ~~involved with crime.~~
- 27 (viii) ~~The defendant has had no disciplinary actions for violent~~
28 ~~activities in the last five years in which the defendant was~~
29 ~~determined to be the aggressor.~~
- 30 (G) ~~The court shall have the discretion to recall the sentence~~
31 ~~and commitment previously ordered and to resentence the~~
32 ~~defendant in the same manner as if the defendant had not~~
33 ~~previously been sentenced, provided that the new sentence, if any,~~
34 ~~is not greater than the initial sentence. The discretion of the court~~
35 ~~shall be exercised in consideration of the criteria in subparagraph~~
36 ~~(B). Victims, or victim family members if the victim is deceased,~~
37 ~~shall be notified of the resentencing hearing and shall retain their~~
38 ~~rights to participate in the hearing.~~
- 39 (H) ~~If the sentence is not recalled, the defendant may submit~~
40 ~~another petition for recall and resentencing to the sentencing court~~

1 when the defendant has been committed to the custody of the
2 department for at least 20 years. If recall and resentencing is not
3 granted under that petition, the defendant may file another petition
4 after having served 24 years. The final petition may be submitted,
5 and the response to that petition shall be determined, during the
6 25th year of the defendant's sentence.

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

12 (J) This subdivision shall have retroactive application.

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

18 (2) (A) The court shall have the discretion to resentence or
19 recall if the court finds that the facts described in clauses (i) and
20 (ii) or clauses (ii) and (iii) exist:

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

25 (ii) The conditions under which the prisoner would be released
26 or receive treatment do not pose a threat to public safety.

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

34 (B) This subdivision does not apply to the following:

35 (i) A prisoner sentenced to death or a term of life without the
36 possibility of parole.

37 (ii) (I) A prisoner who was convicted of first-degree murder if
38 the victim was a peace officer, as defined in Chapter 4.5
39 (commencing with Section 830) of Title 3, who was killed while
40 engaged in the performance of his or her duties, and the individual

1 knew, or reasonably should have known, that the victim was a
2 peace officer engaged in the performance of his or her duties.

3 (H) The victim was a peace officer or had been a peace officer,
4 as defined in Chapter 4.5 (commencing with Section 830) of Title
5 3, and was intentionally murdered in retaliation for the performance
6 of his or her official duties, and the defendant was sentenced on
7 or after January 1, 2016.

8 (C) The Board of Parole Hearings shall make findings pursuant
9 to this subdivision before making a recommendation for resentence
10 or recall to the court.

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

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

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

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

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

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

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

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

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

35 (f) Notwithstanding any other provision of this section, for
36 purposes of paragraph (3) of subdivision (h), any allegation that
37 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, an executed sentence for a felony punishable~~
23 ~~pursuant to this subdivision shall be served in state prison.~~

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

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

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

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

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

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

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

23 SEC. 2. ~~Section 1170 of the Penal Code, as amended by Section~~
24 ~~2 of Chapter 612 of the Statutes of 2014, is amended to read:~~

25 1170. ~~(a) (1) The Legislature finds and declares that the~~
26 ~~purpose of imprisonment for crime is punishment. This purpose~~
27 ~~is best served by terms proportionate to the seriousness of the~~
28 ~~offense with provision for uniformity in the sentences of offenders~~
29 ~~committing the same offense under similar circumstances. The~~
30 ~~Legislature further finds and declares that the elimination of~~
31 ~~disparity and the provision of uniformity of sentences can best be~~
32 ~~achieved by determinate sentences fixed by statute in proportion~~
33 ~~to the seriousness of the offense as determined by the Legislature~~
34 ~~to be imposed by the court with specified discretion.~~

35 (2) ~~Notwithstanding paragraph (1), the Legislature further finds~~
36 ~~and declares that programs should be available for inmates,~~
37 ~~including, but not limited to, educational programs, that are~~
38 ~~designed to prepare nonviolent felony offenders for successful~~
39 ~~reentry into the community. The Legislature encourages the~~
40 ~~development of policies and programs designed to educate and~~

1 rehabilitate nonviolent felony offenders. In implementing this
2 section, the Department of Corrections and Rehabilitation is
3 encouraged to give priority enrollment in programs to promote
4 successful return to the community to an inmate with a short
5 remaining term of commitment and a release date that would allow
6 him or her adequate time to complete the program.

7 (3) In any case in which the punishment prescribed by statute
8 for a person convicted of a public offense is a term of imprisonment
9 in the state prison of any specification of three time periods, the
10 court shall sentence the defendant to one of the terms of
11 imprisonment specified unless the convicted person is given any
12 other disposition provided by law, including a fine, jail, probation,
13 or the suspension of imposition or execution of sentence or is
14 sentenced pursuant to subdivision (b) of Section 1168 because he
15 or she had committed his or her crime prior to July 1, 1977. In
16 sentencing the convicted person, the court shall apply the
17 sentencing rules of the Judicial Council. The court, unless it
18 determines that there are circumstances in mitigation of the
19 punishment prescribed, shall also impose any other term that it is
20 required by law to impose as an additional term. Nothing in this
21 article shall affect any provision of law that imposes the death
22 penalty, that authorizes or restricts the granting of probation or
23 suspending the execution or imposition of sentence, or expressly
24 provides for imprisonment in the state prison for life, except as
25 provided in paragraph (2) of subdivision (d). In any case in which
26 the amount of preimprisonment credit under Section 2900.5 or any
27 other provision of law is equal to or exceeds any sentence imposed
28 pursuant to this chapter, the entire sentence shall be deemed to
29 have been served and the defendant shall not be actually delivered
30 to the custody of the secretary. The court shall advise the defendant
31 that he or she shall serve a period of parole and order the defendant
32 to report to the parole office closest to the defendant's last legal
33 residence, unless the in-custody credits equal the total sentence,
34 including both confinement time and the period of parole. The
35 sentence shall be deemed a separate prior prison term under Section
36 667.5, and a copy of the judgment and other necessary
37 documentation shall be forwarded to the secretary.

38 (b) When a judgment of imprisonment is to be imposed and the
39 statute specifies three possible terms, the court shall order
40 imposition of the middle term, unless there are circumstances in

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

19 ~~(e) The court shall state the reasons for its sentence choice on~~
20 ~~the record at the time of sentencing. The court shall also inform~~
21 ~~the defendant that as part of the sentence after expiration of the~~
22 ~~term he or she may be on parole for a period as provided in Section~~
23 ~~3000.~~

24 ~~(d) (1) When a defendant subject to this section or subdivision~~
25 ~~(b) of Section 1168 has been sentenced to be imprisoned in the~~
26 ~~state prison and has been committed to the custody of the secretary,~~
27 ~~the court may, within 120 days of the date of commitment on its~~
28 ~~own motion, or at any time upon the recommendation of the~~
29 ~~secretary or the Board of Parole Hearings, recall the sentence and~~
30 ~~commitment previously ordered and resentence the defendant in~~
31 ~~the same manner as if he or she had not previously been sentenced,~~
32 ~~provided the new sentence, if any, is no greater than the initial~~
33 ~~sentence. The court resentencing under this subdivision shall apply~~
34 ~~the sentencing rules of the Judicial Council so as to eliminate~~
35 ~~disparity of sentences and to promote uniformity of sentencing.~~
36 ~~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) (A) The court shall have the discretion to resentence or~~
33 ~~recall if the court finds that the facts described in clauses (i) and~~
34 ~~(ii) or clauses (ii) and (iii) exist:~~

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

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

8 ~~(B) This subdivision does not apply to the following:~~

9 ~~(i) A prisoner sentenced to death or a term of life without the~~
10 ~~possibility of parole.~~

11 ~~(ii) (I) A prisoner who was convicted of first degree murder if~~
12 ~~the victim was a peace officer, as defined in Chapter 4.5~~
13 ~~(commencing with Section 830) of Title 3, who was killed while~~
14 ~~engaged in the performance of his or her duties, and the individual~~
15 ~~knew, or reasonably should have known, that the victim was a~~
16 ~~peace officer engaged in the performance of his or her duties.~~

17 ~~(II) The victim was a peace officer or had been a peace officer,~~
18 ~~as defined in Chapter 4.5 (commencing with Section 830) of Title~~
19 ~~3, and was intentionally murdered in retaliation for the performance~~
20 ~~of his or her official duties, and the defendant was sentenced on~~
21 ~~or after January 1, 2016.~~

22 ~~(C) The Board of Parole Hearings shall make findings pursuant~~
23 ~~to this subdivision before making a recommendation for resentence~~
24 ~~or recall to the court.~~

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

28 ~~(4) Any physician employed by the department who determines~~
29 ~~that a prisoner has six months or less to live shall notify the chief~~
30 ~~medical officer of the prognosis. If the chief medical officer~~
31 ~~concurs with the prognosis, he or she shall notify the warden.~~
32 ~~Within 48 hours of receiving notification, the warden or the~~
33 ~~warden's representative shall notify the prisoner of the recall and~~
34 ~~resentencing procedures, and shall arrange for the prisoner to~~
35 ~~designate a family member or other outside agent to be notified~~
36 ~~as to the prisoner's medical condition and prognosis, and as to the~~
37 ~~recall and resentencing procedures. If the inmate is deemed~~
38 ~~mentally unfit, the warden or the warden's representative shall~~
39 ~~contact the inmate's emergency contact and provide the information~~
40 ~~described in paragraph (2).~~

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

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

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

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

32 ~~(9) If the court grants the recall and resentencing application,~~
33 ~~the prisoner shall be released by the department within 48 hours~~
34 ~~of receipt of the court’s order, unless a longer time period is agreed~~
35 ~~to by the inmate. At the time of release, the warden or the warden’s~~
36 ~~representative shall ensure that the prisoner has each of the~~
37 ~~following in his or her possession: a discharge medical summary,~~
38 ~~full medical records, state identification, parole medications, and~~
39 ~~all property belonging to the prisoner. After discharge, any~~

1 additional records shall be sent to the prisoner's forwarding
2 address.

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

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

16 (g) A sentence to state prison for a determinate term for which
17 only one term is specified, is a sentence to state prison under this
18 section.

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

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

26 (3) Notwithstanding paragraphs (1) and (2), where the defendant
27 (A) has a prior or current felony conviction for a serious felony
28 described in subdivision (e) of Section 1192.7 or a prior or current
29 conviction for a violent felony described in subdivision (e) of
30 Section 667.5, (B) has a prior felony conviction in another
31 jurisdiction for an offense that has all the elements of a serious
32 felony described in subdivision (e) of Section 1192.7 or a violent
33 felony described in subdivision (e) of Section 667.5, (C) is required
34 to register as a sex offender pursuant to Chapter 5.5 (commencing
35 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
36 and as part of the sentence an enhancement pursuant to Section
37 186.11 is imposed, an executed sentence for a felony punishable
38 pursuant to this subdivision shall be served in state prison.

39 (4) Nothing in this subdivision shall be construed to prevent
40 other dispositions authorized by law, including pretrial diversion,

1 deferred entry of judgment, or an order granting probation pursuant
2 to Section 1203.1.

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

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

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

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

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

36 *SECTION 1. Section 1170 of the Penal Code, as amended by*
37 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*
38 *read:*

39 1170. (a) (1) The Legislature finds and declares that the
40 purpose of imprisonment for crime is punishment. This purpose

1 is best served by terms proportionate to the seriousness of the
2 offense with provision for uniformity in the sentences of offenders
3 committing the same offense under similar circumstances. The
4 Legislature further finds and declares that the elimination of
5 disparity and the provision of uniformity of sentences can best be
6 achieved by determinate sentences fixed by statute in proportion
7 to the seriousness of the offense as determined by the Legislature
8 to be imposed by the court with specified discretion.

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

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

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

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

39 (c) The court shall state the reasons for its sentence choice on
40 the record at the time of sentencing. The court shall also inform

1 the defendant that as part of the sentence after expiration of the
2 term he or she may be on parole for a period as provided in Section
3 3000 or 3000.08 or postrelease community supervision for a period
4 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (J) This subdivision shall have retroactive application.

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

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

20 ~~(A)~~

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

25 ~~(B)~~

26 (ii) The conditions under which the prisoner would be released
 27 or receive treatment do not pose a threat to public safety.

28 ~~(C)~~

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

36 (B) *This subdivision does not apply to the following:*

37 (i) *A prisoner sentenced to death or a term of life without the*
 38 *possibility of parole.*

39 (ii) *A prisoner who was convicted of first-degree murder if the*
 40 *victim was a peace officer, as defined in Section 830.1, 830.2,*

1 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,
2 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed
3 while engaged in the performance of his or her duties, and the
4 individual knew, or reasonably should have known, that the victim
5 was a peace officer engaged in the performance of his or her
6 duties, or the victim was a peace officer or a former peace officer
7 under any of the above-enumerated sections, and was intentionally
8 killed in retaliation for the performance of his or her official duties.

9 ~~The~~

10 (C) 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 physician employed by the department who determines
18 that a prisoner has six months or less to live shall notify the chief
19 medical officer of the prognosis. If the chief medical officer
20 concurs with the prognosis, he or she shall notify the warden.
21 Within 48 hours of receiving notification, the warden or the
22 warden's representative shall notify the prisoner of the recall and
23 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 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 allegation that
6 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 that, in the interests of justice, 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 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 time period which is suspended because a person
21 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 remain in effect only until January 1, 2017,
31 and as of that date is repealed, unless a later enacted statute, that
32 is enacted before that date, deletes or extends that date.

33 *SEC. 2. Section 1170 of the Penal Code, as amended by Section*
34 *2 of Chapter 378 of the Statutes of 2015, is amended to read:*

35 1170. (a) (1) The Legislature finds and declares that the
36 purpose of imprisonment for crime is punishment. This purpose
37 is best served by terms proportionate to the seriousness of the
38 offense with provision for uniformity in the sentences of offenders
39 committing the same offense under similar circumstances. The
40 Legislature further finds and declares that the elimination of

1 disparity and the provision of uniformity of sentences can best be
2 achieved by determinate sentences fixed by statute in proportion
3 to the seriousness of the offense as determined by the Legislature
4 to be imposed by the court with specified discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (J) This subdivision shall have retroactive application.

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

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

18 ~~(A)~~

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

23 ~~(B)~~

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

26 ~~(C)~~

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

34 (B) *This subdivision does not apply to the following:*

35 (i) *A prisoner sentenced to death or a term of life without the*
36 *possibility of parole.*

37 (ii) *A prisoner who was convicted of first-degree murder if the*
38 *victim was a peace officer, as defined in Section 830.1, 830.2,*
39 *830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37,*
40 *830.4, 830.5, 830.6, 830.10, 830.11, or 830.12, who was killed*

1 *while engaged in the performance of his or her duties, and the*
2 *individual knew, or reasonably should have known, that the victim*
3 *was a peace officer engaged in the performance of his or her*
4 *duties, or the victim was a peace officer or a former peace officer*
5 *under any of the above-enumerated sections, and was intentionally*
6 *killed in retaliation for the performance of his or her official duties.*

7 ~~The~~

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

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

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

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

34 (6) Notwithstanding any other provisions of this section, the
35 prisoner or his or her family member or designee may
36 independently request consideration for recall and resentencing
37 by contacting the chief medical officer at the prison or the
38 secretary. Upon receipt of the request, the chief medical officer
39 and the warden or the warden's representative shall follow the
40 procedures described in paragraph (4). If the secretary determines

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

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

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

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

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

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

1 officer” shall mean a physician designated by the county
2 correctional administrator for this purpose.

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

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

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

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

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

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

36 (5) (A) Unless the court finds, in the interest of justice, that it
37 is not appropriate in a particular case, the court, when imposing a
38 sentence pursuant to paragraph (1) or (2), shall suspend execution
39 of a concluding portion of the term for a period selected at the
40 court’s discretion.

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

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

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

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

29 SEC. 3. Section 3550 of the Penal Code is amended to read:

30 3550. (a) Notwithstanding any other provision of law, except
31 as provided in subdivision (b), if the head physician of an
32 institution in which a prisoner is incarcerated determines, as
33 provided in this section, that the prisoner is permanently medically
34 incapacitated with a medical condition that renders him or her
35 permanently unable to perform activities of basic daily living, and
36 results in the prisoner requiring 24-hour care, and that
37 incapacitation did not exist at the time of sentencing, the prisoner
38 shall be granted medical parole if the Board of Parole Hearings
39 determines that the conditions under which he or she would be
40 released would not reasonably pose a threat to public safety.

1 (b) This section does not alter or diminish the rights conferred
2 under the Victims' Bill of Rights Act of 2008 (Marsy's Law).
3 Subdivision (a) does not apply to any of the following:

4 (1) A prisoner sentenced to death or life in prison without
5 possibility of parole.

6 (2) A prisoner who is serving a sentence for which parole,
7 pursuant to subdivision (a), is prohibited by any initiative statute.

8 (3) ~~(A)~~ A prisoner who was convicted of ~~first-degree~~
9 *first-degree* murder if the victim was a peace officer, as defined
10 in ~~Chapter 4.5 (commencing with Section 830) of Title 3, Section~~
11 *830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35,*
12 *830.36, 830.37, 830.4, 830.5, 830.6, 830.10, 830.11, or 830.12,*
13 who was killed while engaged in the performance of his or her
14 duties, and the individual knew, or reasonably should have known,
15 that the victim was a peace officer engaged in the performance of
16 his or her ~~duties~~: *duties, or the victim was a peace officer or a*
17 *former peace officer under any of the above-enumerated sections,*
18 *and was intentionally killed in retaliation for the performance of*
19 *his or her official duties.*

20 ~~(B) The victim was a peace officer or had been a peace officer,~~
21 ~~as defined in Chapter 4.5 (commencing with Section 830) of Title~~
22 ~~3, and was intentionally murdered in retaliation for the performance~~
23 ~~of his or her official duties, and the defendant was sentenced on~~
24 ~~or after January 1, 2016.~~

25 (c) When a physician employed by the Department of
26 Corrections and Rehabilitation who is the primary care provider
27 for a prisoner identifies a prisoner that he or she believes meets
28 the medical criteria for medical parole specified in subdivision (a),
29 the primary care physician shall recommend to the head physician
30 of the institution where the prisoner is located that the prisoner be
31 referred to the Board of Parole Hearings for consideration for
32 medical parole. Within 30 days of receiving that recommendation,
33 if the head physician of the institution concurs in the
34 recommendation of the primary care physician, he or she shall
35 refer the matter to the Board of Parole Hearings using a
36 standardized form and format developed by the department, and
37 if the head physician of the institution does not concur in the
38 recommendation, he or she shall provide the primary care physician
39 with a written explanation of the reasons for denying the referral.

1 (d) Notwithstanding any other provisions of this section, the
2 prisoner or his or her family member or designee may
3 independently request consideration for medical parole by
4 contacting the head physician at the prison or the department.
5 Within 30 days of receiving the request, the head physician of the
6 institution shall, in consultation with the prisoner's primary care
7 physician, make a determination regarding whether the prisoner
8 meets the criteria for medical parole as specified in subdivision
9 (a) and, if the head physician of the institution determines that the
10 prisoner satisfies the criteria set forth in subdivision (a), he or she
11 shall refer the matter to the Board of Parole Hearings using a
12 standardized form and format developed by the department. If the
13 head physician of the institution does not concur in the
14 recommendation, he or she shall provide the prisoner or his or her
15 family member or designee with a written explanation of the
16 reasons for denying the application.

17 (e) The Department of Corrections and Rehabilitation shall
18 complete parole plans for inmates referred to the Board of Parole
19 Hearings for medical parole consideration. The parole plans shall
20 include, but not be limited to, the inmate's plan for residency and
21 medical care.

22 (f) Notwithstanding any other law, medical parole hearings shall
23 be conducted by two-person panels consisting of at least one
24 commissioner. In the event of a tie vote, the matter shall be referred
25 to the full board for a decision. Medical parole hearings may be
26 heard in absentia.

27 (g) Upon receiving a recommendation from the head physician
28 of the institution where a prisoner is located for the prisoner to be
29 granted medical parole pursuant to subdivision (c) or (d), the board,
30 as specified in subdivision (f), shall make an independent judgment
31 regarding whether the conditions under which the inmate would
32 be released pose a reasonable threat to public safety, and make
33 written findings related thereto.

34 (h) Notwithstanding any other provision of law, the board or
35 the Division of Adult Parole Operations shall have the authority
36 to impose any reasonable conditions on prisoners subject to medical
37 parole supervision pursuant to subdivision (a), including, but not
38 limited to, the requirement that the parolee submit to electronic
39 monitoring. As a further condition of medical parole, pursuant to
40 subdivision (a), the parolee may be required to submit to an

1 examination by a physician selected by the board for the purpose
2 of diagnosing the parolee's current medical condition. In the event
3 such an examination takes place, a report of the examination and
4 diagnosis shall be submitted to the board by the examining
5 physician. If the board determines, based on that medical
6 examination, that the person's medical condition has improved to
7 the extent that the person no longer qualifies for medical parole,
8 the board shall return the person to the custody of the department.

9 (1) Notwithstanding any other provision of law establishing
10 maximum periods for parole, a prisoner sentenced to a determinate
11 term who is placed on medical parole supervision prior to the
12 earliest possible release date and who remains eligible for medical
13 parole, shall remain on medical parole, pursuant to subdivision
14 (a), until that earliest possible release date, at which time the
15 parolee shall commence serving that period of parole provided by,
16 and under the provisions of, Chapter 8 (commencing with Section
17 3000) of Title 1.

18 (2) Notwithstanding any other provisions of law establishing
19 maximum periods for parole, a prisoner sentenced to an
20 indeterminate term who is placed on medical parole supervision
21 prior to the prisoner's minimum eligible parole date, and who
22 remains eligible for medical parole, shall remain on medical parole
23 pursuant to subdivision (a) until that minimum eligible parole date,
24 at which time the parolee shall be eligible for parole consideration
25 under all other provisions of Chapter 8 (commencing with Section
26 3000) of Title 1.

27 (i) The Department of Corrections and Rehabilitation shall, at
28 the time a prisoner is placed on medical parole supervision pursuant
29 to subdivision (a), ensure that the prisoner has applied for any
30 federal entitlement programs for which the prisoner is eligible,
31 and has in his or her possession a discharge medical summary, full
32 medical records, parole medications, and all property belonging
33 to the prisoner that was under the control of the department. Any
34 additional records shall be sent to the prisoner's forwarding address
35 after release to health care-related parole supervision.

36 (j) The provisions for medical parole set forth in this title shall
37 not affect an inmate's eligibility for any other form of parole or
38 release provided by law.

39 (k) (1) Notwithstanding any other provision of law, the
40 Department of Corrections and Rehabilitation shall give notice to

1 the county of commitment and the proposed county of release, if
2 that county is different than the county of commitment, of any
3 medical parole hearing as described in subdivision (f), and of any
4 medical parole release as described in subdivision (g).

5 (2) Notice shall be made at least 30 days, or as soon as feasible,
6 prior to the time any medical parole hearing or medical parole
7 release is scheduled for an inmate receiving medical parole
8 consideration, regardless of whether the inmate is sentenced either
9 determinately or indeterminately.