

Introduced by Senator Stone

February 17, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 240, as introduced, Stone. Mandatory supervision.

Existing law authorizes a court, when sentencing a person to county jail for a felony, to commit the person to county jail for either the full term in custody, as specified, or to suspend the execution of a concluding portion of the term selected at the court's discretion. Under existing law, this period of suspended execution is supervised by the county probation officer and is known as mandatory supervision.

This bill would make a defendant subject to mandatory supervision subject to search and seizure by a peace officer at any time of the day or night, with or without cause. The bill would also require the defendant to admit any peace officer designated by the sheriff or his or her designee or the county probation officer or his or her designee into the defendant's residence at any time for purposes of verifying the defendant's compliance with the conditions of his or her mandatory supervision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1170 of the Penal Code, as amended by
- 2 Section 1 of Chapter 612 of the Statutes of 2014, is amended to
- 3 read:

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

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

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

1 provided in paragraph (2) of subdivision (d). In any case in which
2 the amount of preimprisonment credit under Section 2900.5 or any
3 other provision of law is equal to or exceeds any sentence imposed
4 pursuant to this chapter, the entire sentence shall be deemed to
5 have been served and the defendant shall not be actually delivered
6 to the custody of the secretary. The court shall advise the defendant
7 that he or she shall serve a period of parole and order the defendant
8 to report to the parole office closest to the defendant's last legal
9 residence, unless the in-custody credits equal the total sentence,
10 including both confinement time and the period of parole. The
11 sentence shall be deemed a separate prior prison term under Section
12 667.5, and a copy of the judgment and other necessary
13 documentation shall be forwarded to the secretary.

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

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

38 (d) (1) When a defendant subject to this section or subdivision
39 (b) of Section 1168 has been sentenced to be imprisoned in the
40 state prison and has been committed to the custody of the secretary,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

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

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

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

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

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

1 all property belonging to the prisoner. After discharge, any
2 additional records shall be sent to the prisoner's forwarding
3 address.

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

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

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

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

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

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

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

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

10 (B) The portion of a defendant's sentenced term that is
11 suspended pursuant to this paragraph shall be known as mandatory
12 supervision, and, unless otherwise ordered by the court, shall
13 commence upon release from physical custody or an alternative
14 custody program, whichever is later. During the period of
15 mandatory supervision, the defendant shall be supervised by the
16 county probation officer in accordance with the terms, conditions,
17 and procedures generally applicable to persons placed on probation,
18 for the remaining unserved portion of the sentence imposed by the
19 court. The period of supervision shall be mandatory, and may not
20 be earlier terminated except by court order. Any proceeding to
21 revoke or modify mandatory supervision under this subparagraph
22 shall be conducted pursuant to either subdivisions (a) and (b) of
23 Section 1203.2 or Section 1203.3. During the period when the
24 defendant is under ~~such~~ *that* supervision, unless in actual custody
25 related to the sentence imposed by the court, the defendant shall
26 be entitled to only actual time credit against the term of
27 imprisonment imposed by the court. Any time period which is
28 suspended because a person has absconded shall not be credited
29 toward the period of supervision. *A defendant subject to mandatory*
30 *supervision is subject to search and seizure by a peace officer at*
31 *any time of the day or night, with or without cause. In addition,*
32 *the defendant shall admit any peace officer designated by the*
33 *sheriff or his or her designee or the county probation officer or*
34 *his or her designee into the defendant's residence at any time for*
35 *purposes of verifying the defendant's compliance with the*
36 *conditions of his or her mandatory supervision.*

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

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

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

8 SEC. 2. Section 1170 of the Penal Code, as amended by Section
9 2 of Chapter 612 of the Statutes of 2014, is amended to read:

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

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

32 (3) In any case in which the punishment prescribed by statute
33 for a person convicted of a public offense is a term of imprisonment
34 in the state prison of any specification of three time periods, the
35 court shall sentence the defendant to one of the terms of
36 imprisonment specified unless the convicted person is given any
37 other disposition provided by law, including a fine, jail, probation,
38 or the suspension of imposition or execution of sentence or is
39 sentenced pursuant to subdivision (b) of Section 1168 because he
40 or she had committed his or her crime prior to July 1, 1977. In

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

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

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

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

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

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

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

37 (B) The defendant shall file the original petition with the
38 sentencing court. A copy of the petition shall be served on the
39 agency that prosecuted the case. The petition shall include the
40 defendant's statement that he or she was under 18 years of age at

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

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

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

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

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

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

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

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

39 (i) The defendant was convicted pursuant to felony murder or
40 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) The court shall have the discretion to resentence or recall if
17 the court finds that the facts described in subparagraphs (A) and
18 (B) or subparagraphs (B) and (C) exist:

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

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

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

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

39 (4) Any physician employed by the department who determines
40 that a prisoner has six months or less to live shall notify the chief

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (B) The portion of a defendant's sentenced term that is
19 suspended pursuant to this paragraph shall be known as mandatory
20 supervision, and, unless otherwise ordered by the court, shall
21 commence upon release from physical custody or an alternative
22 custody program, whichever is later. During the period of
23 mandatory supervision, the defendant shall be supervised by the
24 county probation officer in accordance with the terms, conditions,
25 and procedures generally applicable to persons placed on probation,
26 for the remaining unserved portion of the sentence imposed by the
27 court. The period of supervision shall be mandatory, and may not
28 be earlier terminated except by court order. Any proceeding to
29 revoke or modify mandatory supervision under this subparagraph
30 shall be conducted pursuant to either subdivisions (a) and (b) of
31 Section 1203.2 or Section 1203.3. During the period when the
32 defendant is under ~~such~~ *that* supervision, unless in actual custody
33 related to the sentence imposed by the court, the defendant shall
34 be entitled to only actual time credit against the term of
35 imprisonment imposed by the court. Any time period which is
36 suspended because a person has absconded shall not be credited
37 toward the period of supervision. *A defendant subject to mandatory*
38 *supervision is subject to search and seizure by a peace officer at*
39 *any time of the day or night, with or without cause. In addition,*
40 *the defendant shall admit any peace officer designated by the*

1 *sheriff or his or her designee or the county probation officer or*
2 *his or her designee into the defendant's residence at any time for*
3 *purposes of verifying the defendant's compliance with the*
4 *conditions of his or her mandatory supervision.*

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

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

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