

Introduced by Senator Bates

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

SB 679, as introduced, Bates. 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, and his or her residence and possessions, subject to search and seizure by an agent of the supervising county agency or a peace officer at any time of the day or night, with or without a warrant and with or without cause.

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:
- 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

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

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

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

1 have been served and the defendant shall not be actually delivered
2 to the custody of the secretary. The court shall advise the defendant
3 that he or she shall serve a period of parole and order the defendant
4 to report to the parole office closest to the defendant's last legal
5 residence, unless the in-custody credits equal the total sentence,
6 including both confinement time and the period of parole. The
7 sentence shall be deemed a separate prior prison term under Section
8 667.5, and a copy of the judgment and other necessary
9 documentation shall be forwarded to the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (iii) The defendant committed the offense with at least one adult
31 codefendant.

32 (iv) Prior to the offense for which the sentence is being
33 considered for recall, the defendant had insufficient adult support
34 or supervision and had suffered from psychological or physical
35 trauma, or significant stress.

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

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

7 (vii) The defendant has maintained family ties or connections
8 with others through letter writing, calls, or visits, or has eliminated
9 contact with individuals outside of prison who are currently
10 involved with crime.

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

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

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

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

36 (J) This subdivision shall have retroactive application.

37 (e) (1) Notwithstanding any other law and consistent with
38 paragraph (1) of subdivision (a), if the secretary or the Board of
39 Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may
2 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

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

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 suspending the execution or imposition of sentence, or expressly
2 provides for imprisonment in the state prison for life, except as
3 provided in paragraph (2) of subdivision (d). In any case in which
4 the amount of preimprisonment credit under Section 2900.5 or any
5 other provision of law is equal to or exceeds any sentence imposed
6 pursuant to this chapter, the entire sentence shall be deemed to
7 have been served and the defendant shall not be actually delivered
8 to the custody of the secretary. The court shall advise the defendant
9 that he or she shall serve a period of parole and order the defendant
10 to report to the parole office closest to the defendant's last legal
11 residence, unless the in-custody credits equal the total sentence,
12 including both confinement time and the period of parole. The
13 sentence shall be deemed a separate prior prison term under Section
14 667.5, and a copy of the judgment and other necessary
15 documentation shall be 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

1 term he or she may be on parole for a period as provided in Section
2 3000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

1 as to the prisoner's medical condition and prognosis, and as to the
2 recall and resentencing procedures. If the inmate is deemed
3 mentally unfit, the warden or the warden's representative shall
4 contact the inmate's emergency contact and provide the information
5 described in paragraph (2).

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

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

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

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

37 (9) If the court grants the recall and resentencing application,
38 the prisoner shall be released by the department within 48 hours
39 of receipt of the court's order, unless a longer time period is agreed
40 to by the inmate. At the time of release, the warden or the warden's

1 representative shall ensure that the prisoner has each of the
2 following in his or her possession: a discharge medical summary,
3 full medical records, state identification, parole medications, and
4 all property belonging to the prisoner. After discharge, any
5 additional records shall be sent to the prisoner's forwarding
6 address.

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

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

20 (g) A sentence to state prison for a determinate term for which
21 only one term is specified, is a sentence to state prison under this
22 section.

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

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

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

1 186.11 is imposed, an executed sentence for a felony punishable
2 pursuant to this subdivision shall be served in state prison.

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

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

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

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

39 (7) The sentencing changes made to paragraph (5) by the act
40 that added this paragraph shall become effective and operative on

- 1 January 1, 2015, and shall be applied prospectively to any person
- 2 sentenced on or after January 1, 2015.
- 3 (i) This section shall become operative on January 1, 2017.

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