

AMENDED IN ASSEMBLY AUGUST 18, 2016

**SENATE BILL**

**No. 1016**

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**Introduced by Senator Monning**

February 11, 2016

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An act to amend Sections 186.22, 186.33, 1170, 1170.1, 1170.3, 12021.5, 12022.2, and 12022.4 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1016, as amended, Monning. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing generally, operative until January 1, 2017, specify that the appropriate term rests within the sound discretion of the court. Existing law, operative on and after January 1, 2017, instead requires the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

This bill would extend to January 1, 2022, the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice. The bill would also make conforming changes.

*This bill would incorporate additional changes to Section 1170 of the Penal Code, proposed by SB 1084 and AB 2590, that would become operative only if this bill and one or more of those other bills are enacted*

and become effective on or before January 1, 2017, and this bill is chaptered last.

This bill would amend Proposition 21, an initiative statute adopted by the voters at the March 7, 2000, statewide primary election that provides that its provisions may be amended by the Legislature by a ~~2/3~~ <sup>2/3</sup> vote of the membership of each house, and therefore requires a ~~2/3~~ <sup>2/3</sup> vote.

Vote: <sup>2/3</sup>. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended  
 2 by Section 1 of Chapter 508 of the Statutes of 2013, is amended  
 3 to read:

4 186.22. (a) Any person who actively participates in any  
 5 criminal street gang with knowledge that its members engage in  
 6 or have engaged in a pattern of criminal gang activity, and who  
 7 willfully promotes, furthers, or assists in any felonious criminal  
 8 conduct by members of that gang, shall be punished by  
 9 imprisonment in a county jail for a period not to exceed one year,  
 10 or by imprisonment in the state prison for 16 months, or two or  
 11 three years.

12 (b) (1) Except as provided in paragraphs (4) and (5), any person  
 13 who is convicted of a felony committed for the benefit of, at the  
 14 direction of, or in association with any criminal street gang, with  
 15 the specific intent to promote, further, or assist in any criminal  
 16 conduct by gang members, shall, upon conviction of that felony,  
 17 in addition and consecutive to the punishment prescribed for the  
 18 felony or attempted felony of which he or she has been convicted,  
 19 be punished as follows:

20 (A) Except as provided in subparagraphs (B) and (C), the person  
 21 shall be punished by an additional term of two, three, or four years  
 22 at the court’s discretion.

23 (B) If the felony is a serious felony, as defined in subdivision  
 24 (c) of Section 1192.7, the person shall be punished by an additional  
 25 term of five years.

26 (C) If the felony is a violent felony, as defined in subdivision  
 27 (c) of Section 667.5, the person shall be punished by an additional  
 28 term of 10 years.

1 (2) If the underlying felony described in paragraph (1) is  
2 committed on the grounds of, or within 1,000 feet of, a public or  
3 private elementary, vocational, junior high, or high school, during  
4 hours in which the facility is open for classes or school-related  
5 programs or when minors are using the facility, that fact shall be  
6 a circumstance in aggravation of the crime in imposing a term  
7 under paragraph (1).

8 (3) The court shall select the sentence enhancement which, in  
9 the court's discretion, best serves the interests of justice and shall  
10 state the reasons for its choice on the record at the time of the  
11 sentencing in accordance with the provisions of subdivision (d) of  
12 Section 1170.1.

13 (4) Any person who is convicted of a felony enumerated in this  
14 paragraph committed for the benefit of, at the direction of, or in  
15 association with any criminal street gang, with the specific intent  
16 to promote, further, or assist in any criminal conduct by gang  
17 members, shall, upon conviction of that felony, be sentenced to  
18 an indeterminate term of life imprisonment with a minimum term  
19 of the indeterminate sentence calculated as the greater of:

20 (A) The term determined by the court pursuant to Section 1170  
21 for the underlying conviction, including any enhancement  
22 applicable under Chapter 4.5 (commencing with Section 1170) of  
23 Title 7 of Part 2, or any period prescribed by Section 3046, if the  
24 felony is any of the offenses enumerated in subparagraph (B) or  
25 (C) of this paragraph.

26 (B) Imprisonment in the state prison for 15 years, if the felony  
27 is a home invasion robbery, in violation of subparagraph (A) of  
28 paragraph (1) of subdivision (a) of Section 213; carjacking, as  
29 defined in Section 215; a felony violation of Section 246; or a  
30 violation of Section 12022.55.

31 (C) Imprisonment in the state prison for seven years, if the  
32 felony is extortion, as defined in Section 519; or threats to victims  
33 and witnesses, as defined in Section 136.1.

34 (5) Except as provided in paragraph (4), any person who violates  
35 this subdivision in the commission of a felony punishable by  
36 imprisonment in the state prison for life shall not be paroled until  
37 a minimum of 15 calendar years have been served.

38 (c) If the court grants probation or suspends the execution of  
39 sentence imposed upon the defendant for a violation of subdivision  
40 (a), or in cases involving a true finding of the enhancement

1 enumerated in subdivision (b), the court shall require that the  
2 defendant serve a minimum of 180 days in a county jail as a  
3 condition thereof.

4 (d) Any person who is convicted of a public offense punishable  
5 as a felony or a misdemeanor, which is committed for the benefit  
6 of, at the direction of, or in association with any criminal street  
7 gang, with the specific intent to promote, further, or assist in any  
8 criminal conduct by gang members, shall be punished by  
9 imprisonment in a county jail not to exceed one year, or by  
10 imprisonment in a state prison for one, two, or three years, provided  
11 that any person sentenced to imprisonment in the county jail shall  
12 be imprisoned for a period not to exceed one year, but not less  
13 than 180 days, and shall not be eligible for release upon completion  
14 of sentence, parole, or any other basis, until he or she has served  
15 180 days. If the court grants probation or suspends the execution  
16 of sentence imposed upon the defendant, it shall require as a  
17 condition thereof that the defendant serve 180 days in a county  
18 jail.

19 (e) As used in this chapter, “pattern of criminal gang activity”  
20 means the commission of, attempted commission of, conspiracy  
21 to commit, or solicitation of, sustained juvenile petition for, or  
22 conviction of two or more of the following offenses, provided at  
23 least one of these offenses occurred after the effective date of this  
24 chapter and the last of those offenses occurred within three years  
25 after a prior offense, and the offenses were committed on separate  
26 occasions, or by two or more persons:

27 (1) Assault with a deadly weapon or by means of force likely  
28 to produce great bodily injury, as defined in Section 245.

29 (2) Robbery, as defined in Chapter 4 (commencing with Section  
30 211) of Title 8 of Part 1.

31 (3) Unlawful homicide or manslaughter, as defined in Chapter  
32 1 (commencing with Section 187) of Title 8 of Part 1.

33 (4) The sale, possession for sale, transportation, manufacture,  
34 offer for sale, or offer to manufacture controlled substances as  
35 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
36 the Health and Safety Code.

37 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
38 as defined in Section 246.

39 (6) Discharging or permitting the discharge of a firearm from  
40 a motor vehicle, as defined in subdivisions (a) and (b) of Section

- 1 12034 until January 1, 2012, and, on or after that date, subdivisions  
2 (a) and (b) of Section 26100.
- 3 (7) Arson, as defined in Chapter 1 (commencing with Section  
4 450) of Title 13.
- 5 (8) The intimidation of witnesses and victims, as defined in  
6 Section 136.1.
- 7 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
8 487.
- 9 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 10 (11) Burglary, as defined in Section 459.
- 11 (12) Rape, as defined in Section 261.
- 12 (13) Looting, as defined in Section 463.
- 13 (14) Money laundering, as defined in Section 186.10.
- 14 (15) Kidnapping, as defined in Section 207.
- 15 (16) Mayhem, as defined in Section 203.
- 16 (17) Aggravated mayhem, as defined in Section 205.
- 17 (18) Torture, as defined in Section 206.
- 18 (19) Felony extortion, as defined in Sections 518 and 520.
- 19 (20) Felony vandalism, as defined in paragraph (1) of  
20 subdivision (b) of Section 594.
- 21 (21) Carjacking, as defined in Section 215.
- 22 (22) The sale, delivery, or transfer of a firearm, as defined in  
23 Section 12072 until January 1, 2012, and, on or after that date,  
24 Article 1 (commencing with Section 27500) of Chapter 4 of  
25 Division 6 of Title 4 of Part 6.
- 26 (23) Possession of a pistol, revolver, or other firearm capable  
27 of being concealed upon the person in violation of paragraph (1)  
28 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
29 or after that date, Section 29610.
- 30 (24) Threats to commit crimes resulting in death or great bodily  
31 injury, as defined in Section 422.
- 32 (25) Theft and unlawful taking or driving of a vehicle, as defined  
33 in Section 10851 of the Vehicle Code.
- 34 (26) Felony theft of an access card or account information, as  
35 defined in Section 484e.
- 36 (27) Counterfeiting, designing, using, or attempting to use an  
37 access card, as defined in Section 484f.
- 38 (28) Felony fraudulent use of an access card or account  
39 information, as defined in Section 484g.

1 (29) Unlawful use of personal identifying information to obtain  
2 credit, goods, services, or medical information, as defined in  
3 Section 530.5.

4 (30) Wrongfully obtaining Department of Motor Vehicles  
5 documentation, as defined in Section 529.7.

6 (31) Prohibited possession of a firearm in violation of Section  
7 12021 until January 1, 2012, and on or after that date, Chapter 2  
8 (commencing with Section 29800) of Division 9 of Title 4 of Part  
9 6.

10 (32) Carrying a concealed firearm in violation of Section 12025  
11 until January 1, 2012, and, on or after that date, Section 25400.

12 (33) Carrying a loaded firearm in violation of Section 12031  
13 until January 1, 2012, and, on or after that date, Section 25850.

14 (f) As used in this chapter, “criminal street gang” means any  
15 ongoing organization, association, or group of three or more  
16 persons, whether formal or informal, having as one of its primary  
17 activities the commission of one or more of the criminal acts  
18 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),  
19 inclusive, of subdivision (e), having a common name or common  
20 identifying sign or symbol, and whose members individually or  
21 collectively engage in or have engaged in a pattern of criminal  
22 gang activity.

23 (g) Notwithstanding any other law, the court may strike the  
24 additional punishment for the enhancements provided in this  
25 section or refuse to impose the minimum jail sentence for  
26 misdemeanors in an unusual case where the interests of justice  
27 would best be served, if the court specifies on the record and enters  
28 into the minutes the circumstances indicating that the interests of  
29 justice would best be served by that disposition.

30 (h) Notwithstanding any other provision of law, for each person  
31 committed to the Department of Corrections and Rehabilitation,  
32 Division of Juvenile Facilities for a conviction pursuant to  
33 subdivision (a) or (b) of this section, the offense shall be deemed  
34 one for which the state shall pay the rate of 100 percent of the per  
35 capita institutional cost of the Department of Corrections and  
36 Rehabilitation, Division of Juvenile Facilities, pursuant to Section  
37 912.5 of the Welfare and Institutions Code.

38 (i) In order to secure a conviction or sustain a juvenile petition,  
39 pursuant to subdivision (a) it is not necessary for the prosecution  
40 to prove that the person devotes all, or a substantial part, of his or

1 her time or efforts to the criminal street gang, nor is it necessary  
2 to prove that the person is a member of the criminal street gang.  
3 Active participation in the criminal street gang is all that is  
4 required.

5 (j) A pattern of gang activity may be shown by the commission  
6 of one or more of the offenses enumerated in paragraphs (26) to  
7 (30), inclusive, of subdivision (e), and the commission of one or  
8 more of the offenses enumerated in paragraphs (1) to (25),  
9 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
10 of gang activity cannot be established solely by proof of  
11 commission of offenses enumerated in paragraphs (26) to (30),  
12 inclusive, of subdivision (e), alone.

13 (k) This section shall remain in effect only until January 1, 2022,  
14 and as of that date is repealed, unless a later enacted statute, that  
15 is enacted before January 1, 2022, deletes or extends that date.

16 SEC. 2. Section 186.22 of the Penal Code, as amended by  
17 Section 2 of Chapter 508 of the Statutes of 2013, is amended to  
18 read:

19 186.22. (a) Any person who actively participates in any  
20 criminal street gang with knowledge that its members engage in  
21 or have engaged in a pattern of criminal gang activity, and who  
22 willfully promotes, furthers, or assists in any felonious criminal  
23 conduct by members of that gang, shall be punished by  
24 imprisonment in a county jail for a period not to exceed one year,  
25 or by imprisonment in the state prison for 16 months, or two or  
26 three years.

27 (b) (1) Except as provided in paragraphs (4) and (5), any person  
28 who is convicted of a felony committed for the benefit of, at the  
29 direction of, or in association with any criminal street gang, with  
30 the specific intent to promote, further, or assist in any criminal  
31 conduct by gang members, shall, upon conviction of that felony,  
32 in addition and consecutive to the punishment prescribed for the  
33 felony or attempted felony of which he or she has been convicted,  
34 be punished as follows:

35 (A) Except as provided in subparagraphs (B) and (C), the person  
36 shall be punished by an additional term of two, three, or four years  
37 at the court's discretion.

38 (B) If the felony is a serious felony, as defined in subdivision  
39 (c) of Section 1192.7, the person shall be punished by an additional  
40 term of five years.

1 (C) If the felony is a violent felony, as defined in subdivision  
2 (c) of Section 667.5, the person shall be punished by an additional  
3 term of 10 years.

4 (2) If the underlying felony described in paragraph (1) is  
5 committed on the grounds of, or within 1,000 feet of, a public or  
6 private elementary, vocational, junior high, or high school, during  
7 hours in which the facility is open for classes or school-related  
8 programs or when minors are using the facility, that fact shall be  
9 a circumstance in aggravation of the crime in imposing a term  
10 under paragraph (1).

11 (3) The court shall order the imposition of the middle term of  
12 the sentence enhancement, unless there are circumstances in  
13 aggravation or mitigation. The court shall state the reasons for its  
14 choice of sentencing enhancements on the record at the time of  
15 the sentencing.

16 (4) Any person who is convicted of a felony enumerated in this  
17 paragraph committed for the benefit of, at the direction of, or in  
18 association with any criminal street gang, with the specific intent  
19 to promote, further, or assist in any criminal conduct by gang  
20 members, shall, upon conviction of that felony, be sentenced to  
21 an indeterminate term of life imprisonment with a minimum term  
22 of the indeterminate sentence calculated as the greater of:

23 (A) The term determined by the court pursuant to Section 1170  
24 for the underlying conviction, including any enhancement  
25 applicable under Chapter 4.5 (commencing with Section 1170) of  
26 Title 7 of Part 2, or any period prescribed by Section 3046, if the  
27 felony is any of the offenses enumerated in subparagraph (B) or  
28 (C) of this paragraph.

29 (B) Imprisonment in the state prison for 15 years, if the felony  
30 is a home invasion robbery, in violation of subparagraph (A) of  
31 paragraph (1) of subdivision (a) of Section 213; carjacking, as  
32 defined in Section 215; a felony violation of Section 246; or a  
33 violation of Section 12022.55.

34 (C) Imprisonment in the state prison for seven years, if the  
35 felony is extortion, as defined in Section 519; or threats to victims  
36 and witnesses, as defined in Section 136.1.

37 (5) Except as provided in paragraph (4), any person who violates  
38 this subdivision in the commission of a felony punishable by  
39 imprisonment in the state prison for life shall not be paroled until  
40 a minimum of 15 calendar years have been served.

1 (c) If the court grants probation or suspends the execution of  
2 sentence imposed upon the defendant for a violation of subdivision  
3 (a), or in cases involving a true finding of the enhancement  
4 enumerated in subdivision (b), the court shall require that the  
5 defendant serve a minimum of 180 days in a county jail as a  
6 condition thereof.

7 (d) Any person who is convicted of a public offense punishable  
8 as a felony or a misdemeanor, which is committed for the benefit  
9 of, at the direction of, or in association with any criminal street  
10 gang, with the specific intent to promote, further, or assist in any  
11 criminal conduct by gang members, shall be punished by  
12 imprisonment in a county jail not to exceed one year, or by  
13 imprisonment in a state prison for one, two, or three years, provided  
14 that any person sentenced to imprisonment in the county jail shall  
15 be imprisoned for a period not to exceed one year, but not less  
16 than 180 days, and shall not be eligible for release upon completion  
17 of sentence, parole, or any other basis, until he or she has served  
18 180 days. If the court grants probation or suspends the execution  
19 of sentence imposed upon the defendant, it shall require as a  
20 condition thereof that the defendant serve 180 days in a county  
21 jail.

22 (e) As used in this chapter, “pattern of criminal gang activity”  
23 means the commission of, attempted commission of, conspiracy  
24 to commit, or solicitation of, sustained juvenile petition for, or  
25 conviction of two or more of the following offenses, provided at  
26 least one of these offenses occurred after the effective date of this  
27 chapter and the last of those offenses occurred within three years  
28 after a prior offense, and the offenses were committed on separate  
29 occasions, or by two or more persons:

30 (1) Assault with a deadly weapon or by means of force likely  
31 to produce great bodily injury, as defined in Section 245.

32 (2) Robbery, as defined in Chapter 4 (commencing with Section  
33 211) of Title 8 of Part 1.

34 (3) Unlawful homicide or manslaughter, as defined in Chapter  
35 1 (commencing with Section 187) of Title 8 of Part 1.

36 (4) The sale, possession for sale, transportation, manufacture,  
37 offer for sale, or offer to manufacture controlled substances as  
38 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
39 the Health and Safety Code.

- 1 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
2 as defined in Section 246.
- 3 (6) Discharging or permitting the discharge of a firearm from  
4 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
5 12034 until January 1, 2012, and, on or after that date, subdivisions  
6 (a) and (b) of Section 26100.
- 7 (7) Arson, as defined in Chapter 1 (commencing with Section  
8 450) of Title 13.
- 9 (8) The intimidation of witnesses and victims, as defined in  
10 Section 136.1.
- 11 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
12 487.
- 13 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 14 (11) Burglary, as defined in Section 459.
- 15 (12) Rape, as defined in Section 261.
- 16 (13) Looting, as defined in Section 463.
- 17 (14) Money laundering, as defined in Section 186.10.
- 18 (15) Kidnapping, as defined in Section 207.
- 19 (16) Mayhem, as defined in Section 203.
- 20 (17) Aggravated mayhem, as defined in Section 205.
- 21 (18) Torture, as defined in Section 206.
- 22 (19) Felony extortion, as defined in Sections 518 and 520.
- 23 (20) Felony vandalism, as defined in paragraph (1) of  
24 subdivision (b) of Section 594.
- 25 (21) Carjacking, as defined in Section 215.
- 26 (22) The sale, delivery, or transfer of a firearm, as defined in  
27 Section 12072 until January 1, 2012, and, on or after that date,  
28 Article 1 (commencing with Section 27500) of Chapter 4 of  
29 Division 6 of Title 4 of Part 6.
- 30 (23) Possession of a pistol, revolver, or other firearm capable  
31 of being concealed upon the person in violation of paragraph (1)  
32 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
33 or after that date, Section 29610.
- 34 (24) Threats to commit crimes resulting in death or great bodily  
35 injury, as defined in Section 422.
- 36 (25) Theft and unlawful taking or driving of a vehicle, as defined  
37 in Section 10851 of the Vehicle Code.
- 38 (26) Felony theft of an access card or account information, as  
39 defined in Section 484e.

1 (27) Counterfeiting, designing, using, or attempting to use an  
2 access card, as defined in Section 484f.

3 (28) Felony fraudulent use of an access card or account  
4 information, as defined in Section 484g.

5 (29) Unlawful use of personal identifying information to obtain  
6 credit, goods, services, or medical information, as defined in  
7 Section 530.5.

8 (30) Wrongfully obtaining Department of Motor Vehicles  
9 documentation, as defined in Section 529.7.

10 (31) Prohibited possession of a firearm in violation of Section  
11 12021 until January 1, 2012, and, on or after that date, Chapter 2  
12 (commencing with Section 29800) of Division 9 of Title 4 of Part  
13 6.

14 (32) Carrying a concealed firearm in violation of Section 12025  
15 until January 1, 2012, and, on or after that date, Section 25400.

16 (33) Carrying a loaded firearm in violation of Section 12031  
17 until January 1, 2012, and, on or after that date, Section 25850.

18 (f) As used in this chapter, “criminal street gang” means any  
19 ongoing organization, association, or group of three or more  
20 persons, whether formal or informal, having as one of its primary  
21 activities the commission of one or more of the criminal acts  
22 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),  
23 inclusive, of subdivision (e), having a common name or common  
24 identifying sign or symbol, and whose members individually or  
25 collectively engage in or have engaged in a pattern of criminal  
26 gang activity.

27 (g) Notwithstanding any other law, the court may strike the  
28 additional punishment for the enhancements provided in this  
29 section or refuse to impose the minimum jail sentence for  
30 misdemeanors in an unusual case where the interests of justice  
31 would best be served, if the court specifies on the record and enters  
32 into the minutes the circumstances indicating that the interests of  
33 justice would best be served by that disposition.

34 (h) Notwithstanding any other provision of law, for each person  
35 committed to the Department of Corrections and Rehabilitation,  
36 Division of Juvenile Facilities for a conviction pursuant to  
37 subdivision (a) or (b) of this section, the offense shall be deemed  
38 one for which the state shall pay the rate of 100 percent of the per  
39 capita institutional cost of the Department of Corrections and

1 Rehabilitation, Division of Juvenile Facilities, pursuant to Section  
2 912.5 of the Welfare and Institutions Code.

3 (i) In order to secure a conviction or sustain a juvenile petition,  
4 pursuant to subdivision (a) it is not necessary for the prosecution  
5 to prove that the person devotes all, or a substantial part, of his or  
6 her time or efforts to the criminal street gang, nor is it necessary  
7 to prove that the person is a member of the criminal street gang.  
8 Active participation in the criminal street gang is all that is  
9 required.

10 (j) A pattern of gang activity may be shown by the commission  
11 of one or more of the offenses enumerated in paragraphs (26) to  
12 (30), inclusive, of subdivision (e), and the commission of one or  
13 more of the offenses enumerated in paragraphs (1) to (25),  
14 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
15 of gang activity cannot be established solely by proof of  
16 commission of offenses enumerated in paragraphs (26) to (30),  
17 inclusive, of subdivision (e), alone.

18 (k) This section shall become operative on January 1, 2022.

19 SEC. 3. Section 186.33 of the Penal Code, as amended by  
20 Section 3 of Chapter 508 of the Statutes of 2013, is amended to  
21 read:

22 186.33. (a) Any person required to register pursuant to Section  
23 186.30 who knowingly violates any of its provisions is guilty of  
24 a misdemeanor.

25 (b) (1) Any person who knowingly fails to register pursuant to  
26 Section 186.30 and is subsequently convicted of, or any person  
27 for whom a petition is subsequently sustained for a violation of,  
28 any of the offenses specified in Section 186.30, shall be punished  
29 by an additional term of imprisonment in the state prison for 16  
30 months, or two or three years. The court shall select the sentence  
31 enhancement which, in the court’s discretion, best serves the  
32 interests of justice and shall state the reasons for its choice on the  
33 record at the time of sentencing in accordance with the provisions  
34 of subdivision (d) of Section 1170.1.

35 (2) The existence of any fact bringing a person under this  
36 subdivision shall be alleged in the information, indictment, or  
37 petition, and be either admitted by the defendant or minor in open  
38 court, or found to be true or not true by the trier of fact.

1 (c) This section shall remain in effect only until January 1, 2022,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2022, deletes or extends that date.

4 SEC. 4. Section 186.33 of the Penal Code, as amended by  
5 Section 4 of Chapter 508 of the Statutes of 2013, is amended to  
6 read:

7 186.33. (a) Any person required to register pursuant to Section  
8 186.30 who knowingly violates any of its provisions is guilty of  
9 a misdemeanor.

10 (b) (1) Any person who knowingly fails to register pursuant to  
11 Section 186.30 and is subsequently convicted of, or any person  
12 for whom a petition is subsequently sustained for a violation of,  
13 any of the offenses specified in Section 186.30, shall be punished  
14 by an additional term of imprisonment in the state prison for 16  
15 months, or two or three years. The court shall order imposition of  
16 the middle term unless there are circumstances in aggravation or  
17 mitigation. The court shall state its reasons for the enhancement  
18 choice on the record at the time of sentencing.

19 (2) The existence of any fact bringing a person under this  
20 subdivision shall be alleged in the information, indictment, or  
21 petition, and be either admitted by the defendant or minor in open  
22 court, or found to be true or not true by the trier of fact.

23 (c) This section shall become operative on January 1, 2022.

24 SEC. 5. Section 1170 of the Penal Code, as amended by Section  
25 1 of Chapter 378 of the Statutes of 2015, is amended to read:

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

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

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

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

1 and the period of parole, postrelease community supervision, or  
2 mandatory supervision. The sentence shall be deemed a separate  
3 prior prison term or a sentence of imprisonment in a county jail  
4 under subdivision (h) for purposes of Section 667.5, and a copy  
5 of the judgment and other necessary documentation shall be  
6 forwarded to the secretary.

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

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

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

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

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

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

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

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

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

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

39 (iv) The defendant has performed acts that tend to indicate  
40 rehabilitation or the potential for rehabilitation, including, but not

1 limited to, availing himself or herself of rehabilitative, educational,  
2 or vocational programs, if those programs have been available at  
3 his or her classification level and facility, using self-study for  
4 self-improvement, or showing evidence of remorse.

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

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

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

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

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

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

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

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

37 (v) The defendant suffers from cognitive limitations due to  
38 mental illness, developmental disabilities, or other factors that did  
39 not constitute a defense, but influenced the defendant's  
40 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 or postrelease  
37 community supervision medications, and all property belonging  
38 to the prisoner. After discharge, any additional records shall be  
39 sent to the prisoner's forwarding 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 (11) The provisions of this subdivision shall be available to an  
9 inmate who is sentenced to a county jail pursuant to subdivision  
10 (h). For purposes of those inmates, “secretary” or “warden” shall  
11 mean the county correctional administrator and “chief medical  
12 officer” shall mean a physician designated by the county  
13 correctional administrator for this purpose.

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 that, in the interests of justice, 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 that supervision, unless in actual custody related  
27 to the sentence imposed by the court, the defendant shall be entitled  
28 to only actual time credit against the term of imprisonment imposed  
29 by the court. Any time period which is suspended because a person  
30 has absconded shall not be credited toward the period of  
31 supervision.

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

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

1 (i) This section shall remain in effect only until January 1, 2022,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2022, deletes or extends that date.

4 *SEC. 5.1. Section 1170 of the Penal Code, as amended by*  
5 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*  
6 *read:*

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

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

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

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

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

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

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

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

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

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

1 firefighter as described in Section 245.1, as well as any other officer  
2 in any segment of law enforcement who is employed by the federal  
3 government, the state, or any of its political subdivisions.

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

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

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

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

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

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

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

35 (E) If the court finds by a preponderance of the evidence that  
36 *one or more of the statements in the petition are true, the court*  
37 *shall hold a hearing to consider whether to specified in clauses (i)*  
38 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*  
39 *the sentence and commitment previously ordered and hold a*  
40 *hearing to resentence the defendant in the same manner as if the*

1 defendant had not previously been sentenced, provided that the  
2 new sentence, if any, is not greater than the initial sentence.  
3 Victims, or victim family members if the victim is deceased, shall  
4 retain the rights to participate in the hearing.

5 (F) The factors that the court may consider when determining  
6 whether to ~~recall~~ and resentence *the defendant to a term of*  
7 *imprisonment with the possibility of parole* include, but are not  
8 limited to, the following:

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

11 (ii) The defendant does not have juvenile felony adjudications  
12 for assault or other felony crimes with a significant potential for  
13 personal harm to victims prior to the offense for which the ~~sentence~~  
14 ~~is being considered for recall~~; *defendant was sentenced to life*  
15 *without the possibility of parole*.

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

18 (iv) Prior to the offense for which the ~~sentence is being~~  
19 ~~considered for recall~~; *defendant was sentenced to life without the*  
20 *possibility of parole*, the defendant had insufficient adult support  
21 or supervision and had suffered from psychological or physical  
22 trauma, or significant stress.

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

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

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

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

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

10 (H) If the sentence is not recalled, *recalled or the defendant is*  
11 *resentenced to imprisonment for life without the possibility of*  
12 *parole*, the defendant may submit another petition for recall and  
13 resentencing to the sentencing court when the defendant has been  
14 committed to the custody of the department for at least 20 years.  
15 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
16 *or the defendant is resentenced to imprisonment for life without*  
17 *the possibility of parole* under that petition, the defendant may file  
18 another petition after having served 24 years. The final petition  
19 may be submitted, and the response to that petition shall be  
20 determined, during the 25th year of the defendant's sentence.

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

26 (J) This subdivision shall have retroactive application.

27 (K) *Nothing in this paragraph is intended to diminish or*  
28 *abrogate any rights or remedies otherwise available to the*  
29 *defendant.*

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

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

38 (A) The prisoner is terminally ill with an incurable condition  
39 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the  
2 department.

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

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

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

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

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

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

38 (6) Notwithstanding any other provisions of this section, the  
39 prisoner or his or her family member or designee may  
40 independently request consideration for recall and resentencing

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

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

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

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

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

1 (11) The provisions of this subdivision shall be available to an  
2 inmate who is sentenced to a county jail pursuant to subdivision  
3 (h). For purposes of those inmates, “secretary” or “warden” shall  
4 mean the county correctional administrator and “chief medical  
5 officer” shall mean a physician designated by the county  
6 correctional administrator for this purpose.

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

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

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

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

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

36 (4) Nothing in this subdivision shall be construed to prevent  
37 other dispositions authorized by law, including pretrial diversion,  
38 deferred entry of judgment, or an order granting probation pursuant  
39 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 that supervision, unless in actual custody related  
21 to the sentence imposed by the court, the defendant shall be entitled  
22 to only actual time credit against the term of imprisonment imposed  
23 by the court. Any time period which is suspended because a person  
24 has absconded shall not be credited toward the period of  
25 supervision.

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

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

33 (i) This section shall remain in effect only until January 1, ~~2017,~~  
34 2022, and as of that date is repealed, unless a later enacted statute,  
35 that is enacted before ~~that date,~~ January 1, 2022, deletes or extends  
36 that date.

37 *SEC. 5.2. Section 1170 of the Penal Code, as amended by*  
38 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*  
39 *read:*

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

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

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

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

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

1 is deceased, and any further evidence introduced at the sentencing  
2 hearing. The court shall select the term which, in the court's  
3 discretion, best serves the interests of justice. The court shall set  
4 forth on the record the reasons for imposing the term selected and  
5 the court may not impose an upper term by using the fact of any  
6 enhancement upon which sentence is imposed under any provision  
7 of law. A term of imprisonment shall not be specified if imposition  
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on  
10 the record at the time of sentencing. The court shall also inform  
11 the defendant that as part of the sentence after expiration of the  
12 term he or she may be on parole for a period as provided in Section  
13 3000 or 3000.08 or postrelease community supervision for a period  
14 as provided in Section 3451.

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

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

37 (ii) Notwithstanding clause (i), this paragraph shall not apply  
38 to defendants sentenced to life without parole for an offense where  
39 the defendant tortured, as described in Section 206, his or her  
40 victim or the victim was a public safety official, including any law

1 enforcement personnel mentioned in Chapter 4.5 (commencing  
2 with Section 830) of Title 3, or any firefighter as described in  
3 Section 245.1, as well as any other officer in any segment of law  
4 enforcement who is employed by the federal government, the state,  
5 or any of its political subdivisions.

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

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

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

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

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

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

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

37 (E) If the court finds by a preponderance of the evidence that  
38 the statements in the petition are true, the court shall hold a hearing  
39 to consider whether to recall the sentence and commitment  
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,  
2 provided that the new sentence, if any, is not greater than the initial  
3 sentence. Victims, or victim family members if the victim is  
4 deceased, shall retain the rights to participate in the hearing.

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

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

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

14 (iii) The defendant committed the offense with at least one adult  
15 codefendant.

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

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

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

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

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

37 (G) The court shall have the discretion to recall the sentence  
38 and commitment previously ordered and to resentence the  
39 defendant in the same manner as if the defendant had not  
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court  
2 shall be exercised in consideration of the criteria in subparagraph  
3 (B). Victims, or victim family members if the victim is deceased,  
4 shall be notified of the resentencing hearing and shall retain their  
5 rights to participate in the hearing.

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

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

19 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (g) A sentence to state prison for a determinate term for which  
2 only one term is specified, is a sentence to state prison under this  
3 section.

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

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

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

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

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

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

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

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

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

20 (i) This section shall remain in effect only until January 1, 2017,  
21 2022, and as of that date is repealed, unless a later enacted statute,  
22 that is enacted before that date, *January 1, 2022*, deletes or extends  
23 that date.

24 *SEC. 5.3. Section 1170 of the Penal Code, as amended by*  
25 *Section 1 of Chapter 378 of the Statutes of 2015, is amended to*  
26 *read:*

27 1170. (a) (1) The Legislature finds and declares that the  
28 purpose of imprisonment for crime is punishment. ~~This sentencing~~  
29 ~~is public safety achieved through punishment, rehabilitation, and~~  
30 ~~restorative justice. When a sentence includes incarceration, this~~  
31 ~~purpose is best served by terms that are proportionate to the~~  
32 ~~seriousness of the offense with provision for uniformity in the~~  
33 ~~sentences of offenders committing the same offense under similar~~  
34 ~~circumstances. The Legislature further finds and declares that the~~  
35 ~~elimination of disparity and the provision of uniformity of~~  
36 ~~sentences can best be achieved by determinate sentences fixed by~~  
37 ~~statute in proportion to the seriousness of the offense as determined~~  
38 ~~by the Legislature to be imposed by the court with specified~~  
39 ~~discretion.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (E) If the court finds by a preponderance of the evidence that  
27 *one or more of the statements in the petition are true, the court*  
28 *shall hold a hearing to consider whether to specified in clauses (i)*  
29 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*  
30 *the sentence and commitment previously ordered and hold a*  
31 *hearing to resentence the defendant in the same manner as if the*  
32 *defendant had not previously been sentenced, provided that the*  
33 *new sentence, if any, is not greater than the initial sentence.*  
34 *Victims, or victim family members if the victim is deceased, shall*  
35 *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 *the defendant to a term of*  
38 *imprisonment with the possibility of parole* include, but are not  
39 limited to, the following:

- 1 (i) The defendant was convicted pursuant to felony murder or  
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications  
4 for assault or other felony crimes with a significant potential for  
5 personal harm to victims prior to the offense for which the sentence  
6 ~~is being considered for recall.~~ *defendant was sentenced to life*  
7 *without the possibility of parole.*
- 8 (iii) The defendant committed the offense with at least one adult  
9 codefendant.
- 10 (iv) Prior to the offense for which the ~~sentence is being~~  
11 ~~considered for recall,~~ *defendant was sentenced to life without the*  
12 *possibility of parole,* the defendant had insufficient adult support  
13 or supervision and had suffered from psychological or physical  
14 trauma, or significant stress.
- 15 (v) The defendant suffers from cognitive limitations due to  
16 mental illness, developmental disabilities, or other factors that did  
17 not constitute a defense, but influenced the defendant's  
18 involvement in the offense.
- 19 (vi) The defendant has performed acts that tend to indicate  
20 rehabilitation or the potential for rehabilitation, including, but not  
21 limited to, availing himself or herself of rehabilitative, educational,  
22 or vocational programs, if those programs have been available at  
23 his or her classification level and facility, using self-study for  
24 self-improvement, or showing evidence of remorse.
- 25 (vii) The defendant has maintained family ties or connections  
26 with others through letter writing, calls, or visits, or has eliminated  
27 contact with individuals outside of prison who are currently  
28 involved with crime.
- 29 (viii) The defendant has had no disciplinary actions for violent  
30 activities in the last five years in which the defendant was  
31 determined to be the aggressor.
- 32 (G) The court shall have the discretion ~~to recall the sentence~~  
33 ~~and commitment previously ordered and~~ to resentence the  
34 defendant in the same manner as if the defendant had not  
35 previously been sentenced, provided that the new sentence, if any,  
36 is not greater than the initial sentence. The discretion of the court  
37 shall be exercised in consideration of the criteria in subparagraph  
38 ~~(B)~~: (F). Victims, or victim family members if the victim is  
39 deceased, shall be notified of the resentencing hearing and shall  
40 retain their rights to participate in the hearing.

1 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*  
2 *resentenced to imprisonment for life without the possibility of*  
3 *parole*, the defendant may submit another petition for recall and  
4 resentencing to the sentencing court when the defendant has been  
5 committed to the custody of the department for at least 20 years.  
6 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
7 *or the defendant is resentenced to imprisonment for life without*  
8 *the possibility of parole* under that petition, the defendant may file  
9 another petition after having served 24 years. The final petition  
10 may be submitted, and the response to that petition shall be  
11 determined, during the 25th year of the defendant's sentence.

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

17 (J) This subdivision shall have retroactive application.

18 (K) *Nothing in this paragraph is intended to diminish or*  
19 *abrogate any rights or remedies otherwise available to the*  
20 *defendant.*

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

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

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

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

35 (C) The prisoner is permanently medically incapacitated with  
36 a medical condition that renders him or her permanently unable  
37 to perform activities of basic daily living, and results in the prisoner  
38 requiring 24-hour total care, including, but not limited to, coma,  
39 persistent vegetative state, brain death, ventilator-dependency, loss

1 of control of muscular or neurological function, and that  
2 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

1 indeterminate terms, the secretary shall make a recommendation  
2 to the Board of Parole Hearings with respect to the inmates who  
3 have applied under this section. The board shall consider this  
4 information and make an independent judgment pursuant to  
5 paragraph (2) and make findings related thereto before rejecting  
6 the request or making a recommendation to the court. This action  
7 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

37 (f) Notwithstanding any other provision of this section, for  
38 purposes of paragraph (3) of subdivision (h), any allegation that  
39 a defendant is eligible for state prison due to a prior or current  
40 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal  
2 pursuant to Section 1385.

3 (g) A sentence to state prison for a determinate term for which  
4 only one term is specified, is a sentence to state prison under this  
5 section.

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

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

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

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

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

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

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

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

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

22 (i) This section shall remain in effect only until January 1, ~~2017,~~  
23 ~~2022~~, and as of that date is repealed, unless a later enacted statute,  
24 that is enacted before ~~that date~~, *January 1, 2022*, deletes or extends  
25 that date.

26 SEC. 6. Section 1170 of the Penal Code, as amended by Section  
27 2 of Chapter 378 of the Statutes of 2015, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 community supervision medications, and all property belonging  
2 to the prisoner. After discharge, any additional records shall be  
3 sent to the prisoner's forwarding 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 (11) The provisions of this subdivision shall be available to an  
12 inmate who is sentenced to a county jail pursuant to subdivision  
13 (h). For purposes of those inmates, "secretary" or "warden" shall  
14 mean the county correctional administrator and "chief medical  
15 officer" shall mean a physician designated by the county  
16 correctional administrator for this purpose.

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

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

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

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

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

1 to register as a sex offender pursuant to Chapter 5.5 (commencing  
2 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
3 and as part of the sentence an enhancement pursuant to Section  
4 186.11 is imposed, an executed sentence for a felony punishable  
5 pursuant to this subdivision shall be served in state prison.

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

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

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

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

38 (7) The sentencing changes made to paragraph (5) by the act  
39 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, 2022.

4 *SEC. 6.1. Section 1170 of the Penal Code, as amended by*  
5 *Section 2 of Chapter 378 of the Statutes of 2015, is amended to*  
6 *read:*

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

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

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

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

28 (b) When a judgment of imprisonment is to be imposed and the  
29 statute specifies three possible terms, the court shall order  
30 imposition of the middle term, unless there are circumstances in  
31 aggravation or mitigation of the crime. At least four days prior to  
32 the time set for imposition of judgment, either party or the victim,  
33 or the family of the victim if the victim is deceased, may submit  
34 a statement in aggravation or mitigation to dispute facts in the  
35 record or the probation officer's report, or to present additional  
36 facts. In determining whether there are circumstances that justify  
37 imposition of the upper or lower term, the court may consider the  
38 record in the case, the probation officer's report, other reports,  
39 including reports received pursuant to Section 1203.03, and  
40 statements in aggravation or mitigation submitted by the

1 prosecution, the defendant, or the victim, or the family of the victim  
2 if the victim is deceased, and any further evidence introduced at  
3 the sentencing hearing. The court shall set forth on the record the  
4 facts and reasons for imposing the upper or lower term. The court  
5 may not impose an upper term by using the fact of any  
6 enhancement upon which sentence is imposed under any provision  
7 of law. A term of imprisonment shall not be specified if imposition  
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on  
10 the record at the time of sentencing. The court shall also inform  
11 the defendant that as part of the sentence after expiration of the  
12 term he or she may be on parole for a period as provided in Section  
13 3000 or 3000.08 or postrelease community supervision for a period  
14 as provided in Section 3451.

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

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

37 (ii) Notwithstanding clause (i), this paragraph shall not apply  
38 to defendants sentenced to life without parole for an offense where  
39 *it was pled and proved that* the defendant tortured, as described  
40 in Section 206, his or her victim or the victim was a public safety

1 official, including any law enforcement personnel mentioned in  
2 Chapter 4.5 (commencing with Section 830) of Title 3, or any  
3 firefighter as described in Section 245.1, as well as any other officer  
4 in any segment of law enforcement who is employed by the federal  
5 government, the state, or any of its political subdivisions.

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

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

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

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

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

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

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

37 (E) If the court finds by a preponderance of the evidence that  
38 *one or more of the statements in the petition are true, the court*  
39 *shall hold a hearing to consider whether to specified in clauses (i)*  
40 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*

1 the sentence and commitment previously ordered and *hold a*  
2 *hearing* to resentence the defendant in the same manner as if the  
3 defendant had not previously been sentenced, provided that the  
4 new sentence, if any, is not greater than the initial sentence.  
5 Victims, or victim family members if the victim is deceased, shall  
6 retain the rights to participate in the hearing.

7 (F) The factors that the court may consider when determining  
8 whether to ~~recall~~ and resentence *the defendant to a term of*  
9 *imprisonment with the possibility of parole* include, but are not  
10 limited to, the following:

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

13 (ii) The defendant does not have juvenile felony adjudications  
14 for assault or other felony crimes with a significant potential for  
15 personal harm to victims prior to the offense for which the ~~sentence~~  
16 ~~is being considered for recall~~. *defendant was sentenced to life*  
17 *without the possibility of parole.*

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

20 (iv) Prior to the offense for which the ~~sentence is being~~  
21 ~~considered for recall~~, *defendant was sentenced to life without the*  
22 *possibility of parole*, the defendant had insufficient adult support  
23 or supervision and had suffered from psychological or physical  
24 trauma, or significant stress.

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

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

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

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

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

13 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*  
14 *resentenced to imprisonment for life without the possibility of*  
15 *parole*, the defendant may submit another petition for recall and  
16 resentencing to the sentencing court when the defendant has been  
17 committed to the custody of the department for at least 20 years.  
18 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
19 *or the defendant is resentenced to imprisonment for life without*  
20 *the possibility of parole* under that petition, the defendant may file  
21 another petition after having served 24 years. The final petition  
22 may be submitted, and the response to that petition shall be  
23 determined, during the 25th year of the defendant's sentence.

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

29 (J) This subdivision shall have retroactive application.

30 (K) *Nothing in this paragraph is intended to diminish or*  
31 *abrogate any rights or remedies otherwise available to the*  
32 *defendant.*

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (10) The secretary shall issue a directive to medical and  
37 correctional staff employed by the department that details the  
38 guidelines and procedures for initiating a recall and resentencing  
39 procedure. The directive shall clearly state that any prisoner who  
40 is given a prognosis of six months or less to live is eligible for

1 recall and resentencing consideration, and that recall and  
2 resentencing procedures shall be initiated upon that prognosis.

3 (11) The provisions of this subdivision shall be available to an  
4 inmate who is sentenced to a county jail pursuant to subdivision  
5 (h). For purposes of those inmates, “secretary” or “warden” shall  
6 mean the county correctional administrator and “chief medical  
7 officer” shall mean a physician designated by the county  
8 correctional administrator for this purpose.

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

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

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

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

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

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

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

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

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

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

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

35 (i) This section shall become operative on January 1, ~~2017~~  
36 2022.

37 *SEC. 6.2. Section 1170 of the Penal Code, as amended by*  
38 *Section 2 of Chapter 378 of the Statutes of 2015, is amended to*  
39 *read:*

1 1170. (a) (1) The Legislature finds and declares that the  
2 purpose of imprisonment for crime is punishment. ~~This sentencing~~  
3 ~~is public safety achieved through punishment, rehabilitation, and~~  
4 ~~restorative justice. When a sentence includes incarceration, this~~  
5 purpose is best served by terms *that are* proportionate to the  
6 seriousness of the offense with provision for uniformity in the  
7 sentences of offenders committing the same offense under similar  
8 circumstances. ~~The Legislature further finds and declares that the~~  
9 ~~elimination of disparity and the provision of uniformity of~~  
10 ~~sentences can best be achieved by determinate sentences fixed by~~  
11 ~~statute in proportion to the seriousness of the offense as determined~~  
12 ~~by the Legislature to be imposed by the court with specified~~  
13 ~~discretion.~~

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

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

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

30 (b) When a judgment of imprisonment is to be imposed and the  
31 statute specifies three possible terms, the court shall order  
32 imposition of the middle term, unless there are circumstances in  
33 aggravation or mitigation of the crime. At least four days prior to  
34 the time set for imposition of judgment, either party or the victim,  
35 or the family of the victim if the victim is deceased, may submit  
36 a statement in aggravation or mitigation to dispute facts in the  
37 record or the probation officer's report, or to present additional  
38 facts. In determining whether there are circumstances that justify  
39 imposition of the upper or lower term, the court may consider the  
40 record in the case, the probation officer's report, other reports,

1 including reports received pursuant to Section 1203.03, and  
2 statements in aggravation or mitigation submitted by the  
3 prosecution, the defendant, or the victim, or the family of the victim  
4 if the victim is deceased, and any further evidence introduced at  
5 the sentencing hearing. The court shall set forth on the record the  
6 facts and reasons for imposing the upper or lower term. The court  
7 may not impose an upper term by using the fact of any  
8 enhancement upon which sentence is imposed under any provision  
9 of law. A term of imprisonment shall not be specified if imposition  
10 of sentence is suspended.

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

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

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

39 (ii) Notwithstanding clause (i), this paragraph shall not apply  
40 to defendants sentenced to life without parole for an offense where

1 the defendant tortured, as described in Section 206, his or her  
2 victim or the victim was a public safety official, including any law  
3 enforcement personnel mentioned in Chapter 4.5 (commencing  
4 with Section 830) of Title 3, or any firefighter as described in  
5 Section 245.1, as well as any other officer in any segment of law  
6 enforcement who is employed by the federal government, the state,  
7 or any of its political subdivisions.

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

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

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

22 (iii) The defendant committed the offense with at least one adult  
23 codefendant.

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

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

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

39 (E) If the court finds by a preponderance of the evidence that  
40 the statements in the petition are true, the court shall hold a hearing

1 to consider whether to recall the sentence and commitment  
2 previously ordered and to resentence the defendant in the same  
3 manner as if the defendant had not previously been sentenced,  
4 provided that the new sentence, if any, is not greater than the initial  
5 sentence. Victims, or victim family members if the victim is  
6 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

18 (iv) Prior to the offense for which the sentence is being  
19 considered for recall, the defendant had insufficient adult support  
20 or supervision and had suffered from psychological or physical  
21 trauma, or significant stress.

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

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

32 (vii) The defendant has maintained family ties or connections  
33 with others through letter writing, calls, or visits, or has eliminated  
34 contact with individuals outside of prison who are currently  
35 involved with crime.

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

39 (G) The court shall have the discretion to recall the sentence  
40 and commitment previously ordered and to resentence the

1 defendant in the same manner as if the defendant had not  
2 previously been sentenced, provided that the new sentence, if any,  
3 is not greater than the initial sentence. The discretion of the court  
4 shall be exercised in consideration of the criteria in subparagraph  
5 (B). Victims, or victim family members if the victim is deceased,  
6 shall be notified of the resentencing hearing and shall retain their  
7 rights to participate in the hearing.

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

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

21 (J) This subdivision shall have retroactive application.

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

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

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

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

36 (C) The prisoner is permanently medically incapacitated with  
37 a medical condition that renders him or her permanently unable  
38 to perform activities of basic daily living, and results in the prisoner  
39 requiring 24-hour total care, including, but not limited to, coma,  
40 persistent vegetative state, brain death, ventilator-dependency, loss

1 of control of muscular or neurological function, and that  
2 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

1 indeterminate terms, the secretary shall make a recommendation  
2 to the Board of Parole Hearings with respect to the inmates who  
3 have applied under this section. The board shall consider this  
4 information and make an independent judgment pursuant to  
5 paragraph (2) and make findings related thereto before rejecting  
6 the request or making a recommendation to the court. This action  
7 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

37 (f) Notwithstanding any other provision of this section, for  
38 purposes of paragraph (3) of subdivision (h), any allegation that  
39 a defendant is eligible for state prison due to a prior or current  
40 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal  
2 pursuant to Section 1385.

3 (g) A sentence to state prison for a determinate term for which  
4 only one term is specified, is a sentence to state prison under this  
5 section.

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

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

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

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

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

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

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

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

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

22 (i) This section shall become operative on January 1, ~~2017.~~  
23 ~~2022.~~

24 *SEC. 6.3. Section 1170 of the Penal Code, as amended by*  
25 *Section 2 of Chapter 378 of the Statutes of 2015, is amended to*  
26 *read:*

27 1170. (a) (1) The Legislature finds and declares that the  
28 purpose of imprisonment for crime is punishment. ~~This sentencing~~  
29 ~~is public safety achieved through punishment, rehabilitation, and~~  
30 ~~restorative justice. When a sentence includes incarceration, this~~  
31 ~~purpose is best served by terms that are proportionate to the~~  
32 ~~seriousness of the offense with provision for uniformity in the~~  
33 ~~sentences of offenders committing the same offense under similar~~  
34 ~~circumstances. The Legislature further finds and declares that the~~  
35 ~~elimination of disparity and the provision of uniformity of~~  
36 ~~sentences can best be achieved by determinate sentences fixed by~~  
37 ~~statute in proportion to the seriousness of the offense as determined~~  
38 ~~by the Legislature to be imposed by the court with specified~~  
39 ~~discretion.~~

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

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

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

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

38 (c) The court shall state the reasons for its sentence choice on  
39 the record at the time of sentencing. The court shall also inform  
40 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 or 3000.08 or postrelease community supervision for a period  
3 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

26 (E) If the court finds by a preponderance of the evidence that  
27 ~~one or more of the statements in the petition are true, the court~~  
28 ~~shall hold a hearing to consider whether to~~ *specified in clauses (i)*  
29 *to (iv), inclusive, of subparagraph (B) is true, the court shall recall*  
30 *the sentence and commitment previously ordered and hold a*  
31 *hearing to resentence the defendant in the same manner as if the*  
32 *defendant had not previously been sentenced, provided that the*  
33 *new sentence, if any, is not greater than the initial sentence.*  
34 *Victims, or victim family members if the victim is deceased, shall*  
35 *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 *the defendant to a term of*  
38 *imprisonment with the possibility of parole* include, but are not  
39 limited to, the following:

- 1 (i) The defendant was convicted pursuant to felony murder or  
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications  
4 for assault or other felony crimes with a significant potential for  
5 personal harm to victims prior to the offense for which the sentence  
6 ~~is being considered for recall.~~ *defendant was sentenced to life*  
7 *without the possibility of parole.*
- 8 (iii) The defendant committed the offense with at least one adult  
9 codefendant.
- 10 (iv) Prior to the offense for which the ~~sentence is being~~  
11 ~~considered for recall,~~ *defendant was sentenced to life without the*  
12 *possibility of parole,* the defendant had insufficient adult support  
13 or supervision and had suffered from psychological or physical  
14 trauma, or significant stress.
- 15 (v) The defendant suffers from cognitive limitations due to  
16 mental illness, developmental disabilities, or other factors that did  
17 not constitute a defense, but influenced the defendant's  
18 involvement in the offense.
- 19 (vi) The defendant has performed acts that tend to indicate  
20 rehabilitation or the potential for rehabilitation, including, but not  
21 limited to, availing himself or herself of rehabilitative, educational,  
22 or vocational programs, if those programs have been available at  
23 his or her classification level and facility, using self-study for  
24 self-improvement, or showing evidence of remorse.
- 25 (vii) The defendant has maintained family ties or connections  
26 with others through letter writing, calls, or visits, or has eliminated  
27 contact with individuals outside of prison who are currently  
28 involved with crime.
- 29 (viii) The defendant has had no disciplinary actions for violent  
30 activities in the last five years in which the defendant was  
31 determined to be the aggressor.
- 32 (G) The court shall have the discretion ~~to recall the sentence~~  
33 ~~and commitment previously ordered and~~ to resentence the  
34 defendant in the same manner as if the defendant had not  
35 previously been sentenced, provided that the new sentence, if any,  
36 is not greater than the initial sentence. The discretion of the court  
37 shall be exercised in consideration of the criteria in subparagraph  
38 ~~(B)~~: (F). Victims, or victim family members if the victim is  
39 deceased, shall be notified of the resentencing hearing and shall  
40 retain their rights to participate in the hearing.

1 (H) If the sentence is not ~~recalled~~, *recalled or the defendant is*  
2 *resentenced to imprisonment for life without the possibility of*  
3 *parole*, the defendant may submit another petition for recall and  
4 resentencing to the sentencing court when the defendant has been  
5 committed to the custody of the department for at least 20 years.  
6 ~~If recall and resentencing is not granted~~ *the sentence is not recalled*  
7 *or the defendant is resentenced to imprisonment for life without*  
8 *the possibility of parole* under that petition, the defendant may file  
9 another petition after having served 24 years. The final petition  
10 may be submitted, and the response to that petition shall be  
11 determined, during the 25th year of the defendant's sentence.

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

17 (J) This subdivision shall have retroactive application.

18 (K) *Nothing in this paragraph is intended to diminish or*  
19 *abrogate any rights or remedies otherwise available to the*  
20 *defendant.*

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

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

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

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

35 (C) The prisoner is permanently medically incapacitated with  
36 a medical condition that renders him or her permanently unable  
37 to perform activities of basic daily living, and results in the prisoner  
38 requiring 24-hour total care, including, but not limited to, coma,  
39 persistent vegetative state, brain death, ventilator-dependency, loss

1 of control of muscular or neurological function, and that  
2 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

1 indeterminate terms, the secretary shall make a recommendation  
2 to the Board of Parole Hearings with respect to the inmates who  
3 have applied under this section. The board shall consider this  
4 information and make an independent judgment pursuant to  
5 paragraph (2) and make findings related thereto before rejecting  
6 the request or making a recommendation to the court. This action  
7 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

37 (f) Notwithstanding any other provision of this section, for  
38 purposes of paragraph (3) of subdivision (h), any allegation that  
39 a defendant is eligible for state prison due to a prior or current  
40 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal  
2 pursuant to Section 1385.

3 (g) A sentence to state prison for a determinate term for which  
4 only one term is specified, is a sentence to state prison under this  
5 section.

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

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

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

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

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

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

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

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

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

22 (i) This section shall become operative on January 1, ~~2017~~.  
23 2022.

24 SEC. 7. Section 1170.1 of the Penal Code, as amended by  
25 Section 7 of Chapter 508 of the Statutes of 2013, is amended to  
26 read:

27 1170.1. (a) Except as otherwise provided by law, and subject  
28 to Section 654, when any person is convicted of two or more  
29 felonies, whether in the same proceeding or court or in different  
30 proceedings or courts, and whether by judgment rendered by the  
31 same or by a different court, and a consecutive term of  
32 imprisonment is imposed under Sections 669 and 1170, the  
33 aggregate term of imprisonment for all these convictions shall be  
34 the sum of the principal term, the subordinate term, and any  
35 additional term imposed for applicable enhancements for prior  
36 convictions, prior prison terms, and Section 12022.1. The principal  
37 term shall consist of the greatest term of imprisonment imposed  
38 by the court for any of the crimes, including any term imposed for  
39 applicable specific enhancements. The subordinate term for each  
40 consecutive offense shall consist of one-third of the middle term

1 of imprisonment prescribed for each other felony conviction for  
2 which a consecutive term of imprisonment is imposed, and shall  
3 include one-third of the term imposed for any specific  
4 enhancements applicable to those subordinate offenses. Whenever  
5 a court imposes a term of imprisonment in the state prison, whether  
6 the term is a principal or subordinate term, the aggregate term shall  
7 be served in the state prison, regardless as to whether or not one  
8 of the terms specifies imprisonment in a county jail pursuant to  
9 subdivision (h) of Section 1170.

10 (b) If a person is convicted of two or more violations of  
11 kidnapping, as defined in Section 207, involving separate victims,  
12 the subordinate term for each consecutive offense of kidnapping  
13 shall consist of the full middle term and shall include the full term  
14 imposed for specific enhancements applicable to those subordinate  
15 offenses.

16 (c) In the case of any person convicted of one or more felonies  
17 committed while the person is confined in the state prison or is  
18 subject to reimprisonment for escape from custody and the law  
19 either requires the terms to be served consecutively or the court  
20 imposes consecutive terms, the term of imprisonment for all the  
21 convictions that the person is required to serve consecutively shall  
22 commence from the time the person would otherwise have been  
23 released from prison. If the new offenses are consecutive with each  
24 other, the principal and subordinate terms shall be calculated as  
25 provided in subdivision (a). This subdivision shall be applicable  
26 in cases of convictions of more than one offense in the same or  
27 different proceedings.

28 (d) When the court imposes a sentence for a felony pursuant to  
29 Section 1170 or subdivision (b) of Section 1168, the court shall  
30 also impose, in addition and consecutive to the offense of which  
31 the person has been convicted, the additional terms provided for  
32 any applicable enhancements. If an enhancement is punishable by  
33 one of three terms, the court shall, in its discretion, impose the  
34 term that best serves the interest of justice, and state the reasons  
35 for its sentence choice on the record at the time of sentencing. The  
36 court shall also impose any other additional term that the court  
37 determines in its discretion or as required by law shall run  
38 consecutive to the term imposed under Section 1170 or subdivision  
39 (b) of Section 1168. In considering the imposition of the additional

1 term, the court shall apply the sentencing rules of the Judicial  
2 Council.

3 (e) All enhancements shall be alleged in the accusatory pleading  
4 and either admitted by the defendant in open court or found to be  
5 true by the trier of fact.

6 (f) When two or more enhancements may be imposed for being  
7 armed with or using a dangerous or deadly weapon or a firearm  
8 in the commission of a single offense, only the greatest of those  
9 enhancements shall be imposed for that offense. This subdivision  
10 shall not limit the imposition of any other enhancements applicable  
11 to that offense, including an enhancement for the infliction of great  
12 bodily injury.

13 (g) When two or more enhancements may be imposed for the  
14 infliction of great bodily injury on the same victim in the  
15 commission of a single offense, only the greatest of those  
16 enhancements shall be imposed for that offense. This subdivision  
17 shall not limit the imposition of any other enhancements applicable  
18 to that offense, including an enhancement for being armed with  
19 or using a dangerous or deadly weapon or a firearm.

20 (h) For any violation of an offense specified in Section 667.6,  
21 the number of enhancements that may be imposed shall not be  
22 limited, regardless of whether the enhancements are pursuant to  
23 this section, Section 667.6, or some other provision of law. Each  
24 of the enhancements shall be a full and separately served term.

25 (i) This section shall remain in effect only until January 1, 2022,  
26 and as of that date is repealed, unless a later enacted statute, that  
27 is enacted before January 1, 2022, deletes or extends that date.

28 SEC. 8. Section 1170.1 of the Penal Code, as amended by  
29 Section 8 of Chapter 508 of the Statutes of 2013, is amended to  
30 read:

31 1170.1. (a) Except as otherwise provided by law, and subject  
32 to Section 654, when any person is convicted of two or more  
33 felonies, whether in the same proceeding or court or in different  
34 proceedings or courts, and whether by judgment rendered by the  
35 same or by a different court, and a consecutive term of  
36 imprisonment is imposed under Sections 669 and 1170, the  
37 aggregate term of imprisonment for all these convictions shall be  
38 the sum of the principal term, the subordinate term, and any  
39 additional term imposed for applicable enhancements for prior  
40 convictions, prior prison terms, and Section 12022.1. The principal

1 term shall consist of the greatest term of imprisonment imposed  
2 by the court for any of the crimes, including any term imposed for  
3 applicable specific enhancements. The subordinate term for each  
4 consecutive offense shall consist of one-third of the middle term  
5 of imprisonment prescribed for each other felony conviction for  
6 which a consecutive term of imprisonment is imposed, and shall  
7 include one-third of the term imposed for any specific  
8 enhancements applicable to those subordinate offenses. Whenever  
9 a court imposes a term of imprisonment in the state prison, whether  
10 the term is a principal or subordinate term, the aggregate term shall  
11 be served in the state prison, regardless as to whether or not one  
12 of the terms specifies imprisonment in a county jail pursuant to  
13 subdivision (h) of Section 1170.

14 (b) If a person is convicted of two or more violations of  
15 kidnapping, as defined in Section 207, involving separate victims,  
16 the subordinate term for each consecutive offense of kidnapping  
17 shall consist of the full middle term and shall include the full term  
18 imposed for specific enhancements applicable to those subordinate  
19 offenses.

20 (c) In the case of any person convicted of one or more felonies  
21 committed while the person is confined in the state prison or is  
22 subject to reimprisonment for escape from custody and the law  
23 either requires the terms to be served consecutively or the court  
24 imposes consecutive terms, the term of imprisonment for all the  
25 convictions that the person is required to serve consecutively shall  
26 commence from the time the person would otherwise have been  
27 released from prison. If the new offenses are consecutive with each  
28 other, the principal and subordinate terms shall be calculated as  
29 provided in subdivision (a). This subdivision shall be applicable  
30 in cases of convictions of more than one offense in the same or  
31 different proceedings.

32 (d) When the court imposes a sentence for a felony pursuant to  
33 Section 1170 or subdivision (b) of Section 1168, the court shall  
34 also impose, in addition and consecutive to the offense of which  
35 the person has been convicted, the additional terms provided for  
36 any applicable enhancements. If an enhancement is punishable by  
37 one of three terms, the court shall impose the middle term unless  
38 there are circumstances in aggravation or mitigation, and state the  
39 reasons for its sentence choice, other than the middle term, on the  
40 record at the time of sentencing. The court shall also impose any

1 other additional term that the court determines in its discretion or  
2 as required by law shall run consecutive to the term imposed under  
3 Section 1170 or subdivision (b) of Section 1168. In considering  
4 the imposition of the additional term, the court shall apply the  
5 sentencing rules of the Judicial Council.

6 (e) All enhancements shall be alleged in the accusatory pleading  
7 and either admitted by the defendant in open court or found to be  
8 true by the trier of fact.

9 (f) When two or more enhancements may be imposed for being  
10 armed with or using a dangerous or deadly weapon or a firearm  
11 in the commission of a single offense, only the greatest of those  
12 enhancements shall be imposed for that offense. This subdivision  
13 shall not limit the imposition of any other enhancements applicable  
14 to that offense, including an enhancement for the infliction of great  
15 bodily injury.

16 (g) When two or more enhancements may be imposed for the  
17 infliction of great bodily injury on the same victim in the  
18 commission of a single offense, only the greatest of those  
19 enhancements shall be imposed for that offense. This subdivision  
20 shall not limit the imposition of any other enhancements applicable  
21 to that offense, including an enhancement for being armed with  
22 or using a dangerous or deadly weapon or a firearm.

23 (h) For any violation of an offense specified in Section 667.6,  
24 the number of enhancements that may be imposed shall not be  
25 limited, regardless of whether the enhancements are pursuant to  
26 this section, Section 667.6, or some other provision of law. Each  
27 of the enhancements shall be a full and separately served term.

28 (i) This section shall become operative on January 1, 2022.

29 SEC. 9. Section 1170.3 of the Penal Code, as amended by  
30 Section 3 of Chapter 378 of the Statutes of 2015, is amended to  
31 read:

32 1170.3. The Judicial Council shall seek to promote uniformity  
33 in sentencing under Section 1170 by:

34 (a) The adoption of rules providing criteria for the consideration  
35 of the trial judge at the time of sentencing regarding the court's  
36 decision to:

37 (1) Grant or deny probation.

38 (2) Impose the lower, middle, or upper prison term.

39 (3) Impose the lower, middle, or upper term pursuant to  
40 paragraph (1) or (2) of subdivision (h) of Section 1170.

- 1 (4) Impose concurrent or consecutive sentences.
- 2 (5) Determine whether or not to impose an enhancement where
- 3 that determination is permitted by law.
- 4 (6) Deny a period of mandatory supervision in the interests of
- 5 justice under paragraph (5) of subdivision (h) of Section 1170 or
- 6 determine the appropriate period and conditions of mandatory
- 7 supervision. The rules implementing this paragraph shall be
- 8 adopted no later than January 1, 2015.
- 9 (b) The adoption of rules standardizing the minimum content
- 10 and the sequential presentation of material in probation officer
- 11 reports submitted to the court regarding probation and mandatory
- 12 supervision under paragraph (5) of subdivision (h) of Section 1170.
- 13 (c) This section shall remain in effect only until January 1, 2022,
- 14 and as of that date is repealed, unless a later enacted statute, that
- 15 is enacted before January 1, 2022, deletes or extends that date.
- 16 SEC. 10. Section 1170.3 of the Penal Code, as amended by
- 17 Section 4 of Chapter 378 of the Statutes of 2015, is amended to
- 18 read:
- 19 1170.3. The Judicial Council shall seek to promote uniformity
- 20 in sentencing under Section 1170 by:
- 21 (a) The adoption of rules providing criteria for the consideration
- 22 of the trial judge at the time of sentencing regarding the court's
- 23 decision to:
- 24 (1) Grant or deny probation.
- 25 (2) Impose the lower or upper prison term.
- 26 (3) Impose the lower or upper term pursuant to paragraph (1)
- 27 or (2) of subdivision (h) of Section 1170.
- 28 (4) Impose concurrent or consecutive sentences.
- 29 (5) Determine whether or not to impose an enhancement where
- 30 that determination is permitted by law.
- 31 (6) Deny a period of mandatory supervision in the interests of
- 32 justice under paragraph (5) of subdivision (h) of Section 1170 or
- 33 determine the appropriate period and conditions of mandatory
- 34 supervision. The rules implementing this paragraph shall be
- 35 adopted no later than January 1, 2015.
- 36 (b) The adoption of rules standardizing the minimum content
- 37 and the sequential presentation of material in probation officer
- 38 reports submitted to the court regarding probation and mandatory
- 39 supervision under paragraph (5) of subdivision (h) of Section 1170.
- 40 (c) This section shall become operative on January 1, 2022.

1 SEC. 11. Section 12021.5 of the Penal Code, as amended by  
2 Section 11 of Chapter 508 of the Statutes of 2013, is amended to  
3 read:

4 12021.5. (a) Every person who carries a loaded or unloaded  
5 firearm on his or her person, or in a vehicle, during the commission  
6 or attempted commission of any street gang crimes described in  
7 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
8 the felony or attempted felony, be punished by an additional term  
9 of imprisonment in the state prison for one, two, or three years.  
10 The court shall select the sentence enhancement which, in the  
11 court's discretion, best serves the interests of justice and shall state  
12 the reasons for its choice on the record at the time of sentence, in  
13 accordance with the provisions of subdivision (d) of Section  
14 1170.1.

15 (b) Every person who carries a loaded or unloaded firearm  
16 together with a detachable shotgun magazine, a detachable pistol  
17 magazine, a detachable magazine, or a belt-feeding device on his  
18 or her person, or in a vehicle, during the commission or attempted  
19 commission of any street gang crimes described in subdivision (a)  
20 or (b) of Section 186.22, shall, upon conviction of the felony or  
21 attempted felony, be punished by an additional term of  
22 imprisonment in the state prison for two, three, or four years. The  
23 court shall select the sentence enhancement which, in the court's  
24 discretion, best serves the interests of justice and shall state the  
25 reasons for its choice on the record at the time of sentence, in  
26 accordance with the provisions of subdivision (d) of Section  
27 1170.1.

28 (c) As used in this section, the following definitions shall apply:

29 (1) "Detachable magazine" means a device that is designed or  
30 redesigned to do all of the following:

31 (A) To be attached to a rifle that is designed or redesigned to  
32 fire ammunition.

33 (B) To be attached to, and detached from, a rifle that is designed  
34 or redesigned to fire ammunition.

35 (C) To feed ammunition continuously and directly into the  
36 loading mechanism of a rifle that is designed or redesigned to fire  
37 ammunition.

38 (2) "Detachable pistol magazine" means a device that is  
39 designed or redesigned to do all of the following:

1 (A) To be attached to a semiautomatic firearm that is not a rifle  
 2 or shotgun that is designed or redesigned to fire ammunition.

3 (B) To be attached to, and detached from, a firearm that is not  
 4 a rifle or shotgun that is designed or redesigned to fire ammunition.

5 (C) To feed ammunition continuously and directly into the  
 6 loading mechanism of a firearm that is not a rifle or a shotgun that  
 7 is designed or redesigned to fire ammunition.

8 (3) “Detachable shotgun magazine” means a device that is  
 9 designed or redesigned to do all of the following:

10 (A) To be attached to a firearm that is designed or redesigned  
 11 to fire a fixed shotgun shell through a smooth or rifled bore.

12 (B) To be attached to, and detached from, a firearm that is  
 13 designed or redesigned to fire a fixed shotgun shell through a  
 14 smooth bore.

15 (C) To feed fixed shotgun shells continuously and directly into  
 16 the loading mechanism of a firearm that is designed or redesigned  
 17 to fire a fixed shotgun shell.

18 (4) “Belt-feeding device” means a device that is designed or  
 19 redesigned to continuously feed ammunition into the loading  
 20 mechanism of a machinegun or a semiautomatic firearm.

21 (5) “Rifle” shall have the same meaning as specified in  
 22 paragraph (20) of subdivision (c) of Section 12020 until January  
 23 1, 2012, and, on or after that date, Section 17090.

24 (6) “Shotgun” shall have the same meaning as specified in  
 25 paragraph (21) of subdivision (c) of Section 12020 until January  
 26 1, 2012, and, on or after that date, Section 17190.

27 (d) This section shall remain in effect only until January 1, 2022,  
 28 and as of that date is repealed, unless a later enacted statute, that  
 29 is enacted before January 1, 2022, deletes or extends that date.

30 SEC. 12. Section 12021.5 of the Penal Code, as amended by  
 31 Section 12 of Chapter 508 of the Statutes of 2013, is amended to  
 32 read:

33 12021.5. (a) Every person who carries a loaded or unloaded  
 34 firearm on his or her person, or in a vehicle, during the commission  
 35 or attempted commission of any street gang crimes described in  
 36 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
 37 the felony or attempted felony, be punished by an additional term  
 38 of imprisonment pursuant to subdivision (h) of Section 1170 for  
 39 one, two, or three years in the court’s discretion. The court shall  
 40 impose the middle term unless there are circumstances in

1 aggravation or mitigation. The court shall state the reasons for its  
2 enhancement choice on the record at the time of sentence.

3 (b) Every person who carries a loaded or unloaded firearm  
4 together with a detachable shotgun magazine, a detachable pistol  
5 magazine, a detachable magazine, or a belt-feeding device on his  
6 or her person, or in a vehicle, during the commission or attempted  
7 commission of any street gang crimes described in subdivision (a)  
8 or (b) of Section 186.22, shall, upon conviction of the felony or  
9 attempted felony, be punished by an additional term of  
10 imprisonment in the state prison for two, three, or four years in  
11 the court's discretion. The court shall impose the middle term  
12 unless there are circumstances in aggravation or mitigation. The  
13 court shall state the reasons for its enhancement choice on the  
14 record at the time of sentence.

15 (c) As used in this section, the following definitions shall apply:

16 (1) "Detachable magazine" means a device that is designed or  
17 redesigned to do all of the following:

18 (A) To be attached to a rifle that is designed or redesigned to  
19 fire ammunition.

20 (B) To be attached to, and detached from, a rifle that is designed  
21 or redesigned to fire ammunition.

22 (C) To feed ammunition continuously and directly into the  
23 loading mechanism of a rifle that is designed or redesigned to fire  
24 ammunition.

25 (2) "Detachable pistol magazine" means a device that is  
26 designed or redesigned to do all of the following:

27 (A) To be attached to a semiautomatic firearm that is not a rifle  
28 or shotgun that is designed or redesigned to fire ammunition.

29 (B) To be attached to, and detached from, a firearm that is not  
30 a rifle or shotgun that is designed or redesigned to fire ammunition.

31 (C) To feed ammunition continuously and directly into the  
32 loading mechanism of a firearm that is not a rifle or a shotgun that  
33 is designed or redesigned to fire ammunition.

34 (3) "Detachable shotgun magazine" means a device that is  
35 designed or redesigned to do all of the following:

36 (A) To be attached to a firearm that is designed or redesigned  
37 to fire a fixed shotgun shell through a smooth or rifled bore.

38 (B) To be attached to, and detached from, a firearm that is  
39 designed or redesigned to fire a fixed shotgun shell through a  
40 smooth bore.

1 (C) To feed fixed shotgun shells continuously and directly into  
2 the loading mechanism of a firearm that is designed or redesigned  
3 to fire a fixed shotgun shell.

4 (4) “Belt-feeding device” means a device that is designed or  
5 redesigned to continuously feed ammunition into the loading  
6 mechanism of a machinegun or a semiautomatic firearm.

7 (5) “Rifle” shall have the same meaning as specified in Section  
8 17090.

9 (6) “Shotgun” shall have the same meaning as specified in  
10 Section 17190.

11 (d) This section shall become operative on January 1, 2022.

12 SEC. 13. Section 12022.2 of the Penal Code, as amended by  
13 Section 13 of Chapter 508 of the Statutes of 2013, is amended to  
14 read:

15 12022.2. (a) Any person who, while armed with a firearm in  
16 the commission or attempted commission of any felony, has in his  
17 or her immediate possession ammunition for the firearm designed  
18 primarily to penetrate metal or armor, shall upon conviction of  
19 that felony or attempted felony, in addition and consecutive to the  
20 punishment prescribed for the felony or attempted felony, be  
21 punished by an additional term of 3, 4, or 10 years. The court shall  
22 select the sentence enhancement which, in the court’s discretion,  
23 best serves the interests of justice and shall state the reasons for  
24 its choice on the record at the time of the sentence in accordance  
25 with the provisions of subdivision (d) of Section 1170.1.

26 (b) Any person who wears a body vest in the commission or  
27 attempted commission of a violent offense, as defined in  
28 subdivision (b) of Section 12021.1, until January 1, 2012, and, on  
29 or after that date, Section 29905, shall, upon conviction of that  
30 felony or attempted felony, in addition and consecutive to the  
31 punishment prescribed for the felony or attempted felony of which  
32 he or she has been convicted, be punished by an additional term  
33 of one, two, or five years. The court shall select the sentence  
34 enhancement which, in the court’s discretion, best serves the  
35 interests of justice and shall state the reasons for its choice on the  
36 record at the time of the sentence in accordance with the provisions  
37 of subdivision (d) of Section 1170.1.

38 (c) As used in this section, “body vest” means any  
39 bullet-resistant material intended to provide ballistic and trauma  
40 protection for the wearer.

1 (d) This section shall remain in effect only until January 1, 2022,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2022, deletes or extends that date.

4 SEC. 14. Section 12022.2 of the Penal Code, as amended by  
5 Section 14 of Chapter 508 of the Statutes of 2013, is amended to  
6 read:

7 12022.2. (a) Any person who, while armed with a firearm in  
8 the commission or attempted commission of any felony, has in his  
9 or her immediate possession ammunition for the firearm designed  
10 primarily to penetrate metal or armor, shall upon conviction of  
11 that felony or attempted felony, in addition and consecutive to the  
12 punishment prescribed for the felony or attempted felony, be  
13 punished by an additional term of 3, 4, or 10 years. The court shall  
14 order the middle term unless there are circumstances in aggravation  
15 or mitigation. The court shall state the reasons for its enhancement  
16 choice on the record at the time of the sentence.

17 (b) Any person who wears a body vest in the commission or  
18 attempted commission of a violent offense, as defined in Section  
19 29905, shall, upon conviction of that felony or attempted felony,  
20 in addition and consecutive to the punishment prescribed for the  
21 felony or attempted felony of which he or she has been convicted,  
22 be punished by an additional term of one, two, or five years. The  
23 court shall order the middle term unless there are circumstances  
24 in aggravation or mitigation. The court shall state the reasons for  
25 its enhancement choice on the record at the time of the sentence.

26 (c) As used in this section, “body vest” means any  
27 bullet-resistant material intended to provide ballistic and trauma  
28 protection for the wearer.

29 (d) This section shall become operative on January 1, 2022.

30 SEC. 15. Section 12022.4 of the Penal Code, as amended by  
31 Section 15 of Chapter 508 of the Statutes of 2013, is amended to  
32 read:

33 12022.4. (a) Any person who, during the commission or  
34 attempted commission of a felony, furnishes or offers to furnish  
35 a firearm to another for the purpose of aiding, abetting, or enabling  
36 that person or any other person to commit a felony shall, in addition  
37 and consecutive to the punishment prescribed by the felony or  
38 attempted felony of which the person has been convicted, be  
39 punished by an additional term of one, two, or three years in the  
40 state prison. The court shall select the sentence enhancement which,

1 in the court's discretion, best serves the interests of justice and  
2 shall state the reasons for its choice on the record at the time of  
3 the sentence, in accordance with the provisions of subdivision (d)  
4 of Section 1170.1. The additional term provided in this section  
5 shall not be imposed unless the fact of the furnishing is charged  
6 in the accusatory pleading and admitted or found to be true by the  
7 trier of fact.

8 (b) This section shall remain in effect only until January 1, 2022,  
9 and as of that date is repealed, unless a later enacted statute, that  
10 is enacted before January 1, 2022, deletes or extends that date.

11 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
12 Section 16 of Chapter 508 of the Statutes of 2013, is amended to  
13 read:

14 12022.4. (a) Any person who, during the commission or  
15 attempted commission of a felony, furnishes or offers to furnish  
16 a firearm to another for the purpose of aiding, abetting, or enabling  
17 that person or any other person to commit a felony shall, in addition  
18 and consecutive to the punishment prescribed by the felony or  
19 attempted felony of which the person has been convicted, be  
20 punished by an additional term of one, two, or three years in the  
21 state prison. The court shall order the middle term unless there are  
22 circumstances in aggravation or mitigation. The court shall state  
23 the reasons for its enhancement choice on the record at the time  
24 of the sentence. The additional term provided in this section shall  
25 not be imposed unless the fact of the furnishing is charged in the  
26 accusatory pleading and admitted or found to be true by the trier  
27 of fact.

28 (b) This section shall become operative on January 1, 2022.

29 SEC. 17. (a) *Section 5.1 of this bill incorporates amendments*  
30 *to Section 1170 of the Penal Code, as amended by Section 1 of*  
31 *Chapter 378 of the Statutes of 2015, proposed by both this bill and*  
32 *Senate Bill 1084. It shall only become operative if (1) both bills*  
33 *are enacted and become effective on or before January 1, 2017,*  
34 *(2) each bill amends Section 1170 of the Penal Code, as amended*  
35 *by Section 1 of Chapter 378 of the Statutes of 2015, (3) Assembly*  
36 *Bill 2590 is not enacted or as enacted does not amend that section,*  
37 *and (4) this bill is enacted after Senate Bill 1084, in which case*  
38 *Sections 5, 5.2, and 5.3 of this bill shall not become operative.*

39 (b) *Section 5.2 of this bill incorporates amendments to Section*  
40 *1170 of the Penal Code, as amended by Section 1 of Chapter 378*

1 of the Statutes of 2015, proposed by both this bill and Assembly  
2 Bill 2590. It shall only become operative if (1) both bills are  
3 enacted and become effective on or before January 1, 2017, (2)  
4 each bill amends Section 1170 of the Penal Code, as amended by  
5 Section 1 of Chapter 378 of the Statutes of 2015, (3) Senate Bill  
6 1084 is not enacted or as enacted does not amend that section,  
7 and (4) this bill is enacted after Assembly Bill 2590, in which case  
8 Sections 5, 5.1, and 5.3 of this bill shall not become operative.

9 (c) Section 5.3 of this bill incorporates amendments to Section  
10 1170 of the Penal Code, as amended by Section 1 of Chapter 378  
11 of the Statutes of 2015, proposed by this bill, Senate Bill 1084,  
12 and Assembly Bill 2590. It shall only become operative if (1) all  
13 three bills are enacted and become effective on or before January  
14 1, 2017, (2) all three bills amend Section 1170 of the Penal Code,  
15 as amended by Section 1 of Chapter 378 of the Statutes of 2015,  
16 and (3) this bill is enacted after Senate Bill 1084 and Assembly  
17 Bill 2590, in which case Sections 5, 5.1, and 5.2 of this bill shall  
18 not become operative.

19 SEC. 18. (a) Section 6.1 of this bill incorporates amendments  
20 to Section 1170 of the Penal Code, as amended by Section 2 of  
21 Chapter 378 of the Statutes of 2015, proposed by both this bill and  
22 Senate Bill 1084. It shall only become operative if (1) both bills  
23 are enacted and become effective on or before January 1, 2017,  
24 (2) each bill amends Section 1170 of the Penal Code, as amended  
25 by Section 2 of Chapter 378 of the Statutes of 2015, (3) Assembly  
26 Bill 2590 is not enacted or as enacted does not amend that section,  
27 and (4) this bill is enacted after Senate Bill 1084, in which case  
28 Sections 6, 6.2, and 6.3 of this bill shall not become operative.

29 (b) Section 6.2 of this bill incorporates amendments to Section  
30 1170 of the Penal Code, as amended by Section 2 of Chapter 378  
31 of the Statutes of 2015, proposed by both this bill and Assembly  
32 Bill 2590. It shall only become operative if (1) both bills are  
33 enacted and become effective on or before January 1, 2017, (2)  
34 each bill amends Section 1170 of the Penal Code, as amended by  
35 Section 2 of Chapter 378 of the Statutes of 2015, (3) Senate Bill  
36 1084 is not enacted or as enacted does not amend that section,  
37 and (4) this bill is enacted after Assembly Bill 2590, in which case  
38 Sections 6, 6.1, and 6.3 of this bill shall not become operative.

39 (c) Section 6.3 of this bill incorporates amendments to Section  
40 1170 of the Penal Code, as amended by Section 2 of Chapter 378

1 *of the Statutes of 2015, proposed by this bill, Senate Bill 1084,*  
2 *and Assembly Bill 2590. It shall only become operative if (1) all*  
3 *three bills are enacted and become effective on or before January*  
4 *1, 2017, (2) all three bills amend Section 1170 of the Penal Code,*  
5 *as amended by Section 2 of Chapter 378 of the Statutes of 2015,*  
6 *and (3) this bill is enacted after Senate Bill 1084 and Assembly*  
7 *Bill 2590, in which case Sections 6, 6.1, and 6.2 of this bill shall*  
8 *not become operative.*

O