

**Introduced by Senator Stone**

February 19, 2016

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

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1321, as introduced, Stone. Felonies: crimes committed while on mandatory supervision.

Existing law generally requires that felonies punishable by imprisonment in a county jail be punished either by the term described in the underlying offense or by a term of 16 months, or 2 or 3 years if the term is not specified. Existing law requires an executed sentence for these felonies to be punished in state prison if the defendant has a prior or current felony conviction for a serious or violent felony, is required to register as a sex offender, or is convicted of a crime for which the white collar crime enhancement is imposed as part of the sentence.

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

This bill would require an executed sentence for a felony to be punished in state prison if the defendant committed the felony while he or she was under mandatory supervision.

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

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

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

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

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

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

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

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

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

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

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

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

34 (ii) Notwithstanding clause (i), this paragraph shall not apply  
35 to defendants sentenced to life without parole for an offense where  
36 the defendant tortured, as described in Section 206, his or her  
37 victim or the victim was a public safety official, including any law  
38 enforcement personnel mentioned in Chapter 4.5 (commencing  
39 with Section 830) of Title 3, or any firefighter as described in  
40 Section 245.1, as well as any other officer in any segment of law

1 enforcement who is employed by the federal government, the state,  
2 or any of its political subdivisions.

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

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.

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

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

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

34 (E) If the court finds by a preponderance of the evidence that  
35 the statements in the petition are true, the court shall hold a hearing  
36 to consider whether to recall the sentence and commitment  
37 previously ordered and to resentence the defendant in the same  
38 manner as if the defendant had not previously been sentenced,  
39 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

35 (G) The court shall have the discretion to recall the sentence  
36 and commitment previously ordered and to resentence the  
37 defendant in the same manner as if the defendant had not  
38 previously been sentenced, provided that the new sentence, if any,  
39 is not greater than the initial sentence. The discretion of the court  
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,  
2 shall be notified of the resentencing hearing and shall retain their  
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit  
5 another petition for recall and resentencing to the sentencing court  
6 when the defendant has been committed to the custody of the  
7 department for at least 20 years. If recall and resentencing is not  
8 granted under that petition, the defendant may file another petition  
9 after having served 24 years. The final petition may be submitted,  
10 and the response to that petition shall be determined, during the  
11 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 (e) (1) Notwithstanding any other law and consistent with  
19 paragraph (1) of subdivision (a), if the secretary or the Board of  
20 Parole Hearings or both determine that a prisoner satisfies the  
21 criteria set forth in paragraph (2), the secretary or the board may  
22 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

39 The Board of Parole Hearings shall make findings pursuant to  
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner  
2 sentenced to death or a term of life without the possibility of parole.

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

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

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

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



1 paragraph (2) and make findings related thereto before rejecting  
2 the request or making a recommendation to the court. This action  
3 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

33 (f) Notwithstanding any other provision of this section, for  
34 purposes of paragraph (3) of subdivision (h), any allegation that  
35 a defendant is eligible for state prison due to a prior or current  
36 conviction, sentence enhancement, or because he or she is required  
37 to register as a sex offender shall not be subject to dismissal  
38 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) (A) Notwithstanding paragraphs (1) and (2), where the  
12 defendant (A) has a prior or current felony conviction for a serious  
13 felony described in subdivision (c) of Section 1192.7 or a prior or  
14 current conviction for a violent felony described in subdivision  
15 (c) of 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 (B) *Notwithstanding paragraphs (1) and (2), if the defendant*  
25 *committed the felony offense while on mandatory supervision, an*  
26 *executed sentence for that felony shall be served in state prison.*

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

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

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

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

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

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

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

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

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

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates, 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) (A) Notwithstanding paragraphs (1) and (2), where the  
34 defendant (A) has a prior or current felony conviction for a serious  
35 felony described in subdivision (c) of Section 1192.7 or a prior or  
36 current conviction for a violent felony described in subdivision  
37 (c) of 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 *(B) Notwithstanding paragraphs (1) and (2), if the defendant*  
7 *committed the felony offense while on mandatory supervision, an*  
8 *executed sentence for that felony shall be served in state prison.*

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

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

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

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

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

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

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