

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1324

Introduced by Senator Hancock

February 19, 2016

An act to amend Section 1170 of, *and to add Section 5000.1 to*, the Penal Code, relating to ~~sentencing~~; *incarceration*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1324, as amended, Hancock. ~~Sentencing~~*Incarceration: rehabilitation*.

Existing law makes certain felonies punishable by a term of imprisonment in a county jail for 16 months, or 2 or 3 years, in cases in which the term is not specified in the underlying offense, except under specified circumstances. Under those circumstances, existing law makes an executed sentence for those felonies punishable in state prison. Existing law finds and declares that the purpose of imprisonment for crime is punishment and 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.

This bill would find and declare that an ~~additional~~ *additional* purpose of imprisonment for crime is rehabilitation. The bill would also find that those purposes are best served by terms proportionate to the seriousness of the offense and with a correctional treatment program designed to address the particular criminogenic needs of offenders.

Existing law creates the Department of Corrections and Rehabilitation and vests it with certain powers and duties.

This bill would state, among other things, that the mission of the department is to promote public safety by providing a safe and constructive prison environment that fosters positive and enduring

behavioral change among offenders, both in prison and after their return to the community.

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

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

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

4 1170. (a) (1) The Legislature finds and declares that the
5 purposes of imprisonment for crime are punishment and
6 rehabilitation. These purposes are best served by terms
7 proportionate to the seriousness of the offense with provision for
8 uniformity in the sentences of offenders committing the same
9 offense under similar circumstances, and a correctional treatment
10 program designed to address the particular criminogenic needs of
11 offenders.

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

24 (3) In any case in which the punishment prescribed by statute
25 for a person convicted of a public offense is a term of imprisonment
26 in the state prison or a term pursuant to subdivision (h) of any
27 specification of three time periods, the court shall sentence the
28 defendant to one of the terms of imprisonment specified unless
29 the convicted person is given any other disposition provided by
30 law, including a fine, jail, probation, or the suspension of
31 imposition or execution of sentence or is sentenced pursuant to
32 subdivision (b) of Section 1168 because he or she had committed
33 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 prescribed, shall
4 also impose any other term that it is required by law to impose as
5 an additional term. Nothing in this article shall affect any provision
6 of law that imposes the death penalty, that authorizes or restricts
7 the granting of probation or suspending the execution or imposition
8 of sentence, or expressly provides for imprisonment in the state
9 prison for life, except as provided in paragraph (2) of subdivision
10 (d). In any case in which the amount of preimprisonment credit
11 under Section 2900.5 or any other law is equal to or exceeds any
12 sentence imposed pursuant to this chapter, except for the remaining
13 portion of mandatory supervision pursuant to subparagraph (B) of
14 paragraph (5) of subdivision (h), the entire sentence shall be
15 deemed to have been served, except for the remaining period of
16 mandatory supervision, and the defendant shall not be actually
17 delivered to the custody of the secretary or to the custody of the
18 county correctional administrator. The court shall advise the
19 defendant that he or she shall serve an applicable period of parole,
20 postrelease community supervision, or mandatory supervision,
21 and order the defendant to report to the parole or probation office
22 closest to the defendant's last legal residence, unless the in-custody
23 credits equal the total sentence, including both confinement time
24 and the period of parole, postrelease community supervision, or
25 mandatory supervision. The sentence shall be deemed a separate
26 prior prison term or a sentence of imprisonment in a county jail
27 under subdivision (h) for purposes of Section 667.5, and a copy
28 of the judgment and other necessary documentation shall be
29 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 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before that date, deletes or extends that date.

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

25 1170. (a) (1) The Legislature finds and declares that the
26 purposes of imprisonment for crime are punishment and
27 rehabilitation. Those purposes are best served by terms
28 proportionate to the seriousness of the offense with provision for
29 uniformity in the sentences of offenders committing the same
30 offense under similar circumstances, and a correctional treatment
31 program designed to address the particular criminogenic needs of
32 offenders.

33 (2) The Legislature further finds and declares that programs
34 should be available for inmates, including, but not limited to,
35 educational programs, that are designed to prepare nonviolent
36 felony offenders for successful reentry into the community. The
37 Legislature encourages the development of policies and programs
38 designed to educate and rehabilitate nonviolent felony offenders.
39 In implementing this section, the Department of Corrections and
40 Rehabilitation is encouraged to give priority enrollment in

1 programs to promote successful return to the community to an
2 inmate with a short remaining term of commitment and a release
3 date that would allow him or her adequate time to complete the
4 program.

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

1 under subdivision (h) for purposes of Section 667.5, and a copy
2 of the judgment and other necessary documentation shall be
3 forwarded to the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (9) If the court grants the recall and resentencing application,
31 the prisoner shall be released by the department within 48 hours
32 of receipt of the court’s order, unless a longer time period is agreed
33 to by the inmate. At the time of release, the warden or the warden’s
34 representative shall ensure that the prisoner has each of the
35 following in his or her possession: a discharge medical summary,
36 full medical records, state identification, parole 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, in the interest of justice, that it
8 is not appropriate in a particular case, the court, when imposing a
9 sentence pursuant to paragraph (1) or (2), shall suspend execution
10 of a concluding portion of the term for a period selected at the
11 court's discretion.

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

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

40 *SEC. 3. Section 5000.1 is added to the Penal Code, to read:*

1 5000.1. *The mission of the Department of Corrections and*
2 *Rehabilitation is to promote public safety by providing a safe and*
3 *constructive prison environment that fosters positive and enduring*
4 *behavioral change among offenders, both in prison and after their*
5 *return to the community. All staff of the department perform equally*
6 *vital and integrated responsibilities in achieving the restorative*
7 *and rehabilitative goals of the department and shall be supported*
8 *in realizing the highest levels of professional performance and*
9 *personal satisfaction consistent with this section.*

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