

AMENDED IN ASSEMBLY AUGUST 18, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1324

Introduced by Senator Hancock
(Principal coauthor: Assembly Member Bonta)

February 19, 2016

~~An act to amend Section 1170 of, and to add Section 5000.1 to, the Penal Code, relating to incarceration. An act to amend Section 13957.9 of the Government Code, relating to crime victims, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1324, as amended, Hancock. ~~Incarceration; rehabilitation. Crime victims: compensation for pecuniary loss.~~

Existing law generally provides for the reimbursement of victims and derivative victims of specified types of crimes by the California Victim Compensation Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law, until January 1, 2017, authorizes the board to grant from the fund for pecuniary losses, when the board determines it will best aid the person seeking compensation, reimbursement for outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, as specified. Existing law sets forth eligibility requirements and limits on the amount of compensation the board may award, and requires the application for compensation to be verified under penalty of perjury.

This bill would extend the board's authority to grant reimbursement for those outpatient psychiatric, psychological, or other mental health counseling-related expenses until January 1, 2019. By expanding the

authorization for the use of moneys in the Restitution Fund, a continuously appropriated fund, this bill would make an appropriation. Because an application for reimbursement is required to be submitted under penalty of perjury, this bill would expand the definition of a crime and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~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 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 ²/₃. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.~~

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

- 1 *SECTION 1. Section 13957.9 of the Government Code is*
- 2 *amended to read:*

1 13957.9. (a) In addition to the authorization provided in
2 Section 13957 and subject to the limitations set forth in Section
3 13957.2, the board may grant for pecuniary loss, when the board
4 determines it will best aid the person seeking compensation,
5 reimbursement of the amount of outpatient psychiatric,
6 psychological, or other mental health counseling-related expenses
7 incurred by the victim or derivative victim, including peer
8 counseling services provided by violence peer counseling services
9 provided by a service organization for victims of violent crime,
10 and including family psychiatric, psychological, or mental health
11 counseling for the successful treatment of the victim provided to
12 family members of the victim in the presence of the victim, whether
13 or not the family member relationship existed at the time of the
14 crime, that became necessary as a direct result of the crime, subject
15 to the following conditions:

16 (1) The following persons may be reimbursed for the expense
17 of their outpatient mental health counseling in an amount not to
18 exceed ten thousand dollars (\$10,000):

19 (A) A victim.

20 (B) A derivative victim who is the surviving parent, sibling,
21 child, spouse, fiancé, or fiancée of a victim of a crime that directly
22 resulted in the death of the victim.

23 (C) A derivative victim, as described in paragraphs (1) to (4),
24 inclusive, of subdivision (c) of Section 13955, who is the primary
25 caretaker of a minor victim whose claim is not denied or reduced
26 pursuant to Section 13956 in a total amount not to exceed ten
27 thousand dollars (\$10,000) for not more than two derivative
28 victims.

29 (2) The following persons may be reimbursed for the expense
30 of their outpatient mental health counseling in an amount not to
31 exceed five thousand dollars (\$5,000):

32 (A) A derivative victim not eligible for reimbursement pursuant
33 to paragraph (1), provided that mental health counseling of a
34 derivative victim described in paragraph (5) of subdivision (c) of
35 Section 13955, shall be reimbursed only if that counseling is
36 necessary for the treatment of the victim.

37 (B) A victim of a crime of unlawful sexual intercourse with a
38 minor committed in violation of subdivision (d) of Section 261.5
39 of the Penal Code. A derivative victim of a crime committed in
40 violation of subdivision (d) of Section 261.5 of the Penal Code

1 shall not be eligible for reimbursement of mental health counseling
2 expenses.

3 (C) A minor who suffers emotional injury as a direct result of
4 witnessing a violent crime and who is not eligible for
5 reimbursement of the costs of outpatient mental health counseling
6 under any other provision of this chapter. To be eligible for
7 reimbursement under this clause, the minor must have been in
8 close proximity to the victim when he or she witnessed the crime.

9 (3) The board may reimburse a victim or derivative victim for
10 outpatient mental health counseling in excess of that authorized
11 by paragraph (1) or (2) or for inpatient psychiatric, psychological,
12 or other mental health counseling if the claim is based on dire or
13 exceptional circumstances that require more extensive treatment,
14 as approved by the board.

15 (4) Expenses for psychiatric, psychological, or other mental
16 health counseling-related services may be reimbursed only if the
17 services were provided by either of the following individuals:

18 (A) A person who would have been authorized to provide those
19 services pursuant to former Article 1 (commencing with Section
20 13959) as it read on January 1, 2002.

21 (B) A person who is licensed by the state to provide those
22 services, or who is properly supervised by a person who is so
23 licensed, subject to the board's approval and subject to the
24 limitations and restrictions the board may impose.

25 (b) The total award to or on behalf of each victim or derivative
26 victim may not exceed thirty-five thousand dollars (\$35,000),
27 except that this amount may be increased to seventy thousand
28 dollars (\$70,000) if federal funds for that increase are available.

29 (c) For the purposes of this section, the following definitions
30 shall apply:

31 (1) "Service organization for victims of violent crime" means
32 a nonprofit and charitable organization that meets both of the
33 following criteria:

34 (A) Its primary mission is to provide services to victims of
35 violent crime.

36 (B) It provides programs or services to victims of violent crime
37 and their families, and other programs, whether or not a similar
38 program exists in an agency that provides additional services.

39 (2) "Violence peer counseling services" means counseling by
40 a violence peer counselor for the purpose of rendering advice or

1 assistance for victims of violent crime and their families. Any
2 violence peer counseling services that fall under the scope of
3 practice of the Licensed Marriage and Family Therapist Act
4 (Chapter 13 (commencing with Section 4980) of Division 2 of the
5 Business and Professions Code), the Educational Psychologist
6 Practice Act (Chapter 13.5 (commencing with Section 4989.10)
7 of Division 2 of the Business and Professions Code), the Clinical
8 Social Worker Practice Act (Chapter 14 (commencing with Section
9 4991) of Division 2 of the Business and Professions Code), and
10 the Licensed Professional Clinical Counselor Act (Chapter 16
11 (commencing with Section 4999.10) of Division 2 of the Business
12 and Professions Code), which are not performed in an exempt
13 setting as defined in Sections 4980.01, 4996.14, and 4999.22 of
14 the Business and Professions Code, shall only be performed by a
15 licensee or a registrant of the Board of Behavioral Sciences or
16 other appropriately licensed professional, such as a licensed
17 psychologist or board certified psychiatrist.

18 (3) “Violence peer counselor” means a provider of supportive
19 and nonpsychotherapeutic peer counseling services who is
20 employed by a service organization for victims of violent crime,
21 whether financially compensated or not, and who meets all of the
22 following requirements:

23 (A) Possesses at least six months of full-time equivalent
24 experience in providing peer support services acquired through
25 employment, volunteer work, or as part of an internship experience.

26 (B) Completed a training program aimed at preparing an
27 individual who was once a mental health services consumer to use
28 his or her life experience with mental health treatment, combined
29 with other strengths and skills, to promote the mental health
30 recovery of other mental health services consumers who are in
31 need of peer-based services relating to recovery as a victim of a
32 violent crime.

33 (C) Possesses 40 hours of training on all of the following:

34 (i) The profound neurological, biological, psychological, and
35 social effects of trauma and violence.

36 (ii) Peace-building and violence prevention strategies, including,
37 but not limited to, conflict mediation and retaliation prevention
38 related to gangs and gang-related violence.

39 (iii) Post-traumatic stress disorder and vicarious trauma,
40 especially as related to gangs and gang-related violence.

1 (iv) Case management practices, including, but not limited to,
2 ethics and victim compensation advocacy.

3 (D) When providing violence peer counseling services, is
4 supervised by a marriage and family therapist licensed pursuant
5 to Chapter 13 (commencing with Section 4980) of Division 2 of
6 the Business and Professions Code, a licensed educational
7 psychologist licensed pursuant to Chapter 13.5 (commencing with
8 Section 4989.10) of Division 2 of the Business and Professions
9 Code, a clinical social worker licensed pursuant to Chapter 14
10 (commencing with Section 4991) of Division 2 of the Business
11 and Professions Code, or a licensed professional clinical counselor
12 licensed pursuant to Chapter 16 (commencing with Section
13 4999.10) of Division 2 of the Business and Professions Code. For
14 the purposes of this subparagraph, a licensed marriage and family
15 therapist, licensed educational psychologist, licensed clinical social
16 worker, or licensed professional clinical counselor shall be
17 employed by the same service organization as the violence peer
18 counselor.

19 (d) This section shall remain in effect only until January 1, ~~2017,~~
20 ~~2019~~, and as of that date is repealed, unless a later enacted statute,
21 that is enacted before January 1, ~~2017, 2019~~, deletes or extends
22 that date.

23 *SEC. 2. No reimbursement is required by this act pursuant to*
24 *Section 6 of Article XIII B of the California Constitution because*
25 *the only costs that may be incurred by a local agency or school*
26 *district will be incurred because this act creates a new crime or*
27 *infraction, eliminates a crime or infraction, or changes the penalty*
28 *for a crime or infraction, within the meaning of Section 17556 of*
29 *the Government Code, or changes the definition of a crime within*
30 *the meaning of Section 6 of Article XIII B of the California*
31 *Constitution.*

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

35 ~~1170. (a) (1) The Legislature finds and declares that the~~
36 ~~purposes of imprisonment for crime are punishment and~~
37 ~~rehabilitation. These purposes are best served by terms~~
38 ~~proportionate to the seriousness of the offense with provision for~~
39 ~~uniformity in the sentences of offenders committing the same~~
40 ~~offense under similar circumstances, and a correctional treatment~~

1 program designed to address the particular criminogenic needs of
2 offenders.

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

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

1 delivered to the custody of the secretary or to the custody of the
2 county correctional administrator. The court shall advise the
3 defendant that he or she shall serve an applicable period of parole,
4 postrelease community supervision, or mandatory supervision,
5 and order the defendant to report to the parole or probation office
6 closest to the defendant's last legal residence, unless the in-custody
7 credits equal the total sentence, including both confinement time
8 and the period of parole, postrelease community supervision, or
9 mandatory supervision. The sentence shall be deemed a separate
10 prior prison term or a sentence of imprisonment in a county jail
11 under subdivision (h) for purposes of Section 667.5, and a copy
12 of the judgment and other necessary documentation shall be
13 forwarded to the secretary.

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

33 (c) The court shall state the reasons for its sentence choice on
34 the record at the time of sentencing. The court shall also inform
35 the defendant that as part of the sentence after expiration of the
36 term he or she may be on parole for a period as provided in Section
37 3000 or 3000.08 or postrelease community supervision for a period
38 as provided in Section 3451.

39 (d) (1) When a defendant subject to this section or subdivision
40 (b) of Section 1168 has been sentenced to be imprisoned in the

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

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

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

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

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

1 ~~(ii) The defendant does not have juvenile felony adjudications~~
2 ~~for assault or other felony crimes with a significant potential for~~
3 ~~personal harm to victims prior to the offense for which the sentence~~
4 ~~is being considered for recall.~~

5 ~~(iii) The defendant committed the offense with at least one adult~~
6 ~~codefendant.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~(J) This subdivision shall have retroactive application.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (11) The provisions of this subdivision shall be available to an
15 inmate who is sentenced to a county jail pursuant to subdivision
16 (h). For purposes of those inmates, "secretary" or "warden" shall
17 mean the county correctional administrator and "chief medical
18 officer" shall mean a physician designated by the county
19 correctional administrator for this purpose.

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

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

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

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

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

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

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

13 ~~(5) (A) Unless the court finds that, in the interests of justice, 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 remain in effect only until January 1, 2017,~~
6 ~~and as of that date is repealed, unless a later enacted statute, that~~
7 ~~is enacted before that date, deletes or extends that date.~~

8 ~~SEC. 2. Section 1170 of the Penal Code, as amended by Section~~
9 ~~2 of Chapter 378 of the Statutes of 2015, is amended to read:~~

10 ~~1170. (a) (1) The Legislature finds and declares that the~~
11 ~~purposes of imprisonment for crime are punishment and~~
12 ~~rehabilitation. Those purposes are best served by terms~~
13 ~~proportionate to the seriousness of the offense with provision for~~
14 ~~uniformity in the sentences of offenders committing the same~~
15 ~~offense under similar circumstances, and a correctional treatment~~
16 ~~program designed to address the particular criminogenic needs of~~
17 ~~offenders.~~

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

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

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

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

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

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

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

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

38 (ii) Notwithstanding clause (i), this paragraph shall not apply
 39 to defendants sentenced to life without parole for an offense where
 40 the defendant tortured, as described in Section 206, his or her

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(G) The court shall have the discretion to recall the sentence~~
39 ~~and commitment previously ordered and to resentence the~~
40 ~~defendant in the same manner as if the defendant had not~~

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

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

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

20 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SEC. 3. ~~Section 5000.1 is added to the Penal Code, to read:~~

24 ~~5000.1. The mission of the Department of Corrections and~~
25 ~~Rehabilitation is to promote public safety by providing a safe and~~
26 ~~constructive prison environment that fosters positive and enduring~~
27 ~~behavioral change among offenders, both in prison and after their~~
28 ~~return to the community. All staff of the department perform~~
29 ~~equally vital and integrated responsibilities in achieving the~~
30 ~~restorative and rehabilitative goals of the department and shall be~~
31 ~~supported in realizing the highest levels of professional~~
32 ~~performance and personal satisfaction consistent with this section.~~

O