
Introduced by Senator Yee

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as introduced, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings or both may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would establish criteria to be used by the secretary or the board for determining if a prisoner's sentence should be recalled when the defendant was under 18 years of age at the time of committing an offense for which the defendant was sentenced to life without parole. The bill would establish a procedure for reviewing those sentences and would apply retroactively.

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

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

- 1 SECTION 1. Section 1170 of the Penal Code, as amended by
- 2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
- 3 read:
- 4 1170. (a) (1) The Legislature finds and declares that the
- 5 purpose of imprisonment for crime is punishment. This purpose
- 6 is best served by terms proportionate to the seriousness of the
- 7 offense with provision for uniformity in the sentences of offenders

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

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

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

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

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

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

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

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

7 *(e) (1) When a defendant who was under 18 years of age at the*
8 *time of the commission of the offense for which the defendant was*
9 *sentenced to imprisonment for life without the possibility of parole*
10 *has been committed to the custody of the Department of*
11 *Corrections and Rehabilitation, the secretary of the department*
12 *or the Board of Parole Hearings shall review the case no later*
13 *than 90 days before the time that the defendant has served 10 years*
14 *to determine if the defendant satisfies three or more of the criteria*
15 *set forth in paragraph (2). The secretary or the board shall*
16 *consider any documentation relevant to that determination,*
17 *including documentation presented by the defendant, and shall*
18 *issue written findings not later than 90 days after the date of*
19 *review.*

20 *(2) If the secretary or the board finds, based on a preponderance*
21 *of the evidence, that the defendant satisfies three or more of the*
22 *following criteria, that finding shall be forwarded to the sentencing*
23 *court, which shall conduct a hearing as specified in paragraph*
24 *(3):*

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

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

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

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

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

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

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

12 (H) The defendant has had no violent disciplinary violations in
13 the last five years in which the defendant was determined to be the
14 aggressor.

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

24 (4) If the sentence is not recalled, the board shall make the
25 determination mandated by subdivision (a) again when the
26 defendant has been committed to the custody of the department
27 for 15 years, 20 years, and 24 years. The final review shall be
28 during the 24th year of the defendant's sentence.

29 (5) In addition to the criteria in paragraph (2), the court may
30 consider any other criteria that the court deems relevant to its
31 decision, so long as the court identifies them on the record,
32 provides a statement of reasons for adopting them, and states why
33 the defendant does or does not satisfy the criteria.

34 (6) This subdivision shall have retroactive application.

35 (e)

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

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

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

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

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

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

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

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

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall
2 and resentencing proceedings.

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

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

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

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

38 (10) The secretary shall issue a directive to medical and
39 correctional staff employed by the department that details the
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who
2 is given a prognosis of six months or less to live is eligible for
3 recall and resentencing consideration, and that recall and
4 resentencing procedures shall be initiated upon that prognosis.

5 ~~(f)~~

6 (g) Any sentence imposed under this article shall be subject to
7 the provisions of Sections 3000 and 3057 and any other applicable
8 provisions of law.

9 ~~(g)~~

10 (h) A sentence to state prison for a determinate term for which
11 only one term is specified, is a sentence to state prison under this
12 section.

13 ~~(h)~~

14 (i) This section shall remain in effect only until January 1, 2011,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before that date, deletes or extends that date.

17 SEC. 2. Section 1170 of the Penal Code, as amended by Section
18 2 of Chapter 416 of the Statutes of 2008, is amended to read:

19 1170. (a) (1) The Legislature finds and declares that the
20 purpose of imprisonment for crime is punishment. This purpose
21 is best served by terms proportionate to the seriousness of the
22 offense with provision for uniformity in the sentences of offenders
23 committing the same offense under similar circumstances. The
24 Legislature further finds and declares that the elimination of
25 disparity and the provision of uniformity of sentences can best be
26 achieved by determinate sentences fixed by statute in proportion
27 to the seriousness of the offense as determined by the Legislature
28 to be imposed by the court with specified discretion.

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

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, *except as provided in subdivision (e)*. In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

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

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

13 (c) The court shall state the reasons for its sentence choice on
14 the record at the time of sentencing. The court shall also inform
15 the defendant that as part of the sentence after expiration of the
16 term he or she may be on parole for a period as provided in Section
17 3000.

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

31 (e) (1) *When a defendant who was under 18 years of age at the*
32 *time of the commission of the offense for which the defendant was*
33 *sentenced to imprisonment for life without the possibility of parole*
34 *has been committed to the custody of the Department of*
35 *Corrections and Rehabilitation, the secretary of the department*
36 *or the Board of Parole Hearings shall review the case no later*
37 *than 90 days before the time that the defendant has served 10 years*
38 *to determine if the defendant satisfies three or more of the criteria*
39 *set forth in paragraph (2). The secretary or the board shall*
40 *consider any documentation relevant to that determination,*

1 including documentation presented by the defendant, and shall
2 issue written findings not later than 90 days after the date of
3 review.

4 (2) If the secretary or the board finds, based on a preponderance
5 of the evidence, that the defendant satisfies three or more of the
6 following criteria, that finding shall be forwarded to the sentencing
7 court, which shall conduct a hearing as specified in paragraph
8 (3):

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

11 (B) 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 (C) The defendant committed the offense with at least one adult
16 codefendant.

17 (D) 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 (E) 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 involvement
24 in the offense.

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

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

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

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

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

8 *(4) If the sentence is not recalled, the board shall make the*
9 *determination mandated by subdivision (a) again when the*
10 *defendant has been committed to the custody of the department*
11 *for 15 years, 20 years, and 24 years. The final review shall be*
12 *during the 24th year of the defendant's sentence.*

13 *(5) In addition to the criteria in paragraph (2), the court may*
14 *consider any other criteria that the court deems relevant to its*
15 *decision, so long as the court identifies them on the record,*
16 *provides a statement of reasons for adopting them, and states why*
17 *the defendant does or does not satisfy the criteria.*

18 *(6) This subdivision shall have retroactive application.*

19 ~~(e)~~

20 *(f) (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 medications, and
19 all property belonging to the prisoner. After discharge, any
20 additional records shall be sent to the prisoner's forwarding
21 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 ~~(f)~~

30 (g) Any sentence imposed under this article shall be subject to
31 the provisions of Sections 3000 and 3057 and any other applicable
32 provisions of law.

33 ~~(g)~~

34 (h) A sentence to state prison for a determinate term for which
35 only one term is specified, is a sentence to state prison under this
36 section.

37 ~~(h)~~

38 (i) This section shall become operative on January 1, 2011.

O