

AMENDED IN SENATE APRIL 29, 2009

AMENDED IN SENATE APRIL 28, 2009

SENATE BILL

No. 399

Introduced by Senator Yee
(Principal coauthor: Senator Romero)
(Coauthor: Senator Steinberg)

February 26, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as amended, 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 recommended for recall and resentencing when the prisoner was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole. The bill would apply retroactively, as specified.

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

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

SECTION 1. Section 1170 of the Penal Code, as amended by Section 1 of Chapter 416 of the Statutes of 2008, is amended to read:

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

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

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison 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

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

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

38 (c) The court shall state the reasons for its sentence choice on
39 the record at the time of sentencing. The court shall also inform
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section
2 3000.

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

16 (e) (1) When a defendant who was under 18 years of age at the
17 time of the commission of the offense for which the defendant was
18 sentenced to imprisonment for life without the possibility of parole
19 has been committed to the custody of the Department of
20 Corrections and Rehabilitation, the secretary of the department or
21 the Board of Parole Hearings shall review the case no later than
22 90 days before the time that the defendant has served 10 years to
23 determine if the defendant satisfies three or more of the criteria
24 set forth in paragraph (2). Defendants who have served 15 or more
25 years but less than 25 years as of January 1, 2010, shall be reviewed
26 so that at least 20 defendants have their initial review each year
27 until all of those who have served more than 15 years but less than
28 25 years are reviewed, starting with those who have served the
29 longest time. Those who have served less than 15 years as of
30 January 1, 2010, shall have their initial reviews as otherwise set
31 forth in this section. The secretary or the board shall consider any
32 documentation relevant to that determination, including
33 documentation presented by the defendant, and shall issue written
34 findings not later than 90 days after the date of review.

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

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

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

7 (D) Prior to the offense for which the sentence is being
8 considered for recall, the defendant had insufficient adult support
9 or supervision and had suffered from psychological or physical
10 trauma, or significant stress.

11 (E) The defendant suffers from cognitive limitations due to
12 mental illness, developmental disabilities, or other factors that did
13 not constitute a defense, but influenced the defendant's
14 involvement in the offense.

15 (F) The defendant has performed acts that tend to indicate
16 rehabilitation or the potential for rehabilitation, including, but not
17 limited to, availing himself or herself of rehabilitative, educational,
18 or vocational programs, if those programs have been available at
19 his or her classification level and facility, using self-study for
20 self-improvement, or taking action that demonstrates the presence
21 of remorse.

22 (G) The defendant has maintained family ties or connections
23 with others through letter writing, calls, or visits, or has eliminated
24 contact with individuals outside of prison who are currently
25 involved with crime.

26 (H) The defendant has had no violent disciplinary violations in
27 the last five years in which the defendant was determined to be
28 the aggressor.

29 (3) The court shall have the discretion to recall the sentence and
30 commitment previously ordered and to resentence the defendant
31 in the same manner as if the defendant had not previously been
32 sentenced, provided that the new sentence, if any, is not greater
33 than the initial sentence. The discretion of the court shall be
34 exercised in consideration of the criteria in paragraph (2). Victims,
35 or victim family members if the victim is deceased, shall be notified
36 of the resentencing hearing and shall retain their rights to
37 participate in the hearing.

38 (4) If the sentence is not recalled, the board shall make the
39 determination mandated by subdivision (a) again when the
40 defendant has been committed to the custody of the department

1 for 15 years, 20 years, and 24 years. The final review shall be
2 during the 24th year of the defendant's sentence.

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

8 (6) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

37 (4) Any physician employed by the department who determines
38 that a prisoner has six months or less to live shall notify the chief
39 medical officer of the prognosis. If the chief medical officer
40 concurs with the prognosis, he or she shall notify the warden.

1 Within 48 hours of receiving notification, the warden or the
2 warden's representative shall notify the prisoner of the recall and
3 resentencing procedures, and shall arrange for the prisoner to
4 designate a family member or other outside agent to be notified
5 as to the prisoner's medical condition and prognosis, and as to the
6 recall and resentencing procedures. If the inmate is deemed
7 mentally unfit, the warden or the warden's representative shall
8 contact the inmate's emergency contact and provide the information
9 described in paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

(2) Notwithstanding paragraph (1), the Legislature further finds and declares that programs should be available for inmates,

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

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

1 667.5, and a copy of the judgment and other necessary
2 documentation shall be forwarded to the secretary.

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

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

29 (d) When a defendant subject to this section or subdivision (b)
30 of Section 1168 has been sentenced to be imprisoned in the state
31 prison and has been committed to the custody of the secretary, the
32 court may, within 120 days of the date of commitment on its own
33 motion, or at any time upon the recommendation of the secretary
34 or the Board of Parole Hearings, recall the sentence and
35 commitment previously ordered and resentence the defendant in
36 the same manner as if he or she had not previously been sentenced,
37 provided the new sentence, if any, is no greater than the initial
38 sentence. ~~The sentence~~ *court resentencing* under this subdivision
39 shall apply the sentencing rules of the Judicial Council so as to

1 eliminate disparity of sentences and to promote uniformity of
2 sentencing. Credit shall be given for time served.

3 (e) (1) When a defendant who was under 18 years of age at the
4 time of the commission of the offense for which the defendant was
5 sentenced to imprisonment for life without the possibility of parole
6 has been committed to the custody of the Department of
7 Corrections and Rehabilitation, the secretary of the department or
8 the Board of Parole Hearings shall review the case no later than
9 90 days before the time that the defendant has served 10 years to
10 determine if the defendant satisfies three or more of the criteria
11 set forth in paragraph (2). Defendants who have served 15 or more
12 years but less than 25 years as of January 1, 2010, shall be reviewed
13 so that at least 20 defendants have their initial review each year
14 until all of those who have served more than 15 years but less than
15 25 years are reviewed, starting with those who have served the
16 longest time. Those who have served less than 15 years as of
17 January 1, 2010, shall have their initial reviews as otherwise set
18 forth in this section. The secretary or the board shall consider any
19 documentation relevant to that determination, including
20 documentation presented by the defendant, and shall issue written
21 findings not later than 90 days after the date of review.

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

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

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

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

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

38 (E) The defendant suffers from cognitive limitations due to
39 mental illness, developmental disabilities, or other factors that did

1 not constitute a defense, but influenced the defendant's
2 involvement in the offense.

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

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

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

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

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

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

36 (6) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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