

AMENDED IN ASSEMBLY JUNE 25, 2009

AMENDED IN SENATE MAY 28, 2009

AMENDED IN SENATE MAY 11, 2009

AMENDED IN SENATE MAY 5, 2009

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)
(Coauthor: Assembly Member Fuentes)

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 authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and resentencing to the sentencing court, *and to the prosecuting agency*, as specified. The bill would establish certain criteria, *at least one of which*

shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and *additional criteria to be considered by the court when deciding whether to grant the petition*. The bill would require the court to ~~make findings within 90 days of submission of the petition, and to hold a hearing if the court finds that the criteria are met~~ *defendant's statement is true*, as specified. 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:

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
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

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

26 (3) In any case in which the punishment prescribed by statute
27 for a person convicted of a public offense is a term of imprisonment
28 in the state prison of any specification of three time periods, the

1 court shall sentence the defendant to one of the terms of
2 imprisonment specified unless the convicted person is given any
3 other disposition provided by law, including a fine, jail, probation,
4 or the suspension of imposition or execution of sentence or is
5 sentenced pursuant to subdivision (b) of Section 1168 because he
6 or she had committed his or her crime prior to July 1, 1977. In
7 sentencing the convicted person, the court shall apply the
8 sentencing rules of the Judicial Council. The court, unless it
9 determines that there are circumstances in mitigation of the
10 punishment prescribed, shall also impose any other term that it is
11 required by law to impose as an additional term. Nothing in this
12 article shall affect any provision of law that imposes the death
13 penalty, that authorizes or restricts the granting of probation or
14 suspending the execution or imposition of sentence, or expressly
15 provides for imprisonment in the state prison for life, except as
16 provided in subdivision (e). In any case in which the amount of
17 preimprisonment credit under Section 2900.5 or any other provision
18 of law is equal to or exceeds any sentence imposed pursuant to
19 this chapter, the entire sentence shall be deemed to have been
20 served and the defendant shall not be actually delivered to the
21 custody of the secretary. The court shall advise the defendant that
22 he or she shall serve a period of parole and order the defendant to
23 report to the parole office closest to the defendant's last legal
24 residence, unless the in-custody credits equal the total sentence,
25 including both confinement time and the period of parole. The
26 sentence shall be deemed a separate prior prison term under Section
27 667.5, and a copy of the judgment and other necessary
28 documentation shall be forwarded to the secretary.

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

1 hearing. The court shall select the term which, in the court's
2 discretion, best serves the interests of justice. The court shall set
3 forth on the record the reasons for imposing the term selected and
4 the court may not impose an upper term by using the fact of any
5 enhancement upon which sentence is imposed under any provision
6 of law. A term of imprisonment shall not be specified if imposition
7 of sentence is suspended.

8 (c) The court shall state the reasons for its sentence choice on
9 the record at the time of sentencing. The court shall also inform
10 the defendant that as part of the sentence after expiration of the
11 term he or she may be on parole for a period as provided in Section
12 3000.

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

26 (e) (1) When a defendant who was under 18 years of age at the
27 time of the commission of the offense for which the defendant was
28 sentenced to imprisonment for life without the possibility of parole
29 has served at least 10 years of that sentence, the defendant may
30 submit to the sentencing court a petition for recall and resentencing,
31 provided that defendants who have served 10 or more years as of
32 January 1, 2010, shall not be permitted to submit a petition for
33 recall and resentencing pursuant to this subdivision until they have
34 served 15 years. ~~The petition shall include a copy of the inmate's~~
35 ~~legal status summary document, stating the inmate's date of birth,~~
36 ~~the date of the crime resulting in the sentence of life without parole,~~
37 ~~and the date of sentencing. The court shall consider the petition~~
38 ~~and shall issue written findings not later than 90 days after the~~
39 ~~submission of the petition.~~ Defendants who have served 15 or more
40 years but less than 25 years as of January 1, 2010, shall be

1 permitted to submit a petition for recall and resentencing as
2 follows:

3 (A) Those defendants who entered custody prior to July 1, 1993,
4 may submit a petition in 2010.

5 (B) Those defendants who entered custody on or after July 1,
6 1993, but prior to January 1, 1994, may submit a petition in 2011.

7 (C) Those defendants who entered custody on or after January
8 1, 1994, but prior to July 1, 1994, may submit a petition in 2012.

9 (D) Those defendants who entered custody on or after July 1,
10 1994, but prior to January 1, 1995, may submit a petition in 2013.

11 ~~(2) If the court finds, based on a preponderance of the evidence,~~
12 ~~that the defendant satisfies three or more of the following criteria,~~
13 ~~the court, shall conduct a hearing as specified in paragraph (3):~~

14 *(2) The defendant shall file the original petition with the*
15 *sentencing court. A copy of the petition shall be served on the*
16 *agency that prosecuted the case. The petition shall include the*
17 *defendant's statement that he or she was under 18 years of age at*
18 *the time of the crime, was sentenced to life in prison without the*
19 *possibility of parole, and that one of the following is true:*

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

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

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

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

34 *(3) If any of the information required in paragraph (2) is missing*
35 *from the petition, or if proof of service on the prosecuting agency*
36 *is not provided, the court shall return the petition to the defendant*
37 *and advise the defendant that the matter cannot be considered*
38 *without the missing information.*

39 *(4) A reply to the petition, if any, shall be filed with the court*
40 *within 60 days of the date on which the prosecuting agency was*

1 served with the petition, unless a continuance is granted for good
2 cause.

3 (5) If the court finds by a preponderance of the evidence that
4 the statements in the petition are true, the court shall hold a
5 hearing to consider whether to recall the sentence and commitment
6 previously ordered and to resentence the defendant in the same
7 manner as if the defendant had not previously been sentenced,
8 provided that the new sentence, if any, is not greater than the initial
9 sentence. Victims, or victim family members if the victim is
10 deceased, shall retain the rights to participate in the hearing.

11 (6) The factors that the court may consider when determining
12 whether to recall and resentence include, but are not limited to,
13 the following:

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

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

20 (C) The defendant committed the offense with at least one adult
21 codefendant.

22 (D) Prior to the offense for which the sentence is being
23 considered for recall, the defendant had insufficient adult support
24 or supervision and had suffered from psychological or physical
25 trauma, or significant stress.

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

30 (F) The defendant has performed acts that tend to indicate
31 rehabilitation or the potential for rehabilitation, including, but not
32 limited to, availing himself or herself of rehabilitative, educational,
33 or vocational programs, if those programs have been available at
34 his or her classification level and facility, using self-study for
35 self-improvement, or ~~taking action that demonstrates the presence~~
36 *showing evidence* of remorse.

37 (G) The defendant has maintained family ties or connections
38 with others through letter writing, calls, or visits, or has eliminated
39 contact with individuals outside of prison who are currently
40 involved with crime.

1 (H) The defendant has had no ~~violent disciplinary violations~~
2 *disciplinary actions for violent activities* in the last five years in
3 which the defendant was determined to be the aggressor.

4 (3)

5 (7) The court shall have the discretion to recall the sentence and
6 commitment previously ordered and to resentence the defendant
7 in the same manner as if the defendant had not previously been
8 sentenced, provided that the new sentence, if any, is not greater
9 than the initial sentence. The discretion of the court shall be
10 exercised in consideration of the criteria in paragraph (2). Victims,
11 or victim family members if the victim is deceased, shall be notified
12 of the resentencing hearing and shall retain their rights to
13 participate in the hearing.

14 (4)

15 (8) If the sentence is not recalled, the defendant may submit
16 another petition for recall and resentencing to the sentencing court
17 when the defendant has been committed to the custody of the
18 department for at least 15 years. If recall and resentencing is not
19 granted under that petition, the defendant may file another petition
20 after having served 20 years. If recall and resentencing is not
21 granted under that petition, the defendant may file another petition
22 after having served 24 years. The final petition may be submitted,
23 and the response to that petition shall be determined, during the
24 25th year of the defendant's sentence.

25 (5)

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

31 (6)

32 (10) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

34 (5) The warden or the warden's representative shall provide the
35 prisoner and his or her family member, agent, or emergency
36 contact, as described in paragraph (4), updated information
37 throughout the recall and resentencing process with regard to the
38 prisoner's medical condition and the status of the prisoner's recall
39 and resentencing proceedings.

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

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

(8) If possible, the matter shall be heard before the same judge 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

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

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

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

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

12 SEC. 2. Section 1170 of the Penal Code, as amended by Section
13 2 of Chapter 416 of the Statutes of 2008, is amended to read:

14 1170. (a) (1) The Legislature finds and declares that the
15 purpose of imprisonment for crime is punishment. This purpose
16 is best served by terms proportionate to the seriousness of the
17 offense with provision for uniformity in the sentences of offenders
18 committing the same offense under similar circumstances. The
19 Legislature further finds and declares that the elimination of
20 disparity and the provision of uniformity of sentences can best be
21 achieved by determinate sentences fixed by statute in proportion
22 to the seriousness of the offense as determined by the Legislature
23 to be imposed by the court with specified discretion.

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

36 (3) In any case in which the punishment prescribed by statute
37 for a person convicted of a public offense is a term of imprisonment
38 in the state prison of any specification of three time periods, the
39 court shall sentence the defendant to one of the terms of
40 imprisonment specified unless the convicted person is given any

1 other disposition provided by law, including a fine, jail, probation,
2 or the suspension of imposition or execution of sentence or is
3 sentenced pursuant to subdivision (b) of Section 1168 because he
4 or she had committed his or her crime prior to July 1, 1977. In
5 sentencing the convicted person, the court shall apply the
6 sentencing rules of the Judicial Council. The court, unless it
7 determines that there are circumstances in mitigation of the
8 punishment prescribed, shall also impose any other term that it is
9 required by law to impose as an additional term. Nothing in this
10 article shall affect any provision of law that imposes the death
11 penalty, that authorizes or restricts the granting of probation or
12 suspending the execution or imposition of sentence, or expressly
13 provides for imprisonment in the state prison for life, except as
14 provided in subdivision (e). In any case in which the amount of
15 preimprisonment credit under Section 2900.5 or any other provision
16 of law is equal to or exceeds any sentence imposed pursuant to
17 this chapter, the entire sentence shall be deemed to have been
18 served and the defendant shall not be actually delivered to the
19 custody of the secretary. The court shall advise the defendant that
20 he or she shall serve a period of parole and order the defendant to
21 report to the parole office closest to the defendant's last legal
22 residence, unless the in-custody credits equal the total sentence,
23 including both confinement time and the period of parole. The
24 sentence shall be deemed a separate prior prison term under Section
25 667.5, and a copy of the judgment and other necessary
26 documentation shall be forwarded to the secretary.

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

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

8 (c) The court shall state the reasons for its sentence choice on
9 the record at the time of sentencing. The court shall also inform
10 the defendant that as part of the sentence after expiration of the
11 term he or she may be on parole for a period as provided in Section
12 3000.

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

26 (e) (1) When a defendant who was under 18 years of age at the
27 time of the commission of the offense for which the defendant was
28 sentenced to imprisonment for life without the possibility of parole
29 has served at least 10 years of that sentence, the defendant may
30 submit to the sentencing court a petition for recall and resentencing,
31 provided that defendants who have served 10 or more years as of
32 January 1, 2010, shall not be permitted to submit a petition for
33 recall and resentencing pursuant to this subdivision until they have
34 served 15 years. ~~The petition shall include a copy of the inmate's~~
35 ~~legal status summary document, stating the inmate's date of birth,~~
36 ~~the date of the crime resulting in the sentence of life without parole,~~
37 ~~and the date of sentencing. The court shall consider the petition~~
38 ~~and shall issue written findings not later than 90 days after the~~
39 ~~submission of the petition.~~ Defendants who have served 15 or more
40 years but less than 25 years as of January 1, 2010, shall be

1 permitted to submit a petition for recall and resentencing as
2 follows:

3 (A) Those defendants who entered custody prior to July 1, 1993,
4 may submit a petition in 2010.

5 (B) Those defendants who entered custody on or after July 1,
6 1993, but prior to January 1, 1994, may submit a petition in 2011.

7 (C) Those defendants who entered custody on or after January
8 1, 1994, but prior to July 1, 1994, may submit a petition in 2012.

9 (D) Those defendants who entered custody on or after July 1,
10 1994, but prior to January 1, 1995, may submit a petition in 2013.

11 ~~(2) If the court finds, based on a preponderance of the evidence,~~
12 ~~that the defendant satisfies three or more of the following criteria,~~
13 ~~the court shall conduct a hearing as specified in paragraph (3):~~

14 *(2) The defendant shall file the original petition with the*
15 *sentencing court. A copy of the petition shall be served on the*
16 *agency that prosecuted the case. The petition shall include the*
17 *defendant's statement that he or she was under 18 years of age at*
18 *the time of the crime, was sentenced to life in prison without the*
19 *possibility of parole, and that one of the following is true:*

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

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

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

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

34 *(3) If any of the information required in paragraph (2) is missing*
35 *from the petition, or if proof of service on the prosecuting agency*
36 *is not provided, the court shall return the petition to the defendant*
37 *and advise the defendant that the matter cannot be considered*
38 *without the missing information.*

39 *(4) A reply to the petition, if any, shall be filed with the court*
40 *within 60 days of the date on which the prosecuting agency was*

1 served with the petition, unless a continuance is granted for good
2 cause.

3 (5) If the court finds by a preponderance of the evidence that
4 the statements in the petition are true, the court shall hold a
5 hearing to consider whether to recall the sentence and commitment
6 previously ordered and to resentence the defendant in the same
7 manner as if the defendant had not previously been sentenced,
8 provided that the new sentence, if any, is not greater than the initial
9 sentence. Victims, or victim family members if the victim is
10 deceased, shall retain the rights to participate in the hearing.

11 (6) The factors that the court may consider when determining
12 whether to recall and resentence include, but are not limited to,
13 the following:

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

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

20 (C) The defendant committed the offense with at least one adult
21 codefendant.

22 (D) Prior to the offense for which the sentence is being
23 considered for recall, the defendant had insufficient adult support
24 or supervision and had suffered from psychological or physical
25 trauma, or significant stress.

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

30 (F) The defendant has performed acts that tend to indicate
31 rehabilitation or the potential for rehabilitation, including, but not
32 limited to, availing himself or herself of rehabilitative, educational,
33 or vocational programs, if those programs have been available at
34 his or her classification level and facility, using self-study for
35 self-improvement, or ~~taking action that demonstrates the presence~~
36 *showing evidence* of remorse.

37 (G) The defendant has maintained family ties or connections
38 with others through letter writing, calls, or visits, or has eliminated
39 contact with individuals outside of prison who are currently
40 involved with crime.

1 (H) The defendant has had no ~~violent disciplinary violations~~
2 *disciplinary actions for violent activities* in the last five years in
3 which the defendant was determined to be the aggressor.

4 (3)

5 (7) The court shall have the discretion to recall the sentence and
6 commitment previously ordered and to resentence the defendant
7 in the same manner as if the defendant had not previously been
8 sentenced, provided that the new sentence, if any, is not greater
9 than the initial sentence. The discretion of the court shall be
10 exercised in consideration of the criteria in paragraph (2). Victims,
11 or victim family members if the victim is deceased, shall be notified
12 of the resentencing hearing and shall retain their rights to
13 participate in the hearing.

14 (4)

15 (8) If the sentence is not recalled, the defendant may submit
16 another petition for recall and resentencing to the sentencing court
17 when the defendant has been committed to the custody of the
18 department for at least 15 years. If recall and resentencing is not
19 granted under that petition, the defendant may file another petition
20 after having served 20 years. If recall and resentencing is not
21 granted under that petition, the defendant may file another petition
22 after having served 24 years. The final petition may be submitted,
23 and the response to that petition shall be determined, during the
24 25th year of the defendant's sentence.

25 (5)

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

31 (6)

32 (10) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

34 (5) The warden or the warden's representative shall provide the
35 prisoner and his or her family member, agent, or emergency
36 contact, as described in paragraph (4), updated information
37 throughout the recall and resentencing process with regard to the
38 prisoner's medical condition and the status of the prisoner's recall
39 and resentencing proceedings.

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

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

(8) If possible, the matter shall be heard before the same judge 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

1 recall and resentencing consideration, and that recall and
2 resentencing procedures shall be initiated upon that prognosis.

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

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

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