

AMENDED IN ASSEMBLY AUGUST 16, 2010

AMENDED IN ASSEMBLY JUNE 22, 2010

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)
(Coauthors: Assembly Members Fuentes and Hill, Hill, and
John A. Pérez)

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 hold a hearing if the court finds that the defendant's statement is true, as specified. The bill would apply retroactively, as specified.

This bill would incorporate amendments to Section 1170 of the Penal Code proposed by AB 2263, contingent on the prior enactment of that bill.

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

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

5 (3) In any case in which the punishment prescribed by statute
6 for a person convicted of a public offense is a term of imprisonment
7 in the state prison of any specification of three time periods, the
8 court shall sentence the defendant to one of the terms of
9 imprisonment specified unless the convicted person is given any
10 other disposition provided by law, including a fine, jail, probation,
11 or the suspension of imposition or execution of sentence or is
12 sentenced pursuant to subdivision (b) of Section 1168 because he
13 or she had committed his or her crime prior to July 1, 1977. In
14 sentencing the convicted person, the court shall apply the
15 sentencing rules of the Judicial Council. The court, unless it
16 determines that there are circumstances in mitigation of the
17 punishment prescribed, shall also impose any other term that it is
18 required by law to impose as an additional term. Nothing in this
19 article shall affect any provision of law that imposes the death
20 penalty, that authorizes or restricts the granting of probation or
21 suspending the execution or imposition of sentence, or expressly
22 provides for imprisonment in the state prison for life, except as
23 provided in subdivision (e). In any case in which the amount of
24 preimprisonment credit under Section 2900.5 or any other provision
25 of law is equal to or exceeds any sentence imposed pursuant to
26 this chapter, the entire sentence shall be deemed to have been
27 served and the defendant shall not be actually delivered to the
28 custody of the secretary. The court shall advise the defendant that
29 he or she shall serve a period of parole and order the defendant to
30 report to the parole office closest to the defendant's last legal
31 residence, unless the in-custody credits equal the total sentence,
32 including both confinement time and the period of parole. The
33 sentence shall be deemed a separate prior prison term under Section
34 667.5, and a copy of the judgment and other necessary
35 documentation shall be forwarded to the secretary.

36 (b) When a judgment of imprisonment is to be imposed and the
37 statute specifies three possible terms, the choice of the appropriate
38 term shall rest within the sound discretion of the court. At least
39 four days prior to the time set for imposition of judgment, either
40 party or the victim, or the family of the victim if the victim is

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

15 (c) The court shall state the reasons for its sentence choice on
16 the record at the time of sentencing. The court shall also inform
17 the defendant that as part of the sentence after expiration of the
18 term he or she may be on parole for a period as provided in Section
19 3000.

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

33 (e) (1) When a defendant who was under 18 years of age at the
34 time of the commission of the offense for which the defendant was
35 sentenced to imprisonment for life without the possibility of parole
36 has served at least 10 years of that sentence, the defendant may
37 submit to the sentencing court a petition for recall and resentencing,
38 provided that defendants who have served 10 years but not more
39 than 15 years as of January 1, 2011, shall not be permitted to
40 submit a petition for recall and resentencing pursuant to this

1 subdivision until they have served 15 years. Defendants who have
2 served 15 or more years but less than 25 years as of January 1,
3 2011, shall be permitted to submit a petition for recall and
4 resentencing as follows:

5 (A) Those defendants who entered custody prior to July 1, 1993,
6 may submit a petition in 2011.

7 (B) Those defendants who entered custody on or after July 1,
8 1993, but prior to January 1, 1994, may submit a petition in 2012.

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

11 (D) Those defendants who entered custody on or after July 1,
12 1994, but prior to January 1, 1996, may submit a petition in 2014.

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

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

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

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

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

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

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 hearing
5 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 right 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 showing evidence of remorse.

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

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

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

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

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

28 (10) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

36 (6) Notwithstanding any other provisions of this section, the
37 prisoner or his or her family member or designee may
38 independently request consideration for recall and resentencing
39 by contacting the chief medical officer at the prison or the
40 secretary. Upon receipt of the request, the chief medical officer

1 and the warden or the warden's representative shall follow the
2 procedures described in paragraph (4). If the secretary determines
3 that the prisoner satisfies the criteria set forth in paragraph (2), the
4 secretary or board may recommend to the court that the prisoner's
5 sentence be recalled. The secretary shall submit a recommendation
6 for release within 30 days in the case of inmates sentenced to
7 determinate terms and, in the case of inmates sentenced to
8 indeterminate terms, the secretary shall make a recommendation
9 to the Board of Parole Hearings with respect to the inmates who
10 have applied under this section. The board shall consider this
11 information and make an independent judgment pursuant to
12 paragraph (2) and make findings related thereto before rejecting
13 the request or making a recommendation to the court. This action
14 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

7 *SEC. 1.5. Section 1170 of the Penal Code, as amended by*
8 *Section 1 of Chapter 416 of the Statutes of 2008, is amended to*
9 *read:*

10 1170. (a) (1) The Legislature finds and declares that the
11 purpose of imprisonment for crime is punishment. This purpose
12 is best served by terms proportionate to the seriousness of the
13 offense with provision for uniformity in the sentences of offenders
14 committing the same offense under similar circumstances. The
15 Legislature further finds and declares that the elimination of
16 disparity and the provision of uniformity of sentences can best be
17 achieved by determinate sentences fixed by statute in proportion
18 to the seriousness of the offense as determined by the Legislature
19 to be imposed by the court with specified discretion.

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

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

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

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

1 of law. A term of imprisonment shall not be specified if imposition
2 of sentence is suspended.

3 (c) The court shall state the reasons for its sentence choice on
4 the record at the time of sentencing. The court shall also inform
5 the defendant that as part of the sentence after expiration of the
6 term he or she may be on parole for a period as provided in Section
7 3000.

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

21 (e) (1) *When a defendant who was under 18 years of age at the*
22 *time of the commission of the offense for which the defendant was*
23 *sentenced to imprisonment for life without the possibility of parole*
24 *has served at least 10 years of that sentence, the defendant may*
25 *submit to the sentencing court a petition for recall and*
26 *resentencing, provided that defendants who have served 10 years*
27 *but not more than 15 years as of January 1, 2011, shall not be*
28 *permitted to submit a petition for recall and resentencing pursuant*
29 *to this subdivision until they have served 15 years. Defendants*
30 *who have served 15 or more years but less than 25 years as of*
31 *January 1, 2011, shall be permitted to submit a petition for recall*
32 *and resentencing as follows:*

33 (A) *Those defendants who entered custody prior to July 1, 1993,*
34 *may submit a petition in 2011.*

35 (B) *Those defendants who entered custody on or after July 1,*
36 *1993, but prior to January 1, 1994, may submit a petition in 2012.*

37 (C) *Those defendants who entered custody on or after January*
38 *1, 1994, but prior to July 1, 1994, may submit a petition in 2013.*

39 (D) *Those defendants who entered custody on or after July 1,*
40 *1994, but prior to January 1, 1996, may submit a petition in 2014.*

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

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

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

13 (C) The defendant committed the offense with at least one adult
14 codefendant.

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

21 (3) If any of the information required in paragraph (2) is missing
22 from the petition, or if proof of service on the prosecuting agency
23 is not provided, the court shall return the petition to the defendant
24 and advise the defendant that the matter cannot be considered
25 without the missing information. The defendant may resubmit a
26 petition with the information or proof of service.

27 (4) A reply to the petition, if any, shall be filed with the court
28 within 60 days of the date on which the prosecuting agency was
29 served with the petition, unless a continuance is granted for good
30 cause.

31 (5) If the court finds by a preponderance of the evidence that
32 the statements in the petition are true, the court shall hold a
33 hearing to consider whether to recall the sentence and commitment
34 previously ordered and to resentence the defendant in the same
35 manner as if the defendant had not previously been sentenced,
36 provided that the new sentence, if any, is not greater than the initial
37 sentence. Victims, or victim family members if the victim is
38 deceased, shall retain the right to participate in the hearing.

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

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

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

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

12 (D) Prior to the offense for which the sentence is being
13 considered for recall, the defendant had insufficient adult support
14 or supervision and had suffered from psychological or physical
15 trauma, or significant stress.

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

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

26 (G) The defendant has maintained family ties or connections
27 with others through letter writing, calls, or visits, or has eliminated
28 contact with individuals outside of prison who are currently
29 involved with crime.

30 (H) The defendant has had no disciplinary actions for violent
31 activities in the last five years in which the defendant was
32 determined to be the aggressor.

33 (7) The court shall have the discretion to recall the sentence
34 and commitment previously ordered and to resentence the
35 defendant in the same manner as if the defendant had not
36 previously been sentenced, provided that the new sentence, if any,
37 is not greater than the initial sentence. The discretion of the court
38 shall be exercised in consideration of the criteria in paragraph
39 (6). Victims, or victim family members if the victim is deceased,

1 shall be notified of the resentencing hearing and shall retain their
2 right to participate in the hearing.

3 (8) If the sentence is not recalled, the defendant may submit
4 another petition for recall and resentencing to the sentencing court
5 when the defendant has been committed to the custody of the
6 department for at least 15 years. If recall and resentencing is not
7 granted under that petition, the defendant may file another petition
8 after having served 20 years. If recall and resentencing is not
9 granted under that petition, the defendant may file another petition
10 after having served 24 years. The final petition may be submitted,
11 and the response to that petition shall be determined, during the
12 25th year of the defendant's sentence.

13 (9) In addition to the criteria in paragraph (6), 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 (10) 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—subparagraph
27 subparagraphs (A) and (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 remain in effect only until January 1, ~~2011~~
39 2012, and as of that date is repealed, unless a later enacted statute,
40 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, 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 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

1 suspending the execution or imposition of sentence, or expressly
2 provides for imprisonment in the state prison for life, except as
3 provided in subdivision (e). In any case in which the amount of
4 preimprisonment credit under Section 2900.5 or any other provision
5 of law is equal to or exceeds any sentence imposed pursuant to
6 this chapter, the entire sentence shall be deemed to have been
7 served and the defendant shall not be actually delivered to the
8 custody of the secretary. The court shall advise the defendant that
9 he or she shall serve a period of parole and order the defendant to
10 report to the parole office closest to the defendant's last legal
11 residence, unless the in-custody credits equal the total sentence,
12 including both confinement time and the period of parole. The
13 sentence shall be deemed a separate prior prison term under Section
14 667.5, and a copy of the judgment and other necessary
15 documentation shall be forwarded to the secretary.

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

37 (c) The court shall state the reasons for its sentence choice on
38 the record at the time of sentencing. The court shall also inform
39 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 court resentencing under this subdivision shall apply
13 the sentencing rules of the Judicial Council so as to eliminate
14 disparity of sentences and to promote uniformity of sentencing.
15 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 served at least 10 years of that sentence, the defendant may
20 submit to the sentencing court a petition for recall and resentencing,
21 provided that defendants who have served ~~10 or more years but~~
22 *not more than 15 years* as of January 1, ~~2010~~ 2011, shall not be
23 permitted to submit a petition for recall and resentencing pursuant
24 to this subdivision until they have served 15 years. Defendants
25 who have served 15 or more years but less than 25 years as of
26 January 1, ~~2010~~ 2011, shall be permitted to submit a petition for
27 recall and resentencing as follows:

28 (A) Those defendants who entered custody prior to July 1, 1993,
29 may submit a petition in ~~2010~~ 2011.

30 (B) Those defendants who entered custody on or after July 1,
31 1993, but prior to January 1, 1994, may submit a petition in ~~2011~~
32 2012.

33 (C) Those defendants who entered custody on or after January
34 1, 1994, but prior to July 1, 1994, may submit a petition in ~~2012~~
35 2013.

36 (D) Those defendants who entered custody on or after July 1,
37 1994, but prior to January 1, ~~1995~~ 1996, may submit a petition in
38 ~~2013~~ 2014.

39 (2) The defendant shall file the original petition with the
40 sentencing court. A copy of the petition shall be served on the

1 agency that prosecuted the case. The petition shall include the
2 defendant's statement that he or she was under 18 years of age at
3 the time of the crime, was sentenced to life in prison without the
4 possibility of parole, and that one of the following is true:

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

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

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

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

19 (3) If any of the information required in paragraph (2) is missing
20 from the petition, or if proof of service on the prosecuting agency
21 is not provided, the court shall return the petition to the defendant
22 and advise the defendant that the matter cannot be considered
23 without the missing information. *The defendant may resubmit a*
24 *petition with the information or proof of service.*

25 (4) A reply to the petition, if any, shall be filed with the court
26 within 60 days of the date on which the prosecuting agency was
27 served with the petition, unless a continuance is granted for good
28 cause.

29 (5) If the court finds by a preponderance of the evidence that
30 the statements in the petition are true, the court shall hold a hearing
31 to consider whether to recall the sentence and commitment
32 previously ordered and to resentence the defendant in the same
33 manner as if the defendant had not previously been sentenced,
34 provided that the new sentence, if any, is not greater than the initial
35 sentence. Victims, or victim family members if the victim is
36 deceased, shall retain the ~~rights~~ *right* to participate in the hearing.

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

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

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

7 (C) The defendant committed the offense with at least one adult
8 codefendant.

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

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

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

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

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

30 (7) The court shall have the discretion to recall the sentence and
31 commitment previously ordered and to resentence the defendant
32 in the same manner as if the defendant had not previously been
33 sentenced, provided that the new sentence, if any, is not greater
34 than the initial sentence. The discretion of the court shall be
35 exercised in consideration of the criteria in paragraph-(2) (6).
36 Victims, or victim family members if the victim is deceased, shall
37 be notified of the resentencing hearing and shall retain their ~~rights~~
38 *right* to participate in the hearing.

39 (8) If the sentence is not recalled, the defendant may submit
40 another petition for recall and resentencing to the sentencing court

1 when the defendant has been committed to the custody of the
2 department for at least 15 years. If recall and resentencing is not
3 granted under that petition, the defendant may file another petition
4 after having served 20 years. If recall and resentencing is not
5 granted under that petition, the defendant may file another petition
6 after having served 24 years. The final petition may be submitted,
7 and the response to that petition shall be determined, during the
8 25th year of the defendant's sentence.

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

14 (10) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

17 (5) The warden or the warden's representative shall provide the
18 prisoner and his or her family member, agent, or emergency
19 contact, as described in paragraph (4), updated information
20 throughout the recall and resentencing process with regard to the
21 prisoner's medical condition and the status of the prisoner's recall
22 and resentencing proceedings.

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

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

33 *SEC. 2.5. Section 1170 of the Penal Code, as amended by*
34 *Section 2 of Chapter 416 of the Statutes of 2008, is amended to*
35 *read:*

36 1170. (a) (1) The Legislature finds and declares that the
37 purpose of imprisonment for crime is punishment. This purpose
38 is best served by terms proportionate to the seriousness of the
39 offense with provision for uniformity in the sentences of offenders
40 committing the same offense under similar circumstances. The

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

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

18 (3) In any case in which the punishment prescribed by statute
19 for a person convicted of a public offense is a term of imprisonment
20 in the state prison of any specification of three time periods, the
21 court shall sentence the defendant to one of the terms of
22 imprisonment specified unless the convicted person is given any
23 other disposition provided by law, including a fine, jail, probation,
24 or the suspension of imposition or execution of sentence or is
25 sentenced pursuant to subdivision (b) of Section 1168 because he
26 or she had committed his or her crime prior to July 1, 1977. In
27 sentencing the convicted person, the court shall apply the
28 sentencing rules of the Judicial Council. The court, unless it
29 determines that there are circumstances in mitigation of the
30 punishment prescribed, shall also impose any other term that it is
31 required by law to impose as an additional term. Nothing in this
32 article shall affect any provision of law that imposes the death
33 penalty, that authorizes or restricts the granting of probation or
34 suspending the execution or imposition of sentence, or expressly
35 provides for imprisonment in the state prison for life, *except as*
36 *provided in subdivision (e)*. In any case in which the amount of
37 preimprisonment credit under Section 2900.5 or any other provision
38 of law is equal to or exceeds any sentence imposed pursuant to
39 this chapter, the entire sentence shall be deemed to have been
40 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 imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

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

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

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

8 (e) (1) When a defendant who was under 18 years of age at the
9 time of the commission of the offense for which the defendant was
10 sentenced to imprisonment for life without the possibility of parole
11 has served at least 10 years of that sentence, the defendant may
12 submit to the sentencing court a petition for recall and
13 resentencing, provided that defendants who have served 10 years
14 but not more than 15 years as of January 1, 2011, shall not be
15 permitted to submit a petition for recall and resentencing pursuant
16 to this subdivision until they have served 15 years. Defendants
17 who have served 15 or more years but less than 25 years as of
18 January 1, 2011, shall be permitted to submit a petition for recall
19 and resentencing as follows:

20 (A) Those defendants who entered custody prior to July 1, 1993,
21 may submit a petition in 2011.

22 (B) Those defendants who entered custody on or after July 1,
23 1993, but prior to January 1, 1994, may submit a petition in 2012.

24 (C) Those defendants who entered custody on or after January
25 1, 1994, but prior to July 1, 1994, may submit a petition in 2013.

26 (D) Those defendants who entered custody on or after July 1,
27 1994, but prior to January 1, 1996, may submit a petition in 2014.

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

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

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

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

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

9 (3) If any of the information required in paragraph (2) is missing
10 from the petition, or if proof of service on the prosecuting agency
11 is not provided, the court shall return the petition to the defendant
12 and advise the defendant that the matter cannot be considered
13 without the missing information. The defendant may resubmit a
14 petition with the information or proof of service.

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

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

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

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

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

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

38 (D) Prior to the offense for which the sentence is being
39 considered for recall, the defendant had insufficient adult support

1 or supervision and had suffered from psychological or physical
2 trauma, or significant stress.

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

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

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

17 (H) The defendant has had no disciplinary actions for violent
18 activities in the last five years in which the defendant was
19 determined to be the aggressor.

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

29 (8) If the sentence is not recalled, the defendant may submit
30 another petition for recall and resentencing to the sentencing court
31 when the defendant has been committed to the custody of the
32 department for at least 15 years. If recall and resentencing is not
33 granted under that petition, the defendant may file another petition
34 after having served 20 years. If recall and resentencing is not
35 granted under that petition, the defendant may file another petition
36 after having served 24 years. The final petition may be submitted,
37 and the response to that petition shall be determined, during the
38 25th year of the defendant's sentence.

39 (9) In addition to the criteria in paragraph (6), the court may
40 consider any other criteria that the court deems relevant to its

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

4 *(10) This subdivision shall have retroactive application.*

5 *(e)*

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (9) If the court grants the recall and resentencing application,
39 the prisoner shall be released by the department within 48 hours
40 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.

(f)

(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.

(g)

(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.

(h)

(i) This section shall become operative on January 1, ~~2011~~ 2012.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 1 of Chapter 416 of the Statutes of 2008, proposed by both this bill and AB 2263. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 1 of Chapter 416 of the Statutes of 2008, and (3) this bill is enacted after AB 2263, in which case Section 1 of this bill shall not become operative.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 2 of Chapter 416 of the Statutes of 2008, proposed by both this bill and AB 2263. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2011, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 2 of Chapter 416 of the Statutes of 2008, and (3) this bill is enacted

- 1 *after AB 2263, in which case Section 2 of this bill shall not become*
- 2 *operative.*

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