

AMENDED IN ASSEMBLY AUGUST 20, 2010

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, 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~~ 15 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~~

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

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

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

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

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

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

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

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

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

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

(3) *In addition, all petitions shall include a statement describing the defendant's remorse and work towards rehabilitation.*

~~(3)~~

(4) If any of the information required in paragraph (2) or (3) is missing from the petition, or if proof of service on the prosecuting agency is not provided, the court shall return the petition to the defendant and advise the defendant that the matter cannot be

1 considered without the missing information. The defendant may
2 resubmit a petition with the information or proof of service.

3 (4)

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

8 (5)

9 (6) If the court finds by a preponderance of the evidence that
10 the statements in the petition are true, the court shall hold a hearing
11 to consider whether to recall the sentence and commitment
12 previously ordered and to resentence the defendant ~~in the same~~
13 ~~manner as if the defendant had not previously been sentenced,~~
14 ~~provided that the new sentence, if any, is not greater than the initial~~
15 ~~sentence.~~ *to the sentence of 25 years to life in prison.* Victims, or
16 victim family members if the victim is deceased, shall retain the
17 right to participate in the hearing.

18 (6)

19 (7) The factors that the court may consider when determining
20 whether to recall and resentence include, but are not limited to,
21 the following:

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

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

28 (C) The defendant committed the offense with at least one adult
29 codefendant.

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

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

38 (F) The defendant has performed acts that tend to indicate
39 *remorse and* rehabilitation or the potential for rehabilitation,
40 including, but not limited to, availing himself or herself of

1 rehabilitative, educational, or vocational programs, if those
2 programs have been available at his or her classification level and
3 facility, using self-study for self-improvement, or showing evidence
4 of remorse.

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

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

12 ~~(7)~~

13 ~~(8)~~ The court shall have the discretion to recall the sentence and
14 commitment previously ordered and to resentence the defendant
15 ~~in the same manner as if the defendant had not previously been~~
16 ~~sentenced, provided that the new sentence, if any, is not greater~~
17 ~~than the initial sentence to 25 years to life in prison.~~ The discretion
18 of the court shall be exercised in consideration of the criteria in
19 paragraph~~(6)~~ (7). Victims, or victim family members if the victim
20 is deceased, shall be notified of the resentencing hearing and shall
21 retain their right to participate in the hearing.

22 ~~(8)~~

23 (9) If the sentence is not recalled, the defendant may submit
24 another petition for recall and resentencing to the sentencing court
25 when the defendant has been committed to the custody of the
26 department for at least ~~15~~ 20 years. If recall and resentencing is
27 not granted under that petition, the defendant may file another
28 ~~petition after having served 20 years. If recall and resentencing is~~
29 ~~not granted under that petition, the defendant may file another~~
30 ~~petition after having served 24 years. The final petition may be~~
31 ~~submitted, and the response to that petition shall be determined,~~
32 ~~during the 25th year of the defendant's sentence: alleging a~~
33 ~~substantial change in circumstances after having served 24 years,~~
34 ~~but prior to having completed 25 years of imprisonment. The judge~~
35 ~~shall have the discretion as to whether to permit a final hearing~~
36 ~~at that time.~~

37 ~~(9)~~

38 (10) In addition to the criteria in paragraph~~(6)~~ (7), the court
39 may consider any other criteria that the court deems relevant to its
40 decision, so long as the court identifies them on the record,

1 provides a statement of reasons for adopting them, and states why
2 the defendant does or does not satisfy the criteria.

3 ~~(10)~~

4 (11) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 SEC. 1.5. Section 1170 of the Penal Code, as amended by
24 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
25 read:

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

36 (2) Notwithstanding paragraph (1), the Legislature further finds
37 and declares that programs should be available for inmates,
38 including, but not limited to, educational programs, that are
39 designed to prepare nonviolent felony offenders for successful
40 reentry into the community. The Legislature encourages the

1 development of policies and programs designed to educate and
2 rehabilitate nonviolent felony offenders. In implementing this
3 section, the Department of Corrections and Rehabilitation is
4 encouraged to give priority enrollment in programs to promote
5 successful return to the community to an inmate with a short
6 remaining term of commitment and a release date that would allow
7 him or her adequate time to complete the program.

8 (3) In any case in which the punishment prescribed by statute
9 for a person convicted of a public offense is a term of imprisonment
10 in the state prison of any specification of three time periods, the
11 court shall sentence the defendant to one of the terms of
12 imprisonment specified unless the convicted person is given any
13 other disposition provided by law, including a fine, jail, probation,
14 or the suspension of imposition or execution of sentence or is
15 sentenced pursuant to subdivision (b) of Section 1168 because he
16 or she had committed his or her crime prior to July 1, 1977. In
17 sentencing the convicted person, the court shall apply the
18 sentencing rules of the Judicial Council. The court, unless it
19 determines that there are circumstances in mitigation of the
20 punishment prescribed, shall also impose any other term that it is
21 required by law to impose as an additional term. Nothing in this
22 article shall affect any provision of law that imposes the death
23 penalty, that authorizes or restricts the granting of probation or
24 suspending the execution or imposition of sentence, or expressly
25 provides for imprisonment in the state prison for life, except as
26 provided in subdivision (e). In any case in which the amount of
27 preimprisonment credit under Section 2900.5 or any other provision
28 of law is equal to or exceeds any sentence imposed pursuant to
29 this chapter, the entire sentence shall be deemed to have been
30 served and the defendant shall not be actually delivered to the
31 custody of the secretary. The court shall advise the defendant that
32 he or she shall serve a period of parole and order the defendant to
33 report to the parole office closest to the defendant's last legal
34 residence, unless the in-custody credits equal the total sentence,
35 including both confinement time and the period of parole. The
36 sentence shall be deemed a separate prior prison term under Section
37 667.5, and a copy of the judgment and other necessary
38 documentation shall be forwarded to the secretary.

39 (b) When a judgment of imprisonment is to be imposed and the
40 statute specifies three possible terms, the choice of the appropriate

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

18 (c) The court shall state the reasons for its sentence choice on
19 the record at the time of sentencing. The court shall also inform
20 the defendant that as part of the sentence after expiration of the
21 term he or she may be on parole for a period as provided in Section
22 3000.

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

36 (e) (1) When a defendant who was under 18 years of age at the
37 time of the commission of the offense for which the defendant was
38 sentenced to imprisonment for life without the possibility of parole
39 has served at least ~~10~~ 15 years of that sentence, the defendant may
40 submit to the sentencing court a petition for recall and resentencing;

1 ~~provided that defendants who have served 10 years but not more~~
2 ~~than 15 years as of January 1, 2011, shall not be permitted to~~
3 ~~submit a petition for recall and resentencing pursuant to this~~
4 ~~subdivision until they have served 15 years.~~ Defendants who have
5 served 15 or more years but less than 25 years as of January 1,
6 2011, shall be permitted to submit a petition for recall and
7 resentencing as follows:

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

10 (B) Those defendants who entered custody on or after July 1,
11 1993, but prior to January 1, 1994, may submit a petition in 2012.

12 (C) Those defendants who entered custody on or after January
13 1, 1994, but prior to July 1, 1994, may submit a petition in 2013.

14 (D) Those defendants who entered custody on or after July 1,
15 1994, but prior to January 1, 1996, may submit a petition in 2014.

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

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

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

28 (C) The defendant committed the offense with at least one adult
29 codefendant.

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

37 (3) *In addition, all petitions shall include a statement describing*
38 *the defendant's remorse and work towards rehabilitation.*

39 (3)

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

7 ~~(4)~~

8 (5) A reply to the petition, if any, shall be filed with the court
9 within 60 days of the date on which the prosecuting agency was
10 served with the petition, unless a continuance is granted for good
11 cause.

12 ~~(5)~~

13 (6) If the court finds by a preponderance of the evidence that
14 the statements in the petition are true, the court shall hold a hearing
15 to consider whether to recall the sentence and commitment
16 previously ordered and to resentence the defendant ~~in the same~~
17 ~~manner as if the defendant had not previously been sentenced,~~
18 ~~provided that the new sentence, if any, is not greater than the initial~~
19 ~~sentence to the sentence of 25 years to life in prison.~~ Victims, or
20 victim family members if the victim is deceased, shall retain the
21 right to participate in the hearing.

22 ~~(6)~~

23 (7) The factors that the court may consider when determining
24 whether to recall and resentence include, but are not limited to,
25 the following:

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

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

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

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

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

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

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

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

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

17 (7)

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

27 (8)

28 (9) If the sentence is not recalled, the defendant may submit
29 another petition for recall and resentencing to the sentencing court
30 when the defendant has been committed to the custody of the
31 department for at least ~~15~~ 20 years. If recall and resentencing is
32 not granted under that petition, the defendant may file another
33 ~~petition after having served 20 years. If recall and resentencing is~~
34 ~~not granted under that petition, the defendant may file another~~
35 ~~petition after having served 24 years. The final petition may be~~
36 ~~submitted, and the response to that petition shall be determined,~~
37 ~~during the 25th year of the defendant's sentence: alleging a~~
38 ~~substantial change in circumstances after having served 24 years,~~
39 ~~but prior to having completed 25 years of imprisonment. The judge~~

1 *shall have the discretion as to whether to permit a final hearing*
2 *at that time.*

3 ~~(9)~~

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

9 ~~(10)~~

10 (11) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

39 (4) Any physician employed by the department who determines
40 that a prisoner has six months or less to live shall notify the chief

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

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

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

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

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

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

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

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

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

26 (i) This section shall remain in effect only until January 1, 2012,
27 and as of that date is repealed, unless a later enacted statute, that
28 is enacted before that date, deletes or extends that date.

29 SEC. 2. Section 1170 of the Penal Code, as amended by Section
30 2 of Chapter 416 of the Statutes of 2008, is amended to read:

31 1170. (a) (1) The Legislature finds and declares that the
32 purpose of imprisonment for crime is punishment. This purpose
33 is best served by terms proportionate to the seriousness of the
34 offense with provision for uniformity in the sentences of offenders
35 committing the same offense under similar circumstances. The
36 Legislature further finds and declares that the elimination of
37 disparity and the provision of uniformity of sentences can best be
38 achieved by determinate sentences fixed by statute in proportion
39 to the seriousness of the offense as determined by the Legislature
40 to be imposed by the court with specified discretion.

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

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

1 sentence shall be deemed a separate prior prison term under Section
2 667.5, and a copy of the judgment and other necessary
3 documentation shall be forwarded to the secretary.

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

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

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

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

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

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

17 (B) Those defendants who entered custody on or after July 1,
18 1993, but prior to January 1, 1994, may submit a petition in 2012.

19 (C) Those defendants who entered custody on or after January
20 1, 1994, but prior to July 1, 1994, may submit a petition in 2013.

21 (D) Those defendants who entered custody on or after July 1,
22 1994, but prior to January 1, 1996, may submit a petition in 2014.

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

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

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

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

37 (D) The defendant has performed acts that tend to indicate
38 *remorse and* rehabilitation or the potential for rehabilitation,
39 including, but not limited to, availing himself or herself of
40 rehabilitative, educational, or vocational programs, if those

1 programs have been available at his or her classification level and
2 facility, using self-study for self-improvement, or showing evidence
3 of remorse.

4 *(3) In addition, all petitions shall include a statement describing*
5 *the defendant's remorse and work towards rehabilitation.*

6 ~~(3)~~

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

13 ~~(4)~~

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

18 ~~(5)~~

19 *(6) If the court finds by a preponderance of the evidence that*
20 *the statements in the petition are true, the court shall hold a hearing*
21 *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: to the sentence of 25 years to life in prison. Victims, or*
26 *victim family members if the victim is deceased, shall retain the*
27 *right to participate in the hearing.*

28 ~~(6)~~

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

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

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

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

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

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

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

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

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

23 (7)

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

33 (8)

34 (9) If the sentence is not recalled, the defendant may submit
35 another petition for recall and resentencing to the sentencing court
36 when the defendant has been committed to the custody of the
37 department for at least ~~15~~ 20 years. If recall and resentencing is
38 not granted under that petition, the defendant may file another
39 petition ~~after having served 20 years. If recall and resentencing is~~
40 ~~not granted under that petition, the defendant may file another~~

~~petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence, alleging a substantial change in circumstances after having served 24 years, but prior to having completed 25 years of imprisonment. The judge shall have the discretion as to whether to permit a final hearing at that time.~~

~~(9)~~

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

~~(10)~~

(11) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

1 custody of the secretary. The court shall advise the defendant that
2 he or she shall serve a period of parole and order the defendant to
3 report to the parole office closest to the defendant's last legal
4 residence, unless the in-custody credits equal the total sentence,
5 including both confinement time and the period of parole. The
6 sentence shall be deemed a separate prior prison term under Section
7 667.5, and a copy of the judgment and other necessary
8 documentation shall be forwarded to the secretary.

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

30 (c) The court shall state the reasons for its sentence choice on
31 the record at the time of sentencing. The court shall also inform
32 the defendant that as part of the sentence after expiration of the
33 term he or she may be on parole for a period as provided in Section
34 3000.

35 (d) When a defendant subject to this section or subdivision (b)
36 of Section 1168 has been sentenced to be imprisoned in the state
37 prison and has been committed to the custody of the secretary, the
38 court may, within 120 days of the date of commitment on its own
39 motion, or at any time upon the recommendation of the secretary
40 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 court resentencing under this subdivision shall apply
5 the sentencing rules of the Judicial Council so as to eliminate
6 disparity of sentences and to promote uniformity of sentencing.
7 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~~ 15 years of that sentence, the defendant may
12 submit to the sentencing court a petition for recall and resentencing;
13 ~~provided that defendants who have served 10 years but not more~~
14 ~~than 15 years as of January 1, 2011, shall not be permitted to~~
15 ~~submit a petition for recall and resentencing pursuant to this~~
16 ~~subdivision until they have served 15 years.~~ Defendants who have
17 served 15 or more years but less than 25 years as of January 1,
18 2011, shall be permitted to submit a petition for recall and
19 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 *remorse and* rehabilitation or the potential for rehabilitation,
5 including, but not limited to, availing himself or herself of
6 rehabilitative, educational, or vocational programs, if those
7 programs have been available at his or her classification level and
8 facility, using self-study for self-improvement, or showing evidence
9 of remorse.

10 (3) *In addition, all petitions shall include a statement describing*
11 *the defendant's remorse and work towards rehabilitation.*

12 ~~(3)~~

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

19 ~~(4)~~

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

24 ~~(5)~~

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

34 ~~(6)~~

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

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

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

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

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

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

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

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

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

29 (7)

30 (8) 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: to 25 years to life in prison.~~ The discretion
35 of the court shall be exercised in consideration of the criteria in
36 paragraph ~~(6)~~ (7). Victims, or victim family members if the victim
37 is deceased, shall be notified of the resentencing hearing and shall
38 retain their right to participate in the hearing.

39 (8)

(9) If the sentence is not recalled, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 20 years. If recall and resentencing is not granted under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence, alleging a substantial change in circumstances after having served 24 years, but prior to having completed 25 years of imprisonment. The judge shall have the discretion as to whether to permit a final hearing at that time.

(9)

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

(10)

(11) This subdivision shall have retroactive application.

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

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

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

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

(C) The prisoner is permanently medically incapacitated with a medical condition that renders him or her permanently unable to perform activities of basic daily living, and results in the prisoner requiring 24-hour total care, including, but not limited to, coma,

1 persistent vegetative state, brain death, ventilator-dependency, loss
2 of control of muscular or neurological function, and that
3 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 SEC. 3. Section 1.5 of this bill incorporates amendments to
40 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 Assembly Bill 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 Assembly Bill 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 Assembly Bill 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 after Assembly Bill 2263, in which case Section 2 of this bill shall not become operative.