

Introduced by Senator Vidak
(Principal coauthor: Assembly Member Patterson)

February 6, 2014

An act to amend Section 1170 of the Penal Code, relating to imprisonment, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 957, as introduced, Vidak. Imprisonment: state prison.

Under existing law, certain specified felonies are punished by imprisonment in a county jail for 16 months, or 2 or 3 years or, where the term is specified, for the term described in the underlying offense. Notwithstanding these provisions, existing law requires that a sentence be served in state prison where the defendant has a prior or current conviction for a serious or violent felony, has a prior felony conviction in another jurisdiction that has all of the elements of a serious or violent felony, is required to register as a sex offender, or has an aggravated white collar crime enhancement imposed as part of the sentence.

This bill would additionally require a defendant to serve his or her sentence in state prison if he or she is convicted of a crime or crimes for which he or she is sentenced to an aggregate term of imprisonment of 10 years or more.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Section 1170 of the Penal Code, as amended by Section 5 of Chapter 508 of the Statutes of 2013, is amended to read:

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

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

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is

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

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

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

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

3 (d) (1) When a defendant subject to this section or subdivision
4 (b) of Section 1168 has been sentenced to be imprisoned in the
5 state prison and has been committed to the custody of the secretary,
6 the court may, within 120 days of the date of commitment on its
7 own motion, or at any time upon the recommendation of the
8 secretary 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 (2) (A) (i) When a defendant who was under 18 years of age
17 at the time of the commission of the offense for which the
18 defendant was sentenced to imprisonment for life without the
19 possibility of parole has served at least 15 years of that sentence,
20 the defendant may submit to the sentencing court a petition for
21 recall and resentencing.

22 (ii) Notwithstanding clause (i), this paragraph shall not apply
23 to defendants sentenced to life without parole for an offense where
24 the defendant tortured, as described in Section 206, his or her
25 victim or the victim was a public safety official, including any law
26 enforcement personnel mentioned in Chapter 4.5 (commencing
27 with Section 830) of Title 3, or any firefighter as described in
28 Section 245.1, as well as any other officer in any segment of law
29 enforcement who is employed by the federal government, the state,
30 or any of its political subdivisions.

31 (B) The defendant shall file the original petition with the
32 sentencing court. A copy of the petition shall be served on the
33 agency that prosecuted the case. The petition shall include the
34 defendant's statement that he or she was under 18 years of age at
35 the time of the crime and was sentenced to life in prison without
36 the possibility of parole, the defendant's statement describing his
37 or her remorse and work towards rehabilitation, and the defendant's
38 statement that one of the following is true:

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

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

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

13 (C) If any of the information required in subparagraph (B) 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.

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

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

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

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

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

39 (iii) The defendant committed the offense with at least one adult
40 codefendant.

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

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

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

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

31 (H) If the sentence is not recalled, the defendant may submit
32 another petition for recall and resentencing to the sentencing court
33 when the defendant has been committed to the custody of the
34 department for at least 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 (I) In addition to the criteria in subparagraph (F), 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 (J) This subdivision shall have retroactive application.

5 (e) (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 (f) Notwithstanding any other provision of this section, for
15 purposes of paragraph (3) of subdivision (h), any allegation that
16 a defendant is eligible for state prison due to a prior or current
17 conviction, sentence enhancement, or because he or she is required
18 to register as a sex offender shall not be subject to dismissal
19 pursuant to Section 1385.

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

23 (h) (1) Except as provided in paragraph (3), a felony punishable
24 pursuant to this subdivision where the term is not specified in the
25 underlying offense shall be punishable by a term of imprisonment
26 in a county jail for 16 months, or two or three years.

27 (2) Except as provided in paragraph (3), a felony punishable
28 pursuant to this subdivision shall be punishable by imprisonment
29 in a county jail for the term described in the underlying offense.

30 (3) Notwithstanding paragraphs (1) and (2), where the defendant
31 (A) has a prior or current felony conviction for a serious felony
32 described in subdivision (c) of Section 1192.7 or a prior or current
33 conviction for a violent felony described in subdivision (c) of
34 Section 667.5, (B) has a prior felony conviction in another
35 jurisdiction for an offense that has all the elements of a serious
36 felony described in subdivision (c) of Section 1192.7 or a violent
37 felony described in subdivision (c) of Section 667.5, (C) is required
38 to register as a sex offender pursuant to Chapter 5.5 (commencing
39 with Section 290) of Title 9 of Part 1, ~~or~~ (D) is convicted of a crime
40 and as part of the sentence an enhancement pursuant to Section

1 186.11 is imposed, or (E) is convicted of a crime or crimes for
2 which he or she is sentenced to an aggregate term of imprisonment
3 of 10 years or more, an executed sentence for a felony punishable
4 pursuant to this subdivision shall be served in state prison.

5 (4) Nothing in this subdivision shall be construed to prevent
6 other dispositions authorized by law, including pretrial diversion,
7 deferred entry of judgment, or an order granting probation pursuant
8 to Section 1203.1.

9 (5) The court, when imposing a sentence pursuant to paragraph
10 (1) or (2) of this subdivision, may commit the defendant to county
11 jail as follows:

12 (A) For a full term in custody as determined in accordance with
13 the applicable sentencing law.

14 (B) (i) For a term as determined in accordance with the
15 applicable sentencing law, but suspend execution of a concluding
16 portion of the term selected in the court's discretion, during which
17 time the defendant shall be supervised by the county probation
18 officer in accordance with the terms, conditions, and procedures
19 generally applicable to persons placed on probation, for the
20 remaining unserved portion of the sentence imposed by the court.
21 The period of supervision shall be mandatory, and may not be
22 earlier terminated except by court order. Any proceeding to revoke
23 or modify mandatory supervision under this subparagraph shall
24 be conducted pursuant to either subdivisions (a) and (b) of Section
25 1203.2 or Section 1203.3. During the period when the defendant
26 is under such supervision, unless in actual custody related to the
27 sentence imposed by the court, the defendant shall be entitled to
28 only actual time credit against the term of imprisonment imposed
29 by the court. Any time period ~~which~~ *that* is suspended because a
30 person has absconded shall not be credited toward the period of
31 supervision.

32 (ii) The portion of a defendant's sentenced term during which
33 time he or she is supervised by the county probation officer
34 pursuant to this subparagraph shall be known as mandatory
35 supervision.

36 (6) The sentencing changes made by the act that added this
37 subdivision shall be applied prospectively to any person sentenced
38 on or after October 1, 2011.

1 (i) This section shall remain in effect only until January 1, 2017,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before that date, deletes or extends that date.

4 SEC. 2. Section 1170 of the Penal Code, as amended by Section
5 6 of Chapter 508 of the Statutes of 2013, is amended to read:

6 1170. (a) (1) The Legislature finds and declares that the
7 purpose of imprisonment for crime is punishment. This purpose
8 is best served by terms proportionate to the seriousness of the
9 offense with provision for uniformity in the sentences of offenders
10 committing the same offense under similar circumstances. The
11 Legislature further finds and declares that the elimination of
12 disparity and the provision of uniformity of sentences can best be
13 achieved by determinate sentences fixed by statute in proportion
14 to the seriousness of the offense as determined by the Legislature
15 to be imposed by the court with specified discretion.

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

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

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

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

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

6 (d) (1) When a defendant subject to this section or subdivision
7 (b) of Section 1168 has been sentenced to be imprisoned in the
8 state prison and has been committed to the custody of the secretary,
9 the court may, within 120 days of the date of commitment on its
10 own motion, or at any time upon the recommendation of the
11 secretary or the Board of Parole Hearings, recall the sentence and
12 commitment previously ordered and resentence the defendant in
13 the same manner as if he or she had not previously been sentenced,
14 provided the new sentence, if any, is no greater than the initial
15 sentence. The court resentencing under this subdivision shall apply
16 the sentencing rules of the Judicial Council so as to eliminate
17 disparity of sentences and to promote uniformity of sentencing.
18 Credit shall be given for time served.

19 (2) (A) (i) When a defendant who was under 18 years of age
20 at the time of the commission of the offense for which the
21 defendant was sentenced to imprisonment for life without the
22 possibility of parole has served at least 15 years of that sentence,
23 the defendant may submit to the sentencing court a petition for
24 recall and resentencing.

25 (ii) Notwithstanding clause (i), this paragraph shall not apply
26 to defendants sentenced to life without parole for an offense where
27 the defendant tortured, as described in Section 206, his or her
28 victim or the victim was a public safety official, including any law
29 enforcement personnel mentioned in Chapter 4.5 (commencing
30 with Section 830) of Title 3, or any firefighter as described in
31 Section 245.1, as well as any other officer in any segment of law
32 enforcement who is employed by the federal government, the state,
33 or any of its political subdivisions.

34 (B) The defendant shall file the original petition with the
35 sentencing court. A copy of the petition shall be served on the
36 agency that prosecuted the case. The petition shall include the
37 defendant's statement that he or she was under 18 years of age at
38 the time of the crime and was sentenced to life in prison without
39 the possibility of parole, the defendant's statement describing his

1 or her remorse and work towards rehabilitation, and the defendant's
2 statement that one of the following is true:

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

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

9 (iii) The defendant committed the offense with at least one adult
10 codefendant.

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

17 (C) If any of the information required in subparagraph (B) is
18 missing from the petition, or if proof of service on the prosecuting
19 agency is not provided, the court shall return the petition to the
20 defendant and advise the defendant that the matter cannot be
21 considered without the missing information.

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

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

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

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

39 (ii) The defendant does not have juvenile felony adjudications
40 for assault or other felony crimes with a significant potential for

1 personal harm to victims prior to the offense for which the sentence
2 is being considered for recall.

3 (iii) The defendant committed the offense with at least one adult
4 codefendant.

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

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

13 (vi) 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 (vii) The defendant has maintained family ties or connections
20 with others through letter writing, calls, or visits, or has eliminated
21 contact with individuals outside of prison who are currently
22 involved with crime.

23 (viii) The defendant has had no disciplinary actions for violent
24 activities in the last five years in which the defendant was
25 determined to be the aggressor.

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

35 (H) If the sentence is not recalled, the defendant may submit
36 another petition for recall and resentencing to the sentencing court
37 when the defendant has been committed to the custody of the
38 department for at least 20 years. If recall and resentencing is not
39 granted under that petition, the defendant may file another petition
40 after having served 24 years. The final petition may be submitted,

1 and the response to that petition shall be determined, during the
2 25th year of the defendant's sentence.

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

8 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any allegation that a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) 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) (1) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent

felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, ~~or~~ (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, *or (E) is convicted of a crime or crimes for which he or she is sentenced to an aggregate term of imprisonment of 10 years or more*, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) (i) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period ~~which~~ *that* is suspended because a person has absconded shall not be credited toward the period of supervision.

(ii) The portion of a defendant's sentenced term during which time he or she is supervised by the county probation officer pursuant to this subparagraph shall be known as mandatory supervision, and shall begin upon release from custody.

1 (6) The sentencing changes made by the act that added this
2 subdivision shall be applied prospectively to any person sentenced
3 on or after October 1, 2011.

4 (i) This section shall become operative on January 1, 2017.

5 SEC. 3. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to protect the safety of the public at the earliest possible
10 time, it is necessary for this act to take effect immediately.