

AMENDED IN ASSEMBLY MAY 19, 2016

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2590

Introduced by Assembly Member Weber

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2590, as amended, Weber. Sentencing: restorative justice.

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment. Existing law further provides that, notwithstanding those provisions, the Legislature 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. Existing law encourages the Department of Corrections and Rehabilitation to give priority to enrollment in programs to promote successful return to the community to inmates with short remaining terms of commitment.

This bill would instead provide legislative findings and declarations that the purpose of sentencing is public safety achieved through accountability, rehabilitation, and restorative justice. The bill would amend the above legislative findings to state that programs should be available to all inmates and would encourage the department to allow all inmates the opportunity to enroll in programs that promote successful return to the community.

~~Existing law, until January 1, 2017, provides that when a judgment of imprisonment is to be imposed and the statute specifies 3 possible terms, the choice of the appropriate term rests within the sound discretion of the court, in best serving the interests of justice. Existing law, commencing January 1, 2017, requires the court in that circumstance to order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime, as specified.~~

~~This bill would repeal the provisions that would have been operative on January 1, 2017, and would indefinitely extend the above authority granting the court discretion in determining the sentence.~~

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 378 of the Statutes of 2015, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of sentencing is public safety achieved through
6 accountability, rehabilitation, and restorative justice. When a
7 sentence includes incarceration, this purpose is best served by
8 terms that are proportionate to the seriousness of the offense with
9 provision for uniformity in the sentences of offenders committing
10 the same offense under similar circumstances. The Legislature
11 further finds and declares that the elimination of disparity and the
12 provision of uniformity of sentences can best be achieved by
13 determinate sentences fixed by statute in proportion to the
14 seriousness of the offense as determined by the Legislature to be
15 imposed by the court with specified discretion.

16 (2) The Legislature further finds and declares that programs
17 should be available for inmates, including, but not limited to,
18 educational programs that are designed to prepare all offenders
19 for successful reentry into the community. The Legislature
20 encourages the development of policies and programs designed to
21 educate and rehabilitate all offenders. In implementing this section,
22 the Department of Corrections and Rehabilitation is encouraged
23 to allow all inmates the opportunity to enroll in programs that
24 promote successful return to the community.

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

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

20 (c) ~~At the time of sentencing, the court shall state on the record~~
21 ~~the reasons for its sentence choice of incarceration, an alternative~~
22 ~~to incarceration, or both. The court shall state the reasons for its~~
23 ~~sentence choice on the record at the time of sentencing.~~ The court
24 shall also inform the defendant that as part of the sentence after
25 expiration of the term he or she may be on parole for a period as
26 provided in Section 3000 or 3000.08 or postrelease community
27 supervision for a period as provided in Section 3451.

28 (d) (1) When a defendant subject to this section or subdivision
29 (b) of Section 1168 has been sentenced to be imprisoned in the
30 state prison or county jail pursuant to subdivision (h) and has been
31 committed to the custody of the secretary or the county correctional
32 administrator, the court may, within 120 days of the date of
33 commitment on its own motion, or at any time upon the
34 recommendation of the secretary or the Board of Parole Hearings
35 in the case of state prison inmates, or the county correctional
36 administrator in the case of county jail inmates, recall the sentence
37 and commitment previously ordered and resentence the defendant
38 in the same manner as if he or she had not previously been
39 sentenced, provided the new sentence, if any, is no greater than
40 the initial sentence. The court resentencing under this subdivision

1 shall apply the sentencing rules of the Judicial Council so as to
2 eliminate disparity of sentences and to promote uniformity of
3 sentencing. Credit shall be given for time served.

4 (2) (A) (i) When a defendant who was under 18 years of age
5 at the time of the commission of the offense for which the
6 defendant was sentenced to imprisonment for life without the
7 possibility of parole has served at least 15 years of that sentence,
8 the defendant may submit to the sentencing court a petition for
9 recall and resentencing.

10 (ii) Notwithstanding clause (i), this paragraph shall not apply
11 to defendants sentenced to life without parole for an offense where
12 the defendant tortured, as described in Section 206, his or her
13 victim or the victim was a public safety official, including any law
14 enforcement personnel mentioned in Chapter 4.5 (commencing
15 with Section 830) of Title 3, or any firefighter as described in
16 Section 245.1, as well as any other officer in any segment of law
17 enforcement who is employed by the federal government, the state,
18 or any of its political subdivisions.

19 (B) The defendant shall file the original petition with the
20 sentencing court. A copy of the petition shall be served on the
21 agency that prosecuted the case. The petition shall include the
22 defendant's statement that he or she was under 18 years of age at
23 the time of the crime and was sentenced to life in prison without
24 the possibility of parole, the defendant's statement describing his
25 or her remorse and work towards rehabilitation, and the defendant's
26 statement that one of the following is true:

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

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

33 (iii) The defendant committed the offense with at least one adult
34 codefendant.

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

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

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

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

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

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

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

27 (iii) The defendant committed the offense with at least one adult
28 codefendant.

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

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

37 (vi) The defendant has performed acts that tend to indicate
38 rehabilitation or the potential for rehabilitation, including, but not
39 limited to, availing himself or herself of rehabilitative, educational,
40 or vocational programs, if those programs have been available at

1 his or her classification level and facility, using self-study for
2 self-improvement, or showing evidence of remorse.

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

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

10 (G) The court shall have the discretion to recall the sentence
11 and commitment previously ordered and to resentence the
12 defendant in the same manner as if the defendant had not
13 previously been sentenced, provided that the new sentence, if any,
14 is not greater than the initial sentence. The discretion of the court
15 shall be exercised in consideration of the criteria in subparagraph
16 (B). Victims, or victim family members if the victim is deceased,
17 shall be notified of the resentencing hearing and shall retain their
18 rights to participate in the hearing.

19 (H) If the sentence is not recalled, the defendant may submit
20 another petition for recall and resentencing to the sentencing court
21 when the defendant has been committed to the custody of the
22 department for at least 20 years. If recall and resentencing is not
23 granted under that petition, the defendant may file another petition
24 after having served 24 years. The final petition may be submitted,
25 and the response to that petition shall be determined, during the
26 25th year of the defendant's sentence.

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

32 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (11) The provisions of this subdivision shall be available to an
4 inmate who is sentenced to a county jail pursuant to subdivision
5 (h). For purposes of those inmates, “secretary” or “warden” shall
6 mean the county correctional administrator and “chief medical
7 officer” shall mean a physician designated by the county
8 correctional administrator for this purpose.

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

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

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

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

25 (3) Notwithstanding paragraphs (1) and (2), where the defendant
26 (A) has a prior or current felony conviction for a serious felony
27 described in subdivision (c) of Section 1192.7 or a prior or current
28 conviction for a violent felony described in subdivision (c) of
29 Section 667.5, (B) has a prior felony conviction in another
30 jurisdiction for an offense that has all the elements of a serious
31 felony described in subdivision (c) of Section 1192.7 or a violent
32 felony described in subdivision (c) of Section 667.5, (C) is required
33 to register as a sex offender pursuant to Chapter 5.5 (commencing
34 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
35 and as part of the sentence an enhancement pursuant to Section
36 186.11 is imposed, an executed sentence for a felony punishable
37 pursuant to this subdivision shall be served in state prison.

38 (4) Nothing in this subdivision shall be construed to prevent
39 other dispositions authorized by law, including pretrial diversion,

1 deferred entry of judgment, or an order granting probation pursuant
2 to Section 1203.1.

3 (5) (A) Unless the court finds that, in the interests of justice, it
4 is not appropriate in a particular case, the court, when imposing a
5 sentence pursuant to paragraph (1) or (2), shall suspend execution
6 of a concluding portion of the term for a period selected at the
7 court's discretion.

8 (B) The portion of a defendant's sentenced term that is
9 suspended pursuant to this paragraph shall be known as mandatory
10 supervision, and, unless otherwise ordered by the court, shall
11 commence upon release from physical custody or an alternative
12 custody program, whichever is later. During the period of
13 mandatory supervision, the defendant shall be supervised by the
14 county probation officer in accordance with the terms, conditions,
15 and procedures generally applicable to persons placed on probation,
16 for the remaining unserved portion of the sentence imposed by the
17 court. The period of supervision shall be mandatory, and may not
18 be earlier terminated except by court order. Any proceeding to
19 revoke or modify mandatory supervision under this subparagraph
20 shall be conducted pursuant to either subdivisions (a) and (b) of
21 Section 1203.2 or Section 1203.3. During the period when the
22 defendant is under that supervision, unless in actual custody related
23 to the sentence imposed by the court, the defendant shall be entitled
24 to only actual time credit against the term of imprisonment imposed
25 by the court. Any time period which is suspended because a person
26 has absconded shall not be credited toward the period of
27 supervision.

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

31 (7) The sentencing changes made to paragraph (5) by the act
32 that added this paragraph shall become effective and operative on
33 January 1, 2015, and shall be applied prospectively to any person
34 sentenced on or after January 1, 2015.

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

38 ~~SEC. 2.—Section 1170 of the Penal Code, as amended by Section~~
39 ~~2 of Chapter 378 of the Statutes of 2015, is repealed.~~

1 SEC. 2. Section 1170 of the Penal Code, as amended by Section
2 2 of Chapter 378 of the Statutes of 2015, is amended to read:

3 1170. (a) (1) The Legislature finds and declares that the
4 purpose of imprisonment for crime is punishment. ~~This sentencing~~
5 ~~is public safety achieved through accountability, rehabilitation,~~
6 ~~and restorative justice. When a sentence includes incarceration,~~
7 ~~this purpose is best served by terms that are proportionate to the~~
8 ~~seriousness of the offense with provision for uniformity in the~~
9 ~~sentences of offenders committing the same offense under similar~~
10 ~~circumstances. The Legislature further finds and declares that the~~
11 ~~elimination of disparity and the provision of uniformity of~~
12 ~~sentences can best be achieved by determinate sentences fixed by~~
13 ~~statute in proportion to the seriousness of the offense as determined~~
14 ~~by the Legislature to be imposed by the court with specified~~
15 ~~discretion.~~

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

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

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

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

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

9 (c) The court shall state the reasons for its sentence choice on
10 the record at the time of sentencing. The court shall also inform
11 the defendant that as part of the sentence after expiration of the
12 term he or she may be on parole for a period as provided in Section
13 3000 or 3000.08 or postrelease community supervision for a period
14 as provided in Section 3451.

15 (d) (1) When a defendant subject to this section or subdivision
16 (b) of Section 1168 has been sentenced to be imprisoned in the
17 state prison or county jail pursuant to subdivision (h) and has been
18 committed to the custody of the secretary or the county correctional
19 administrator, the court may, within 120 days of the date of
20 commitment on its own motion, or at any time upon the
21 recommendation of the secretary or the Board of Parole Hearings
22 in the case of state prison inmates, or the county correctional
23 administrator in the case of county jail inmates, recall the sentence
24 and commitment previously ordered and resentence the defendant
25 in the same manner as if he or she had not previously been
26 sentenced, provided the new sentence, if any, is no greater than
27 the initial sentence. The court resentencing under this subdivision
28 shall apply the sentencing rules of the Judicial Council so as to
29 eliminate disparity of sentences and to promote uniformity of
30 sentencing. Credit shall be given for time served.

31 (2) (A) (i) When a defendant who was under 18 years of age
32 at the time of the commission of the offense for which the
33 defendant was sentenced to imprisonment for life without the
34 possibility of parole has served at least 15 years of that sentence,
35 the defendant may submit to the sentencing court a petition for
36 recall and resentencing.

37 (ii) Notwithstanding clause (i), this paragraph shall not apply
38 to defendants sentenced to life without parole for an offense where
39 the defendant tortured, as described in Section 206, his or her
40 victim or the victim was a public safety official, including any law

1 enforcement personnel mentioned in Chapter 4.5 (commencing
2 with Section 830) of Title 3, or any firefighter as described in
3 Section 245.1, as well as any other officer in any segment of law
4 enforcement who is employed by the federal government, the state,
5 or any of its political subdivisions.

6 (B) The defendant shall file the original petition with the
7 sentencing court. A copy of the petition shall be served on the
8 agency that prosecuted the case. The petition shall include the
9 defendant's statement that he or she was under 18 years of age at
10 the time of the crime and was sentenced to life in prison without
11 the possibility of parole, the defendant's statement describing his
12 or her remorse and work towards rehabilitation, and the defendant's
13 statement that one of the following is true:

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

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

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

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

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

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

37 (E) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a hearing
39 to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,
2 provided that the new sentence, if any, is not greater than the initial
3 sentence. Victims, or victim family members if the victim is
4 deceased, shall retain the rights to participate in the hearing.

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

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

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

14 (iii) The defendant committed the offense with at least one adult
15 codefendant.

16 (iv) Prior to the offense for which the sentence is being
17 considered for recall, the defendant had insufficient adult support
18 or supervision and had suffered from psychological or physical
19 trauma, or significant stress.

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

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

30 (vii) The defendant has maintained family ties or connections
31 with others through letter writing, calls, or visits, or has eliminated
32 contact with individuals outside of prison who are currently
33 involved with crime.

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

37 (G) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant in the same manner as if the defendant had not
40 previously been sentenced, provided that the new sentence, if any,

1 is not greater than the initial sentence. The discretion of the court
2 shall be exercised in consideration of the criteria in subparagraph
3 (B). Victims, or victim family members if the victim is deceased,
4 shall be notified of the resentencing hearing and shall retain their
5 rights to participate in the hearing.

6 (H) If the sentence is not recalled, the defendant may submit
7 another petition for recall and resentencing to the sentencing court
8 when the defendant has been committed to the custody of the
9 department for at least 20 years. If recall and resentencing is not
10 granted under that petition, the defendant may file another petition
11 after having served 24 years. The final petition may be submitted,
12 and the response to that petition shall be determined, during the
13 25th year of the defendant's sentence.

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

19 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

29 (11) The provisions of this subdivision shall be available to an
30 inmate who is sentenced to a county jail pursuant to subdivision
31 (h). For purposes of those inmates, "secretary" or "warden" shall
32 mean the county correctional administrator and "chief medical
33 officer" shall mean a physician designated by the county
34 correctional administrator for this purpose.

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

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

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

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

11 (3) Notwithstanding paragraphs (1) and (2), where the defendant
12 (A) has a prior or current felony conviction for a serious felony
13 described in subdivision (c) of Section 1192.7 or a prior or current
14 conviction for a violent felony described in subdivision (c) of
15 Section 667.5, (B) has a prior felony conviction in another
16 jurisdiction for an offense that has all the elements of a serious
17 felony described in subdivision (c) of Section 1192.7 or a violent
18 felony described in subdivision (c) of Section 667.5, (C) is required
19 to register as a sex offender pursuant to Chapter 5.5 (commencing
20 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime
21 and as part of the sentence an enhancement pursuant to Section
22 186.11 is imposed, an executed sentence for a felony punishable
23 pursuant to this subdivision shall be served in state prison.

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

28 (5) (A) Unless the court finds, in the interest of justice, that it
29 is not appropriate in a particular case, the court, when imposing a
30 sentence pursuant to paragraph (1) or (2), shall suspend execution
31 of a concluding portion of the term for a period selected at the
32 court's discretion.

33 (B) The portion of a defendant's sentenced term that is
34 suspended pursuant to this paragraph shall be known as mandatory
35 supervision, and, unless otherwise ordered by the court, shall
36 commence upon release from physical custody or an alternative
37 custody program, whichever is later. During the period of
38 mandatory supervision, the defendant shall be supervised by the
39 county probation officer in accordance with the terms, conditions,
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the
2 court. The period of supervision shall be mandatory, and may not
3 be earlier terminated except by court order. Any proceeding to
4 revoke or modify mandatory supervision under this subparagraph
5 shall be conducted pursuant to either subdivisions (a) and (b) of
6 Section 1203.2 or Section 1203.3. During the period when the
7 defendant is under that supervision, unless in actual custody related
8 to the sentence imposed by the court, the defendant shall be entitled
9 to only actual time credit against the term of imprisonment imposed
10 by the court. Any time period which is suspended because a person
11 has absconded shall not be credited toward the period of
12 supervision.

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

16 (7) The sentencing changes made to paragraph (5) by the act
17 that added this paragraph shall become effective and operative on
18 January 1, 2015, and shall be applied prospectively to any person
19 sentenced on or after January 1, 2015.

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