

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 introduced, Weber. Sentencing: restorative justice.

Existing law provides legislative findings and declarations that the purpose of imprisonment for crime is punishment, and that 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. 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 provides other legislative findings and declarations relating to the development of policies and programs.

This bill would instead provide legislative findings and declarations that the purpose of sentencing is public safety achieved through restorative justice and that this purpose is best served by taking into account the science of brain development and maturity and the effects of violence on individuals in disadvantaged neighborhoods, among other specified factors. This bill would provide other legislative findings and declarations, as specified.

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. This bill would also grant, when a judgment of imprisonment is to be imposed and the statute specifies 3 possible terms, the court discretion to sentence as an alternative to incarceration the defendant to community-based punishment, as specified, so long as the court imposes a sentence in which the combined periods of incarceration and the alternative to incarceration total at least the minimum term of the 3 possible terms. The bill would prohibit a sentence that includes an alternative to incarceration from exceeding the length of the otherwise applicable upper term of incarceration. The bill would require that the sentence imposed be sufficient, but not greater than necessary, to achieve the purpose of sentencing as described above. This bill would make other conforming changes. By increasing the duties of local officials in operating those community-based punishment programs, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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 imprisonment for crime is punishment. This purpose~~
 6 ~~is best served by terms proportionate to the seriousness of the~~

1 offense with provision for uniformity in the sentences of offenders
2 committing the same offense under similar circumstances. The
3 Legislature further finds and declares that the elimination of
4 disparity and the provision of uniformity of sentences can best be
5 achieved by determinate sentences fixed by statute in proportion
6 to the seriousness of the offense as determined by the Legislature
7 to be imposed by the court with specified discretion.

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

20 *1170. (a) (1) The Legislature finds and declares that the*
21 *purpose of sentencing is public safety achieved through restorative*
22 *justice. This purpose is best served by taking into account the*
23 *science of brain development and maturity, the effects of violence*
24 *on individuals in disadvantaged neighborhoods, the relationship*
25 *between experiencing trauma and subsequent harmful behavior,*
26 *opportunities to repair the harm, and other factors, including, but*
27 *not limited to, those listed in Rule 4.423 of the California Rules*
28 *of Court.*

29 *(2) The Legislature further finds and declares that educational,*
30 *vocational, rehabilitative, treatment, and other programs should*
31 *be made available to all inmates, in order to fully prepare them*
32 *for successful reentry into the community.*

33 (3) In any case in which the punishment prescribed by statute
34 for a person convicted of a public offense is a term of imprisonment
35 in the state prison or a term pursuant to subdivision (h) of any
36 specification of three time periods, the court shall sentence the
37 defendant to one of the terms of imprisonment specified unless
38 the convicted person is given any other disposition provided by
39 law, including a fine, jail, probation, or the suspension of
40 imposition or execution of sentence or is sentenced pursuant to

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

34 (b) (1) When a judgment of imprisonment is to be imposed
35 and the statute specifies three possible terms, the choice of the
36 appropriate term shall rest within the sound discretion of the court.
37 At least four days prior to the time set for imposition of judgment,
38 either party or the victim, or the family of the victim if the victim
39 is deceased, may submit a statement in aggravation or mitigation.
40 In determining the appropriate term, the court may consider the

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

13 (2) *In determining the appropriate term, pursuant to paragraph*
14 *(1), the court has discretion to sentence as an alternative to*
15 *incarceration the defendant to community-based punishment as*
16 *described in Section 17.5, so long as the court imposes a sentence*
17 *in which the combined periods of incarceration and the alternative*
18 *to incarceration total at least the minimum term of the three*
19 *possible terms. A sentence that includes an alternative to*
20 *incarceration shall not exceed the length of the otherwise*
21 *applicable upper term of incarceration. The sentence imposed*
22 *shall be sufficient, but not greater than necessary, to achieve the*
23 *purpose of sentencing as described in paragraph (1) of subdivision*
24 *(a).*

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

32 (d) (1) When a defendant subject to this section or subdivision
33 (b) of Section 1168 has been sentenced to be imprisoned in the
34 state prison or county jail pursuant to subdivision (h) and has been
35 committed to the custody of the secretary or the county correctional
36 administrator, the court may, within 120 days of the date of
37 commitment on its own motion, or at any time upon the
38 recommendation of the secretary or the Board of Parole Hearings
39 in the case of state prison inmates, or the county correctional
40 administrator in the case of county jail inmates, recall the sentence

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

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

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

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

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

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

37 (iii) The defendant committed the offense with at least one adult
38 codefendant.

39 (iv) The defendant has performed acts that tend to indicate
40 rehabilitation or the potential for rehabilitation, including, but not

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

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

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

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

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

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

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

31 (iii) The defendant committed the offense with at least one adult
32 codefendant.

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

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

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

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

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

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

23 (H) If the sentence is not recalled, the defendant may submit
24 another petition for recall and resentencing to the sentencing court
25 when the defendant has been committed to the custody of the
26 department for at least 20 years. If recall and resentencing is not
27 granted under that petition, the defendant may file another petition
28 after having served 24 years. The final petition may be submitted,
29 and the response to that petition shall be determined, during the
30 25th year of the defendant's sentence.

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

36 (J) This subdivision shall have retroactive application.

37 (e) (1) Notwithstanding any other law and consistent with
38 paragraph (1) of subdivision (a), if the secretary or the Board of
39 Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may
2 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

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

39 (5) The warden or the warden's representative shall provide the
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information
2 throughout the recall and resentencing process with regard to the
3 prisoner's medical condition and the status of the prisoner's recall
4 and resentencing proceedings.

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

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

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

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

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

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

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, an executed sentence for a felony punishable
2 pursuant to this subdivision shall be served in state prison.

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

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

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

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

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

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 2 of Chapter 378 of the Statutes of 2015, is repealed.

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

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

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

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

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

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

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

36 (ii) Notwithstanding clause (i), this paragraph shall not apply
37 to defendants sentenced to life without parole for an offense where
38 the defendant tortured, as described in Section 206, his or her
39 victim or the victim was a public safety official, including any law
40 enforcement personnel mentioned in Chapter 4.5 (commencing

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

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

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

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

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

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

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

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

36 (E) If the court finds by a preponderance of the evidence that
37 the statements in the petition are true, the court shall hold a hearing
38 to consider whether to recall the sentence and commitment
39 previously ordered and to resentence the defendant in the same
40 manner as if the defendant had not previously been sentenced,

1 provided that the new sentence, if any, is not greater than the initial
2 sentence. Victims, or victim family members if the victim is
3 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

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

1 shall be exercised in consideration of the criteria in subparagraph
2 (B). Victims, or victim family members if the victim is deceased,
3 shall be notified of the resentencing hearing and shall retain their
4 rights to participate in the hearing.

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

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

18 (J) This subdivision shall have retroactive application.

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

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

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

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

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

21 SEC. 3. If the Commission on State Mandates determines that
 22 this act contains costs mandated by the state, reimbursement to
 23 local agencies and school districts for those costs shall be made
 24 pursuant to Part 7 (commencing with Section 17500) of Division
 25 4 of Title 2 of the Government Code.