

AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 1084**

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**Introduced by Senator Hancock**

February 17, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1084, as amended, Hancock. Sentencing.

Existing law authorizes a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without the possibility of parole to submit a petition for recall and resentencing after he or she has served at least 15 years of his or her sentence. Existing law prohibits a prisoner who tortured his or her victim or whose victim was a public safety official, as defined, from filing a petition for recall and resentencing. Existing law establishes certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. Existing law requires the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified, and grants the court discretion to recall and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence.

This bill would instead authorize those prisoners to submit the petition for recall and resentencing after he or she has been committed to the custody of the Department of Corrections and Rehabilitation for 15 years. The bill would also require a court, if it finds by a preponderance

of the evidence that one or more of the qualifying criteria is true, to recall the sentence previously ordered and hold a hearing to resentence the defendant. The bill would make other conforming changes.

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

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

26 (3) In any case in which the punishment prescribed by statute  
27 for a person convicted of a public offense is a term of imprisonment  
28 in the state prison or a term pursuant to subdivision (h) of any  
29 specification of three time periods, the court shall sentence the  
30 defendant to one of the terms of imprisonment specified unless  
31 the convicted person is given any other disposition provided by  
32 law, including a fine, jail, probation, or the suspension of

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

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

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

12 (c) The court shall state the reasons for its sentence choice on  
13 the record at the time of sentencing. The court shall also inform  
14 the defendant that as part of the sentence after expiration of the  
15 term he or she may be on parole for a period as provided in Section  
16 3000 or 3000.08 or postrelease community supervision for a period  
17 as provided in Section 3451.

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

34 (2) (A) (i) When a defendant who was under 18 years of age  
35 at the time of the commission of the offense for which the  
36 defendant was sentenced to imprisonment for life without the  
37 possibility of parole has been committed to the custody of the  
38 department for at least 15 years, the defendant may submit to the  
39 sentencing court a petition for recall and resentencing.

1 (ii) Notwithstanding clause (i), this paragraph shall not apply  
2 to defendants sentenced to life without parole for an offense where  
3 it was pled and proved that the defendant tortured, as described in  
4 Section 206, his or her victim or the victim was a public safety  
5 official, including any law enforcement personnel mentioned in  
6 Chapter 4.5 (commencing with Section 830) of Title 3, or any  
7 firefighter as described in Section 245.1, as well as any other officer  
8 in any segment of law enforcement who is employed by the federal  
9 government, the state, or any of its political subdivisions.

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

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

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

24 (iii) The defendant committed the offense with at least one adult  
25 codefendant.

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

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

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

1 (E) If the court finds by a preponderance of the evidence that  
2 one or more of the statements specified in clauses (i) to (iv),  
3 inclusive, of subparagraph (B) is true, the court shall recall the  
4 sentence and commitment previously ordered and hold a hearing  
5 to resentence the defendant in the same manner as if the defendant  
6 had not previously been sentenced, provided that the new sentence,  
7 if any, is not greater than the initial sentence. Victims, or victim  
8 family members if the victim is deceased, shall retain the rights to  
9 participate in the hearing.

10 (F) The factors that the court may consider when determining  
11 whether to resentence the defendant to a term of imprisonment  
12 with the possibility of parole include, but are not limited to, the  
13 following:

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~~. *defendant was sentenced to life*  
20 *without the possibility of parole.*

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

23 (iv) Prior to the offense for which the sentence ~~is being~~  
24 ~~considered for recall~~, *defendant was sentenced to life without the*  
25 *possibility of parole*, the defendant had insufficient adult support  
26 or supervision and had suffered from psychological or physical  
27 trauma, or significant stress.

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

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

38 (vii) The defendant has maintained family ties or connections  
39 with others through letter writing, calls, or visits, or has eliminated

1 contact with individuals outside of prison who are currently  
2 involved with crime.

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

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

14 (H) If the sentence is not recalled or the defendant is resented  
15 to imprisonment for life without the possibility of parole, the  
16 defendant may submit another petition for recall and resentencing  
17 to the sentencing court when the defendant has been committed  
18 to the custody of the department for at least 20 years. ~~If recall and~~  
19 ~~resentencing is not granted~~ *the sentence is not recalled or the*  
20 *defendant is resented to imprisonment for life without the*  
21 *possibility of parole* under that petition, the defendant may file  
22 another petition after having been committed to the custody of the  
23 department for 24 years. The final petition may be submitted, and  
24 the response to that petition shall be determined, during the 25th  
25 year of the defendant's commitment to the department.

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

31 (J) This subdivision shall have retroactive application.

32 (K) *Nothing in this paragraph is intended to diminish or*  
33 *abrogate any rights or remedies otherwise available to the*  
34 *defendant.*

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

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

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

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

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

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

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

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

37 (5) The warden or the warden's representative shall provide the  
38 prisoner and his or her family member, agent, or emergency  
39 contact, as described in paragraph (4), updated information  
40 throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall  
2 and resentencing proceedings.

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

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

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

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

38 (10) The secretary shall issue a directive to medical and  
39 correctional staff employed by the department that details the  
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who  
2 is given a prognosis of six months or less to live is eligible for  
3 recall and resentencing consideration, and that recall and  
4 resentencing procedures shall be initiated upon that prognosis.

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

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

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

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

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

27 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
28 (A) has a prior or current felony conviction for a serious felony  
29 described in subdivision (c) of Section 1192.7 or a prior or current  
30 conviction for a violent felony described in subdivision (c) of  
31 Section 667.5, (B) has a prior felony conviction in another  
32 jurisdiction for an offense that has all the elements of a serious  
33 felony described in subdivision (c) of Section 1192.7 or a violent  
34 felony described in subdivision (c) of Section 667.5, (C) is required  
35 to register as a sex offender pursuant to Chapter 5.5 (commencing  
36 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
37 and as part of the sentence an enhancement pursuant to Section  
38 186.11 is imposed, an executed sentence for a felony punishable  
39 pursuant to this subdivision shall be served in state prison.

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

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

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

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

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

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

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 purpose  
5 is best served by terms proportionate to the seriousness of the  
6 offense with provision for uniformity in the sentences of offenders  
7 committing the same offense under similar circumstances. The  
8 Legislature further finds and declares that the elimination of  
9 disparity and the provision of uniformity of sentences can best be  
10 achieved by determinate sentences fixed by statute in proportion  
11 to the seriousness of the offense as determined by the Legislature  
12 to be imposed by the court with specified discretion.  
13 (2) Notwithstanding paragraph (1), the Legislature further finds  
14 and declares that programs should be available for inmates,  
15 including, but not limited to, educational programs, that are  
16 designed to prepare nonviolent felony offenders for successful  
17 reentry into the community. The Legislature encourages the  
18 development of policies and programs designed to educate and  
19 rehabilitate nonviolent felony offenders. In implementing this  
20 section, the Department of Corrections and Rehabilitation is  
21 encouraged to give priority enrollment in programs to promote  
22 successful return to the community to an inmate with a short  
23 remaining term of commitment and a release date that would allow  
24 him or her adequate time to complete the program.  
25 (3) In any case in which the punishment prescribed by statute  
26 for a person convicted of a public offense is a term of imprisonment  
27 in the state prison, or a term pursuant to subdivision (h), of any  
28 specification of three time periods, the court shall sentence the  
29 defendant to one of the terms of imprisonment specified unless  
30 the convicted person is given any other disposition provided by  
31 law, including a fine, jail, probation, or the suspension of  
32 imposition or execution of sentence or is sentenced pursuant to  
33 subdivision (b) of Section 1168 because he or she had committed  
34 his or her crime prior to July 1, 1977. In sentencing the convicted  
35 person, the court shall apply the sentencing rules of the Judicial  
36 Council. The court, unless it determines that there are  
37 circumstances in mitigation of the punishment prescribed, shall  
38 also impose any other term that it is required by law to impose as  
39 an additional term. Nothing in this article shall affect any provision  
40 of law that imposes the death penalty, that authorizes or restricts

1 the granting of probation or suspending the execution or imposition  
2 of sentence, or expressly provides for imprisonment in the state  
3 prison for life, except as provided in paragraph (2) of subdivision  
4 (d). In any case in which the amount of preimprisonment credit  
5 under Section 2900.5 or any other provision of law is equal to or  
6 exceeds any sentence imposed pursuant to this chapter, except for  
7 a remaining portion of mandatory supervision imposed pursuant  
8 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
9 sentence shall be deemed to have been served, except for the  
10 remaining period of mandatory supervision, and the defendant  
11 shall not be actually delivered to the custody of the secretary or  
12 the county correctional administrator. The court shall advise the  
13 defendant that he or she shall serve an applicable period of parole,  
14 postrelease community supervision, or mandatory supervision and  
15 order the defendant to report to the parole or probation office  
16 closest to the defendant's last legal residence, unless the in-custody  
17 credits equal the total sentence, including both confinement time  
18 and the period of parole, postrelease community supervision, or  
19 mandatory supervision. The sentence shall be deemed a separate  
20 prior prison term or a sentence of imprisonment in a county jail  
21 under subdivision (h) for purposes of Section 667.5, and a copy  
22 of the judgment and other necessary documentation shall be  
23 forwarded to the secretary.

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

1 may not impose an upper term by using the fact of any  
2 enhancement upon which sentence is imposed under any provision  
3 of law. A term of imprisonment shall not be specified if imposition  
4 of sentence is suspended.

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

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

27 (2) (A) (i) When a defendant who was under 18 years of age  
28 at the time of the commission of the offense for which the  
29 defendant was sentenced to imprisonment for life without the  
30 possibility of parole has been committed to the custody of the  
31 department for at least 15 years, the defendant may submit to the  
32 sentencing court a petition for recall and resentencing.

33 (ii) Notwithstanding clause (i), this paragraph shall not apply  
34 to defendants sentenced to life without parole for an offense where  
35 it was pled and proved that the defendant tortured, as described in  
36 Section 206, his or her victim or the victim was a public safety  
37 official, including any law enforcement personnel mentioned in  
38 Chapter 4.5 (commencing with Section 830) of Title 3, or any  
39 firefighter as described in Section 245.1, as well as any other officer

1 in any segment of law enforcement who is employed by the federal  
2 government, the state, or any of its political subdivisions.

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

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

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

17 (iii) The defendant committed the offense with at least one adult  
18 codefendant.

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

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

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

34 (E) If the court finds by a preponderance of the evidence that  
35 one or more of the statements specified in clauses (i) to (iv),  
36 inclusive, of subparagraph (B) is true, the court shall recall the  
37 sentence and commitment previously ordered and hold a hearing  
38 to resentence the defendant in the same manner as if the defendant  
39 had not previously been sentenced, provided that the new sentence,  
40 if any, is not greater than the initial sentence. Victims, or victim

1 family members if the victim is deceased, shall retain the rights to  
2 participate in the hearing.

3 (F) The factors that the court may consider when determining  
4 whether to resentence the defendant to a term of imprisonment  
5 with the possibility of parole include, but are not limited to, the  
6 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.~~ *defendant was sentenced to life*  
13 *without the possibility of parole.*

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,~~ *defendant was sentenced to life without the*  
18 *possibility of parole,* the defendant had insufficient adult support  
19 or supervision and had suffered from psychological or physical  
20 trauma, or significant stress.

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

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

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

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

38 (G) The court shall have the discretion 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 (F). 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 or the defendant is resentenced  
7 to imprisonment for life without the possibility of parole, the  
8 defendant may submit another petition for recall and resentencing  
9 to the sentencing court when the defendant has been committed  
10 to the custody of the department for at least 20 years. ~~If recall and~~  
11 ~~resentencing is not granted~~ *the sentence is not recalled or the*  
12 *defendant is resentenced to imprisonment for life without the*  
13 *possibility of parole* under that petition, the defendant may file  
14 another petition after having been committed to the custody of the  
15 department for 24 years. The final petition may be submitted, and  
16 the response to that petition shall be determined, during the 25th  
17 year of the defendant's commitment to the department.

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

23 (J) This subdivision shall have retroactive application.

24 (K) *Nothing in this paragraph is intended to diminish or*  
25 *abrogate any rights or remedies otherwise available to the*  
26 *defendant.*

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

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

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

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

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

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

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

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

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

34 (6) Notwithstanding any other provisions of this section, the  
35 prisoner or his or her family member or designee may  
36 independently request consideration for recall and resentencing  
37 by contacting the chief medical officer at the prison or the  
38 secretary. Upon receipt of the request, the chief medical officer  
39 and the warden or the warden's representative shall follow the  
40 procedures described in paragraph (4). If the secretary determines

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

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

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

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

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

36 (11) The provisions of this subdivision shall be available to an  
37 inmate who is sentenced to a county jail pursuant to subdivision  
38 (h). For purposes of those inmates, "secretary" or "warden" shall  
39 mean the county correctional administrator and "chief medical

1 officer” shall mean a physician designated by the county  
2 correctional administrator for this purpose.

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

9 (g) A sentence to state prison for a determinate term for which  
10 only one term is specified, is a sentence to state prison under this  
11 section.

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

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

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

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

36 (5) (A) Unless the court finds, in the interest of justice, that it  
37 is not appropriate in a particular case, the court, when imposing a  
38 sentence pursuant to paragraph (1) or (2), shall suspend execution  
39 of a concluding portion of the term for a period selected at the  
40 court’s discretion.

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

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

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

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

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