

Introduced by Senator Yee

(Principal coauthors: Senators Steinberg and Vargas)

(Coauthors: Assembly Members Fuentes and Bonnie Lowenthal)

December 6, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

SB 9, as introduced, Yee. Sentencing.

Existing law provides that the Secretary of the Department of Corrections and Rehabilitation or the Board of Parole Hearings, or both, may, for specified reasons, recommend to the court that a prisoner's sentence be recalled, and that a court may recall a prisoner's sentence.

This bill would authorize a prisoner who was under 18 years of age at the time of committing an offense for which the prisoner was sentenced to life without parole to submit a petition for recall and resentencing to the sentencing court, and to the prosecuting agency, as specified. The bill would establish certain criteria, at least one of which shall be asserted in the petition, to be considered when a court decides whether to conduct a hearing on the petition for recall and resentencing and additional criteria to be considered by the court when deciding whether to grant the petition. The bill would require the court to hold a hearing if the court finds that the statements in the defendant's petition are true, as specified. The bill would apply retroactively, as specified.

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

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

1 SECTION 1. Section 1170 of the Penal Code, as amended by
2 Section 1 of Chapter 416 of the Statutes of 2008, is amended to
3 read:

4 1170. (a) (1) The Legislature finds and declares that the
5 purpose of imprisonment for crime is punishment. This purpose
6 is best served by terms proportionate to the seriousness of the
7 offense with provision for uniformity in the sentences of offenders
8 committing the same offense under similar circumstances. The
9 Legislature further finds and declares that the elimination of
10 disparity and the provision of uniformity of sentences can best be
11 achieved by determinate sentences fixed by statute in proportion
12 to the seriousness of the offense as determined by the Legislature
13 to be imposed by the court with specified discretion.

14 (2) Notwithstanding paragraph (1), the Legislature further finds
15 and declares that programs should be available for inmates,
16 including, but not limited to, educational programs, that are
17 designed to prepare nonviolent felony offenders for successful
18 reentry into the community. The Legislature encourages the
19 development of policies and programs designed to educate and
20 rehabilitate nonviolent felony offenders. In implementing this
21 section, the Department of Corrections and Rehabilitation is
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 of any specification of three time periods, the
29 court shall sentence the defendant to one of the terms of
30 imprisonment specified unless the convicted person is given any
31 other disposition provided by law, including a fine, jail, probation,
32 or the suspension of imposition or execution of sentence or is
33 sentenced pursuant to subdivision (b) of Section 1168 because he
34 or she had committed his or her crime prior to July 1, 1977. In
35 sentencing the convicted person, the court shall apply the
36 sentencing rules of the Judicial Council. The court, unless it
37 determines that there are circumstances in mitigation of the
38 punishment prescribed, shall also impose any other term that it is

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

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

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

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

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

16 (e) (1) *When a defendant who was under 18 years of age at the*
17 *time of the commission of the offense for which the defendant was*
18 *sentenced to imprisonment for life without the possibility of parole*
19 *has served at least 10 years of that sentence, the defendant may*
20 *submit to the sentencing court a petition for recall and*
21 *resentencing, provided that defendants who have served 10 years*
22 *but not more than 15 years as of January 1, 2012, shall not be*
23 *permitted to submit a petition for recall and resentencing pursuant*
24 *to this subdivision until they have served 15 years. Defendants*
25 *who have served 15 or more years but less than 25 years as of*
26 *January 1, 2012, shall be permitted to submit a petition for recall*
27 *and resentencing as follows:*

28 (A) *Those defendants who entered custody prior to July 1, 1993,*
29 *may submit a petition in 2012.*

30 (B) *Those defendants who entered custody on or after July 1,*
31 *1993, but prior to January 1, 1994, may submit a petition in 2013.*

32 (C) *Those defendants who entered custody on or after January*
33 *1, 1994, but prior to July 1, 1994, may submit a petition in 2014.*

34 (D) *Those defendants who entered custody on or after July 1,*
35 *1994, but prior to January 1, 1996, may submit a petition in 2015.*

36 (2) *The defendant shall file the original petition with the*
37 *sentencing court. A copy of the petition shall be served on the*
38 *agency that prosecuted the case. The petition shall include the*
39 *defendant's statement that he or she was under 18 years of age at*

1 *the time of the crime, was sentenced to life in prison without the*
2 *possibility of parole, and that one of the following is true:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (8) *If the sentence is not recalled, the defendant may submit*
38 *another petition for recall and resentencing to the sentencing court*
39 *when the defendant has been committed to the custody of the*
40 *department for at least 15 years. If recall and resentencing is not*

1 *granted under that petition, the defendant may file another petition*
2 *after having served 20 years. If recall and resentencing is not*
3 *granted under that petition, the defendant may file another petition*
4 *after having served 24 years. The final petition may be submitted,*
5 *and the response to that petition shall be determined, during the*
6 *25th year of the defendant's sentence.*

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

12 *(10) This subdivision shall have retroactive application.*

13 ~~(e)~~

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

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

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

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

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

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

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

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

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

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

1 the request or making a recommendation to the court. This action
2 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

26 ~~(f)~~

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

30 ~~(g)~~

31 (h) A sentence to state prison for a determinate term for which
32 only one term is specified, is a sentence to state prison under this
33 section.

34 ~~(h)~~

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

38 SEC. 2. Section 1170 of the Penal Code, as amended by Section
39 2 of Chapter 416 of the Statutes of 2008, is amended to read:

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

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

23 (3) In any case in which the punishment prescribed by statute
24 for a person convicted of a public offense is a term of imprisonment
25 in the state prison of any specification of three time periods, the
26 court shall sentence the defendant to one of the terms of
27 imprisonment specified unless the convicted person is given any
28 other disposition provided by law, including a fine, jail, probation,
29 or the suspension of imposition or execution of sentence or is
30 sentenced pursuant to subdivision (b) of Section 1168 because he
31 or she had committed his or her crime prior to July 1, 1977. In
32 sentencing the convicted person, the court shall apply the
33 sentencing rules of the Judicial Council. The court, unless it
34 determines that there are circumstances in mitigation of the
35 punishment prescribed, shall also impose any other term that it is
36 required by law to impose as an additional term. Nothing in this
37 article shall affect any provision of law that imposes the death
38 penalty, that authorizes or restricts the granting of probation or
39 suspending the execution or imposition of sentence, or expressly
40 provides for imprisonment in the state prison for life, *except as*

1 *provided in subdivision (e)*. In any case in which the amount of
2 preimprisonment credit under Section 2900.5 or any other provision
3 of law is equal to or exceeds any sentence imposed pursuant to
4 this chapter, the entire sentence shall be deemed to have been
5 served and the defendant shall not be actually delivered to the
6 custody of the secretary. The court shall advise the defendant that
7 he or she shall serve a period of parole and order the defendant to
8 report to the parole office closest to the defendant's last legal
9 residence, unless the in-custody credits equal the total sentence,
10 including both confinement time and the period of parole. The
11 sentence shall be deemed a separate prior prison term under Section
12 667.5, and a copy of the judgment and other necessary
13 documentation shall be forwarded to the secretary.

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

35 (c) The court shall state the reasons for its sentence choice on
36 the record at the time of sentencing. The court shall also inform
37 the defendant that as part of the sentence after expiration of the
38 term he or she may be on parole for a period as provided in Section
39 3000.

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

14 (e) (1) *When a defendant who was under 18 years of age at the*
15 *time of the commission of the offense for which the defendant was*
16 *sentenced to imprisonment for life without the possibility of parole*
17 *has served at least 10 years of that sentence, the defendant may*
18 *submit to the sentencing court a petition for recall and*
19 *resentencing, provided that defendants who have served 10 or*
20 *more years as of January 1, 2012, shall not be permitted to submit*
21 *a petition for recall and resentencing pursuant to this subdivision*
22 *until they have served 15 years. Defendants who have served 15*
23 *or more years but less than 25 years as of January 1, 2012, shall*
24 *be permitted to submit a petition for recall and resentencing as*
25 *follows:*

26 (A) *Those defendants who entered custody prior to July 1, 1993,*
27 *may submit a petition in 2012.*

28 (B) *Those defendants who entered custody on or after July 1,*
29 *1993, but prior to January 1, 1994, may submit a petition in 2013.*

30 (C) *Those defendants who entered custody on or after January*
31 *1, 1994, but prior to July 1, 1994, may submit a petition in 2014.*

32 (D) *Those defendants who entered custody on or after July 1,*
33 *1994, but prior to January 1, 1996, may submit a petition in 2015.*

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

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

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

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

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

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

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

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

32 (6) *The factors that the court may consider when determining*
33 *whether to recall and resentence include, but are not limited to,*
34 *the following:*

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

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

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

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

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

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

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

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

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

33 (8) *If the sentence is not recalled, the defendant may submit*
34 *another petition for recall and resentencing to the sentencing court*
35 *when the defendant has been committed to the custody of the*
36 *department for at least 15 years. If recall and resentencing is not*
37 *granted under that petition, the defendant may file another petition*
38 *after having served 20 years. If recall and resentencing is not*
39 *granted under that petition, the defendant may file another petition*
40 *after having served 24 years. The final petition may be submitted,*

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

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

8 *(10) This subdivision shall have retroactive application.*

9 (e)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 ~~(f)~~

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

24 ~~(g)~~

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

28 ~~(h)~~

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