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AB-124 Criminal procedure. (2021-2022)

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Assembly Bill No. 124

CHAPTER 695

An act to amend Sections 236.23 and 1170 of, and to add Sections 236.15, 236.24, and 1016.7 to, the Penal Code, relating to criminal procedure.

[Approved by Governor October 08, 2021. Filed with Secretary of State October 08, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 124, Kamlager. Criminal procedure.

(1) Existing law allows a person who was arrested or convicted of a nonviolent offense while they were a victim of human trafficking to petition the court, under penalty of perjury, for vacatur relief. Existing law requires, to receive that relief, that the person establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of human trafficking.

This bill would create similar relief for a person who was arrested or convicted of an offense that was the direct result of being a victim of intimate partner violence or sexual violence. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

Existing law creates an affirmative defense against a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and when the person had reasonable fear of harm. Existing law prohibits this defense from being used with respect to a serious or violent felony, as defined, or a charge of human trafficking.

This bill would allow that defense to be used with respect to a serious felony or a charge of human trafficking. The bill would additionally create a defense against a charge of a crime that the person was coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm.

(2) Existing law specifies the pleas that may be made to an indictment, information, or complaint charging a misdemeanor or infraction, including the pleas of guilty, not guilty, or nolo contendere. Existing law defines "plea bargaining" as any bargaining, negotiation, or discussion between a criminal defendant, or their counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

This bill would require the prosecutor, during plea negotiations, to consider in support of a mitigated sentence whether the person has experienced psychological, physical, or childhood trauma, was a youth, as defined, at the time of the commission of the offense, or was a victim of intimate partner violence or human trafficking.

(3) Existing law, after January 1, 2022, requires the court, when a judgment of imprisonment is imposed and specifies 3 possible terms, to impose the middle term unless there are circumstances in aggravation or mitigation of the crime.

This bill would require the court to impose the lower term if the person has experienced psychological, physical, or childhood trauma, was a youth, as defined, at the time of the commission of the offense, or was a victim of intimate partner violence or human trafficking, unless the aggravating circumstances outweigh the mitigating circumstances that the imposition of the lower term would be contrary to the interests of justice.

Existing law authorizes a court, within 120 days after sentencing the defendant or at any time upon a recommendation from specified correctional entities, to recall an inmate's sentence and resentence that inmate to a lesser sentence.

This bill would require the court, when resentencing, to consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense.

(4) This bill would incorporate additional changes to Section 1170 of the Penal Code proposed by AB 1540 and SB 567 to be operative only if this bill, AB 1540, and SB 567 are enacted and this bill is enacted last.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 236.15 is added to the Penal Code, to read:

236.15. (a) If a person was arrested for or convicted of any nonviolent offense committed while the person was a victim of intimate partner violence or sexual violence, the person may petition the court for vacatur relief of their convictions and arrests under this section. The petitioner shall establish, by clear and convincing evidence, that the arrest or conviction was the direct result of being a victim of intimate partner violence or sexual violence.

(b) The petition for relief shall be submitted under penalty of perjury and shall describe all of the available grounds and evidence that the petitioner was a victim of intimate partner violence or sexual violence and the arrest or conviction of a nonviolent offense was the direct result of being a victim of intimate partner violence or sexual violence.

(c) The petition for relief and supporting documentation shall be served on the state or local prosecutorial agency that obtained the conviction for which vacatur is sought or with jurisdiction over charging decisions with regard to the arrest. The state or local prosecutorial agency shall have 45 days from the date of receipt of service to respond to the petition for relief.

(d) If opposition to the petition is not filed by the applicable state or local prosecutorial agency, the court shall deem the petition unopposed and may grant the petition.

(e) The court may, with the agreement of the petitioner and all of the involved state or local prosecutorial agencies, consolidate into one hearing a petition with multiple convictions from different jurisdictions.

(f) If the petition is opposed or if the court otherwise deems it necessary, the court shall schedule a hearing on the petition. The hearing may consist of the following:

(1) Testimony by the petitioner, which may be required in support of the petition.

(2) Evidence and supporting documentation in support of the petition.

(3) Opposition evidence presented by any of the involved state or local prosecutorial agencies that obtained the conviction.

(g) After considering the totality of the evidence presented, the court may vacate the conviction and expunge the arrests and issue an order if it finds all of the following:

(1) That the petitioner was a victim of intimate partner violence or sexual violence at the time the nonviolent offense was committed.

(2) The commission of the crime was a direct result of being a victim of intimate partner violence or sexual violence.

(3) The victim is engaged in a good faith effort to distance themselves from the perpetrator of the harm.

(4) It is in the best interest of the petitioner and in the interests of justice.

(h) In issuing an order of vacatur for the convictions, an order shall do the following:

(1) Set forth a finding that the petitioner was a victim of intimate partner violence or sexual violence when they committed the offense.

(2) Set aside the verdict of guilty or the adjudication and dismiss the accusation or information against the petitioner.

(3) Notify the Department of Justice that the petitioner was a victim of intimate partner violence or sexual violence when they committed the crime and of the relief that has been ordered.

(i) Notwithstanding this section, a petitioner shall not be relieved of any financial restitution order that directly benefits the victim of a nonviolent offense, unless it has already been paid.

(j) A person who was arrested as, or found to be, a person described in Section 602 of the Welfare and Institutions Code because they committed a nonviolent offense while they were a victim of intimate partner violence or sexual violence, may petition the court for relief under this section. If the petitioner establishes that the arrest or adjudication was the direct result of being a victim of intimate partner violence or sexual violence the petitioner is entitled to a rebuttable presumption that the requirements for relief have been met.

(k) If the court issues an order as described in subdivision (a) or (j), the court shall also order the law enforcement agency having jurisdiction over the offense, the Department of Justice, and any law enforcement agency that arrested the petitioner or participated in the arrest of the petitioner to seal their records of the arrest and the court order to seal and destroy the records within three years from the date of the arrest, or within one year after the court order is granted, whichever occurs later, and thereafter to destroy their records of the arrest and the court order to seal and destroy those records. The court shall provide the petitioner a copy of any court order concerning the destruction of the arrest records.

(l) A petition pursuant to this section shall be made and heard within a reasonable time after the person has ceased to be a victim of intimate partner violence or sexual violence, or within a reasonable time after the petitioner has sought services for being a victim of intimate partner violence or sexual violence, whichever occurs later, subject to reasonable concerns for the safety of the petitioner, family members of the petitioner, or other victims of intimate partner violence or sexual violence who may be jeopardized by the bringing of the application or for other reasons consistent with the purposes of this section.

(m) For the purposes of this section, official documentation of a petitioner's status as a victim of intimate partner violence or sexual violence may be introduced as evidence that their participation in the offense was the result of their status as a victim of intimate partner violence or sexual violence. For the purposes of this subdivision, "official documentation" means any documentation issued by a federal, state, or local agency that tends to show the petitioner's status as a victim of intimate partner violence or sexual violence. Official documentation shall not be required for the issuance of an order described in subdivision (a).

(n) A petitioner, or their attorney, may be excused from appearing in person at a hearing for relief pursuant to this section only if the court finds a compelling reason why the petitioner cannot attend the hearing, in which case the petitioner may appear telephonically, via videoconference, or by other electronic means established by the court.

(o) Notwithstanding any other law, a petitioner who has obtained an order pursuant to this section may lawfully deny or refuse to acknowledge an arrest, conviction, or adjudication that is set aside pursuant to the order.

(p) Notwithstanding any other law, the records of the arrest, conviction, or adjudication shall not be distributed to any state licensing board.

(q) The record of a proceeding related to a petition pursuant to this section that is accessible by the public shall not disclose the petitioner's full name.

(r) A court that grants relief pursuant to this section may take additional action as appropriate under the circumstances to carry out the purposes of this section.

(s) If the court denies the application because the evidence is insufficient to establish grounds for vacatur, the denial may be without prejudice. The court may state the reasons for its denial in writing or on the record that is memorialized by transcription, audio tape, or video tape, and if those reasons are based on curable deficiencies in the application, allow the applicant a reasonable time period to cure the deficiencies upon which the court based the denial.

(t) For the purposes of this section, the following terms apply:

(1) "Nonviolent offense" means any offense not listed in subdivision (c) of Section 667.5.

(2) "Vacate" means that the arrest and any adjudications or convictions suffered by the petitioner are deemed not to have occurred and that all records in the case are sealed and destroyed pursuant to this section. The court shall provide the petitioner with a copy of the orders described in subdivisions (a), (j), and (k), as applicable, and inform the petitioner that they may thereafter state that they were not arrested for the charge, or adjudicated or convicted of the charge, that was vacated.

SEC. 2. Section 236.23 of the Penal Code is amended to read:

236.23. (a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a human trafficking victim at the time of the offense and had a reasonable fear of harm. This defense does not apply to a violent felony, as defined in subdivision (c) of Section 667.5.

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

(c) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of human trafficking at the time of the offense, including identification of a victim of human trafficking by a peace officer pursuant to Section 236.2 and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section. Information contained in governmental agency reports, which is relevant to the identification of a victim of human trafficking by a peace officer pursuant to Section 236.2, may be presented pursuant to this subdivision even if a peace officer did not make an identification pursuant to Section 236.2.

(d) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

(1) (A) The court shall order that all records in the case be sealed pursuant to Section 851.86.

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3) (A) The person may in all circumstances state that they have never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or their failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to Section 602 of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a human trafficking victim, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in Section 786 of the Welfare and Institutions Code.

SEC. 3. Section 236.24 is added to the Penal Code, to read:

236.24. (a) In addition to any other affirmative defense, it is a defense to a charge of a crime that the person was coerced to commit the offense as a direct result of being a victim of intimate partner violence or sexual violence at the time of the offense and had a reasonable fear of harm. This defense does not apply to a violent felony, as defined in subdivision (c) of Section 667.5.

(b) A defendant asserting the affirmative defense specified in subdivision (a) has the burden of establishing the affirmative defense by a preponderance of the evidence.

(c) Certified records of a federal, state, tribal, or local court or governmental agency documenting the person's status as a victim of intimate partner violence or sexual violence at the time of the offense, including identification of a victim of intimate partner violence or sexual violence by a peace officer and certified records of approval notices or enforcement certifications generated from federal immigration proceedings, may be presented to establish an affirmative defense pursuant to this section. Information contained in governmental agency reports, which is relevant to the identification of a victim of intimate partner violence or sexual violence, may be presented pursuant to this subdivision even if the defendant was not then identified as a victim of intimate partner violence or sexual violence.

(d) The affirmative defense may be asserted at any time before the entry of a plea of guilty or nolo contendere or admission to the truth of the charges and before the conclusion of any trial for the offense. If asserted before the preliminary hearing held in a case, the affirmative defense shall, upon request by the defendant, be determined at the preliminary hearing.

(e) If the defendant prevails on the affirmative defense provided under subdivision (a), the defendant is entitled to all of the following relief:

(1) (A) The court shall order that all records in the case be sealed pursuant to Section 851.86.

(B) Records that have been sealed pursuant to this paragraph may be accessed, inspected, or utilized by law enforcement for subsequent investigatory purposes involving persons other than the defendant.

(2) The person shall be released from all penalties and disabilities resulting from the charge, and all actions and proceedings by law enforcement personnel, courts, or other government employees that led to the charge shall be deemed not to have occurred.

(3) (A) The person may in all circumstances state that they have never been arrested for, or charged with, the crime that is the subject of the charge or conviction, including without limitation in response to questions on employment, housing, financial aid, or loan applications.

(B) The person may not be denied rights or benefits, including, without limitation, employment, housing, financial aid, welfare, or a loan or other financial accommodation, based on the arrest or charge or their failure or refusal to disclose the existence of or information concerning those events.

(C) The person may not be thereafter charged or convicted of perjury or otherwise of giving a false statement by reason of having failed to disclose or acknowledge the existence of the charge, or any arrest, indictment, trial, or other proceedings related thereto.

(f) If, in a proceeding pursuant to Section 602 of the Welfare and Institutions Code, the juvenile court finds that the offense on which the proceeding is based was committed as a direct result of the minor being a victim of intimate partner violence or sexual violence, and the affirmative defense established in subdivision (a) is established by a preponderance of the evidence, the court shall dismiss the proceeding and order the relief prescribed in Section 786 of the Welfare and Institutions Code.

SEC. 4. Section 1016.7 is added to the Penal Code, to read:

1016.7. (a) In the interest of justice, and in order to reach a just resolution during plea negotiations, the prosecutor shall consider during plea negotiations, among other factors, the following circumstances as factors in support of a mitigated sentence if any of the following were a contributing factor in the commission of the alleged offense:

(1) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(2) The person is a youth, or was a youth at the time of the commission of the offense.

(3) Prior to the instant offense, or during the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(b) A "youth" for purposes of this section includes any person under 26 years of age on the date the offense was committed.

SEC. 5. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are

proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

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

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(2) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(3) Paragraph (2) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (2) present.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court shall also inform the defendant that as part of the sentence after expiration of the term they may be on parole for a period as provided in Section

3000 or 3000.08 or postrelease community supervision for a period as provided in Section 3451.

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. The court resentencing under this paragraph may reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. Credit shall be given for time served.

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

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

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

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

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

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

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

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

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

- (i) The defendant was convicted pursuant to felony murder or aiding and abetting murder provisions of law.
- (ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.
- (iii) The defendant committed the offense with at least one adult codefendant.
- (iv) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.
- (v) The defendant suffers from cognitive limitations due to mental illness, developmental disabilities, or other factors that did not constitute a defense, but influenced the defendant's involvement in the offense.
- (vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.
- (vii) The defendant has maintained family ties or connections with others through letter writing, calls, or visits, or has eliminated contact with individuals outside of prison who are currently involved with crime.
- (viii) The defendant has had no disciplinary actions for violent activities in the last five years in which the defendant was determined to be the aggressor.

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

(H) Notwithstanding subparagraph (G), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

- (i) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.
- (ii) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.
- (iii) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(I) Subparagraph (H) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in subparagraph (H) are present.

(J) If the sentence is not recalled or the defendant is resentedenced to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentedenced to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

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

(L) This subdivision shall have retroactive application.

(M) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be

recalled.

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

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

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

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

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

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

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

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

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

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

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

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

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

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

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

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

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

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

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in *People v. Vega* (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 5.1. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of

Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

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

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph (2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (6) present.

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

(d) (1) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison or a county jail pursuant to subdivision (h) and has been committed to the custody of the secretary or the county correctional administrator, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings in the case of state prison inmates, the county correctional administrator in the case of county jail inmates, or the district attorney of the county in which the defendant was sentenced, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if they had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. The court resentencing under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. The court resentencing under this paragraph may reduce a defendant's term of imprisonment and modify the judgment, including a judgment entered after a plea agreement, if it is in the interest of justice. The court may consider postconviction factors, including, but not limited to, the inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence, and evidence that reflects that circumstances have changed since the inmate's original sentencing so that the inmate's continued incarceration is no longer in the interest of justice. The court shall consider if the defendant has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence, if the defendant was a victim of intimate partner violence or human trafficking prior to or at the time of the commission of the offense, or if the defendant is a youth or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense, and whether those circumstances were a contributing factor in the commission of the offense. Credit shall be given for time served.

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

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

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

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

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

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

(iv) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

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

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

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

(ii) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

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

(iv) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

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

(vi) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

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

(H) Notwithstanding subparagraph (G), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(i) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(ii) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(iii) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(I) Subparagraph (H) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in subparagraph (H) are present.

(J) If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

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

(L) This subdivision shall have retroactive application.

(M) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

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

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

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

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

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

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

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

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

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

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

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

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

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

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

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

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

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

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

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in *People v. Vega* (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 5.2. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(2) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(3) Paragraph (2) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (2) present.

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

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

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

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

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

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

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

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

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

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

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

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

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

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

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

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

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

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

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

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

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

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

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

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

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

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

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

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

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

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

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

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

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

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

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

supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. Any time period which is suspended because a person has absconded shall not be credited toward the period of supervision.

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

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

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

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in *People v. Vega* (2014) 222 Cal.App.4th 1374, that if an enhancement specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 5.3. Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, is amended to read:

1170. (a) (1) The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice. When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences of offenders committing the same offense under similar circumstances.

(2) The Legislature further finds and declares that programs should be available for inmates, including, but not limited to, educational, rehabilitative, and restorative justice programs that are designed to promote behavior change and to prepare all eligible offenders for successful reentry into the community. The Legislature encourages the development of policies and programs designed to educate and rehabilitate all eligible offenders. In implementing this section, the Department of Corrections and Rehabilitation is encouraged to allow all eligible inmates the opportunity to enroll in programs that promote successful return to the community. The Department of Corrections and Rehabilitation is directed to establish a mission statement consistent with these principles.

(3) In any case in which the sentence prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison, or a term pursuant to subdivision (h), of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because they had committed their crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the sentence prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, except for a remaining portion of mandatory supervision imposed pursuant to subparagraph (B) of paragraph (5) of subdivision (h), the entire sentence shall be deemed to have been served, except for the remaining period of mandatory supervision, and the defendant shall not be actually delivered to the custody of the secretary or the county correctional administrator. The court shall advise the defendant that they shall serve an applicable period of parole, postrelease community supervision, or mandatory supervision and order the defendant to report to the parole or probation office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole, postrelease community supervision, or mandatory supervision. The sentence shall be deemed a separate prior prison term or a sentence of imprisonment in a county jail under subdivision (h) for purposes of Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) (1) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall, in its sound discretion, order imposition of a sentence not to exceed the middle term, except as otherwise provided in paragraph (2).

(2) The court may impose a sentence exceeding the middle term only when there are circumstances in aggravation of the crime that justify the imposition of a term of imprisonment exceeding the middle term, and the facts underlying those circumstances have been stipulated to by the defendant, or have been found true beyond a reasonable doubt at trial by the jury or by the judge in a court trial. Except where evidence supporting an aggravating circumstance is admissible to prove or defend against the charged offense or enhancement at trial, or it is otherwise authorized by law, upon request of a defendant, trial on the circumstances in aggravation alleged in the indictment or information shall be bifurcated from the trial of charges and enhancements. The jury shall not be informed of the bifurcated allegations until there has been a conviction of a felony offense.

(3) Notwithstanding paragraphs (1) and (2), the court may consider the defendant's prior convictions in determining sentencing based on a certified record of conviction without submitting the prior convictions to a jury. This paragraph does not apply to enhancements imposed on prior convictions.

(4) At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. The court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing.

(5) The court shall set forth on the record the facts and reasons for choosing the sentence imposed. The court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(6) Notwithstanding paragraph (1), and unless the court finds that the aggravating circumstances outweigh the mitigating circumstances that imposition of the lower term would be contrary to the interests of justice, the court shall order imposition of the lower term if any of the following was a contributing factor in the commission of the offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(7) Paragraph (6) does not preclude the court from imposing the lower term even if there is no evidence of those circumstances listed in paragraph (6) present.

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

(d) (1) (A) When a defendant who was under 18 years of age at the time of the commission of the offense for which the defendant was sentenced to imprisonment for life without the possibility of parole has been incarcerated for at least 15 years, the defendant may submit to the sentencing court a petition for recall and resentencing.

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

(2) The defendant shall file the original petition with the sentencing court. A copy of the petition shall be served on the agency that prosecuted the case. The petition shall include the defendant's statement that the defendant was under 18 years of age at the time of the crime and was sentenced to life in prison without the possibility of parole, the defendant's statement describing their remorse and work towards rehabilitation, and the defendant's statement that one of the following is true:

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

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

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

(D) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

(5) If the court finds by a preponderance of the evidence that one or more of the statements specified in subparagraphs (A) to (D), inclusive, of paragraph (2) is true, the court shall recall the sentence and commitment previously ordered and hold a hearing to resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided that the new sentence, if any, is not greater than the initial sentence. Victims, or victim family members if the victim is deceased, shall retain the rights to participate in the hearing.

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

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

(B) The defendant does not have juvenile felony adjudications for assault or other felony crimes with a significant potential for personal harm to victims prior to the offense for which the defendant was sentenced to life without the possibility of parole.

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

(D) Prior to the offense for which the defendant was sentenced to life without the possibility of parole, the defendant had insufficient adult support or supervision and had suffered from psychological or physical trauma, or significant stress.

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

(F) The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing themselves of rehabilitative, educational, or vocational programs, if those programs have been available at their classification level and facility, using self-study for self-improvement, or showing evidence of remorse.

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

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

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

(8) Notwithstanding paragraph (7), the court may also resentence the defendant to a term that is less than the initial sentence if any of the following were a contributing factor in the commission of the alleged offense:

(A) The person has experienced psychological, physical, or childhood trauma, including, but not limited to, abuse, neglect, exploitation, or sexual violence.

(B) The person is a youth, or was a youth as defined under subdivision (b) of Section 1016.7 at the time of the commission of the offense.

(C) Prior to the instant offense, or at the time of the commission of the offense, the person is or was a victim of intimate partner violence or human trafficking.

(9) Paragraph (8) does not prohibit the court from resentencing the defendant to a term that is less than the initial sentence even if none of the circumstances listed in paragraph (8) are present.

(10) If the sentence is not recalled or the defendant is resented to imprisonment for life without the possibility of parole, the defendant may submit another petition for recall and resentencing to the sentencing court when the defendant has been

committed to the custody of the department for at least 20 years. If the sentence is not recalled or the defendant is resentence to imprisonment for life without the possibility of parole under that petition, the defendant may file another petition after having served 24 years. The final petition may be submitted, and the response to that petition shall be determined, during the 25th year of the defendant's sentence.

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

(12) This subdivision shall have retroactive application.

(13) Nothing in this paragraph is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary determines that a prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled.

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

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within 12 months, as determined by a physician employed by the department.

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

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

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

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

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

(6) Notwithstanding any other provisions of this section, the prisoner or their family member or designee may independently request consideration for recall and resentencing by contacting the chief medical officer at the prison or the secretary. Upon receipt of the request, the chief medical officer and the warden or the warden's representative shall follow the procedures described in paragraph (4). If the secretary determines that the prisoner satisfies the criteria set forth in paragraph (2), the secretary may recommend to the court that the prisoner's sentence be recalled. The secretary shall submit a recommendation for release within 30 days.

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

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

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

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who is given a prognosis of 12 months or less to live is eligible for recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

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

(12) This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

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

(6) When the court is imposing a judgment pursuant to this subdivision concurrent or consecutive to a judgment or judgments previously imposed pursuant to this subdivision in another county or counties, the court rendering the second or other subsequent judgment shall determine the county or counties of incarceration and supervision of the defendant.

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

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

(9) Notwithstanding the separate punishment for any enhancement, any enhancement shall be punishable in county jail or state prison as required by the underlying offense and not as would be required by the enhancement. The intent of the Legislature in enacting this paragraph is to abrogate the holding in *People v. Vega* (2014) 222 Cal.App.4th 1374, that if an enhancement

specifies service of sentence in state prison, the entire sentence is served in state prison, even if the punishment for the underlying offense is a term of imprisonment in the county jail.

SEC. 6. (a) Section 5.1 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by both this bill and Senate Bill 567. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, (3) Assembly Bill 1540 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 567 in which case Sections 5, 5.2, and 5.3 of this bill shall not become operative.

(b) Section 5.2 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by both this bill and Assembly Bill 1540. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, and (3) Senate Bill 567 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 1540, in which case Sections 5, 5.1, and 5.3 of this bill shall not become operative.

(c) Section 5.3 of this bill incorporates amendments to Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, proposed by this bill, Senate Bill 567, and Assembly Bill 1540. That section of this bill shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2022, (2) all three bills amend Section 1170 of the Penal Code, as amended by Section 15 of Chapter 29 of the Statutes of 2020, and (3) this bill is enacted after Senate Bill 567 and Assembly Bill 1540, in which case Sections 5, 5.1, and 5.2 of this bill shall not become operative.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.