

ASSEMBLY BILL

No. 2263

Introduced by Assembly Member Yamada

February 18, 2010

An act to amend and repeal Sections 186.22, 186.33, 1170, 1170.1, 1170.3, 12021.5, 12022.2, and 12022.4 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2263, as introduced, Yamada. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing generally specify that the appropriate term rests within the sound discretion of the court. Existing law repeals the provision giving the court this discretionary authority on January 1, 2011, and on that date, makes operative alternate provisions that require the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

This bill would continue in existence indefinitely the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice.

This bill would amend Proposition 21, an initiative statute adopted by the voters at the March 7, 2000, Statewide Primary Election that

provides that its provisions may be amended by the Legislature by a 2/3 vote of the membership of each house, and therefore requires a 2/3 vote.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended
2 by Section 1 of Chapter 171 of the Statutes of 2009, is amended
3 to read:

4 186.22. (a) Any person who actively participates in any
5 criminal street gang with knowledge that its members engage in
6 or have engaged in a pattern of criminal gang activity, and who
7 willfully promotes, furthers, or assists in any felonious criminal
8 conduct by members of that gang, shall be punished by
9 imprisonment in a county jail for a period not to exceed one year,
10 or by imprisonment in the state prison for 16 months, or two or
11 three years.

12 (b) (1) Except as provided in paragraphs (4) and (5), any person
13 who is convicted of a felony committed for the benefit of, at the
14 direction of, or in association with any criminal street gang, with
15 the specific intent to promote, further, or assist in any criminal
16 conduct by gang members, shall, upon conviction of that felony,
17 in addition and consecutive to the punishment prescribed for the
18 felony or attempted felony of which he or she has been convicted,
19 be punished as follows:

20 (A) Except as provided in subparagraphs (B) and (C), the person
21 shall be punished by an additional term of two, three, or four years
22 at the court’s discretion.

23 (B) If the felony is a serious felony, as defined in subdivision
24 (c) of Section 1192.7, the person shall be punished by an additional
25 term of five years.

26 (C) If the felony is a violent felony, as defined in subdivision
27 (c) of Section 667.5, the person shall be punished by an additional
28 term of 10 years.

29 (2) If the underlying felony described in paragraph (1) is
30 committed on the grounds of, or within 1,000 feet of, a public or
31 private elementary, vocational, junior high, or high school, during
32 hours in which the facility is open for classes or school-related
33 programs or when minors are using the facility, that fact shall be

1 a circumstance in aggravation of the crime in imposing a term
2 under paragraph (1).

3 (3) The court shall select the sentence enhancement which, in
4 the court's discretion, best serves the interests of justice and shall
5 state the reasons for its choice on the record at the time of the
6 sentencing in accordance with the provisions of subdivision (d) of
7 Section 1170.1.

8 (4) Any person who is convicted of a felony enumerated in this
9 paragraph committed for the benefit of, at the direction of, or in
10 association with any criminal street gang, with the specific intent
11 to promote, further, or assist in any criminal conduct by gang
12 members, shall, upon conviction of that felony, be sentenced to
13 an indeterminate term of life imprisonment with a minimum term
14 of the indeterminate sentence calculated as the greater of:

15 (A) The term determined by the court pursuant to Section 1170
16 for the underlying conviction, including any enhancement
17 applicable under Chapter 4.5 (commencing with Section 1170) of
18 Title 7 of Part 2, or any period prescribed by Section 3046, if the
19 felony is any of the offenses enumerated in subparagraph (B) or
20 (C) of this paragraph.

21 (B) Imprisonment in the state prison for 15 years, if the felony
22 is a home invasion robbery, in violation of subparagraph (A) of
23 paragraph (1) of subdivision (a) of Section 213; carjacking, as
24 defined in Section 215; a felony violation of Section 246; or a
25 violation of Section 12022.55.

26 (C) Imprisonment in the state prison for seven years, if the
27 felony is extortion, as defined in Section 519; or threats to victims
28 and witnesses, as defined in Section 136.1.

29 (5) Except as provided in paragraph (4), any person who violates
30 this subdivision in the commission of a felony punishable by
31 imprisonment in the state prison for life shall not be paroled until
32 a minimum of 15 calendar years have been served.

33 (c) If the court grants probation or suspends the execution of
34 sentence imposed upon the defendant for a violation of subdivision
35 (a), or in cases involving a true finding of the enhancement
36 enumerated in subdivision (b), the court shall require that the
37 defendant serve a minimum of 180 days in a county jail as a
38 condition thereof.

39 (d) Any person who is convicted of a public offense punishable
40 as a felony or a misdemeanor, which is committed for the benefit

1 of, at the direction of or in association with, any criminal street
2 gang with the specific intent to promote, further, or assist in any
3 criminal conduct by gang members, shall be punished by
4 imprisonment in the county jail not to exceed one year, or by
5 imprisonment in the state prison for one, two, or three years,
6 provided that any person sentenced to imprisonment in the county
7 jail shall be imprisoned for a period not to exceed one year, but
8 not less than 180 days, and shall not be eligible for release upon
9 completion of sentence, parole, or any other basis, until he or she
10 has served 180 days. If the court grants probation or suspends the
11 execution of sentence imposed upon the defendant, it shall require
12 as a condition thereof that the defendant serve 180 days in a county
13 jail.

14 (e) As used in this chapter, “pattern of criminal gang activity”
15 means the commission of, attempted commission of, conspiracy
16 to commit, or solicitation of, sustained juvenile petition for, or
17 conviction of two or more of the following offenses, provided at
18 least one of these offenses occurred after the effective date of this
19 chapter and the last of those offenses occurred within three years
20 after a prior offense, and the offenses were committed on separate
21 occasions, or by two or more persons:

22 (1) Assault with a deadly weapon or by means of force likely
23 to produce great bodily injury, as defined in Section 245.

24 (2) Robbery, as defined in Chapter 4 (commencing with Section
25 211) of Title 8 of Part 1.

26 (3) Unlawful homicide or manslaughter, as defined in Chapter
27 1 (commencing with Section 187) of Title 8 of Part 1.

28 (4) The sale, possession for sale, transportation, manufacture,
29 offer for sale, or offer to manufacture controlled substances as
30 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
31 the Health and Safety Code.

32 (5) Shooting at an inhabited dwelling or occupied motor vehicle,
33 as defined in Section 246.

34 (6) Discharging or permitting the discharge of a firearm from
35 a motor vehicle, as defined in subdivisions (a) and (b) of Section
36 12034.

37 (7) Arson, as defined in Chapter 1 (commencing with Section
38 450) of Title 13.

39 (8) The intimidation of witnesses and victims, as defined in
40 Section 136.1.

- 1 (9) Grand theft, as defined in subdivision (a) or (c) of Section
2 487.
- 3 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 4 (11) Burglary, as defined in Section 459.
- 5 (12) Rape, as defined in Section 261.
- 6 (13) Looting, as defined in Section 463.
- 7 (14) Money laundering, as defined in Section 186.10.
- 8 (15) Kidnapping, as defined in Section 207.
- 9 (16) Mayhem, as defined in Section 203.
- 10 (17) Aggravated mayhem, as defined in Section 205.
- 11 (18) Torture, as defined in Section 206.
- 12 (19) Felony extortion, as defined in Sections 518 and 520.
- 13 (20) Felony vandalism, as defined in paragraph (1) of
14 subdivision (b) of Section 594.
- 15 (21) Carjacking, as defined in Section 215.
- 16 (22) The sale, delivery, or transfer of a firearm, as defined in
17 Section 12072.
- 18 (23) Possession of a pistol, revolver, or other firearm capable
19 of being concealed upon the person in violation of paragraph (1)
20 of subdivision (a) of Section 12101.
- 21 (24) Threats to commit crimes resulting in death or great bodily
22 injury, as defined in Section 422.
- 23 (25) Theft and unlawful taking or driving of a vehicle, as defined
24 in Section 10851 of the Vehicle Code.
- 25 (26) Felony theft of an access card or account information, as
26 defined in Section 484e.
- 27 (27) Counterfeiting, designing, using, attempting to use an
28 access card, as defined in Section 484f.
- 29 (28) Felony fraudulent use of an access card or account
30 information, as defined in Section 484g.
- 31 (29) Unlawful use of personal identifying information to obtain
32 credit, goods, services, or medical information, as defined in
33 Section 530.5.
- 34 (30) Wrongfully obtaining Department of Motor Vehicles
35 documentation, as defined in Section 529.7.
- 36 (31) Prohibited possession of a firearm in violation of Section
37 12021.
- 38 (32) Carrying a concealed firearm in violation of Section 12025.
- 39 (33) Carrying a loaded firearm in violation of Section 12031.

1 (f) As used in this chapter, “criminal street gang” means any
2 ongoing organization, association, or group of three or more
3 persons, whether formal or informal, having as one of its primary
4 activities the commission of one or more of the criminal acts
5 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
6 inclusive, of subdivision (e), having a common name or common
7 identifying sign or symbol, and whose members individually or
8 collectively engage in or have engaged in a pattern of criminal
9 gang activity.

10 (g) Notwithstanding any other law, the court may strike the
11 additional punishment for the enhancements provided in this
12 section or refuse to impose the minimum jail sentence for
13 misdemeanors in an unusual case where the interests of justice
14 would best be served, if the court specifies on the record and enters
15 into the minutes the circumstances indicating that the interests of
16 justice would best be served by that disposition.

17 (h) Notwithstanding any other provision of law, for each person
18 committed to the Division of Juvenile Facilities for a conviction
19 pursuant to subdivision (a) or (b) of this section, the offense shall
20 be deemed one for which the state shall pay the rate of 100 percent
21 of the per capita institutional cost of the Division of Juvenile
22 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
23 Code.

24 (i) In order to secure a conviction or sustain a juvenile petition,
25 pursuant to subdivision (a) it is not necessary for the prosecution
26 to prove that the person devotes all, or a substantial part, of his or
27 her time or efforts to the criminal street gang, nor is it necessary
28 to prove that the person is a member of the criminal street gang.
29 Active participation in the criminal street gang is all that is
30 required.

31 (j) A pattern of gang activity may be shown by the commission
32 of one or more of the offenses enumerated in paragraphs (26) to
33 (30), inclusive, of subdivision (e), and the commission of one or
34 more of the offenses enumerated in paragraphs (1) to (25),
35 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern
36 of gang activity cannot be established solely by proof of
37 commission of offenses enumerated in paragraphs (26) to (30),
38 inclusive, of subdivision (e), alone.

1 ~~(k) This section shall remain in effect only until January 1, 2011,~~
2 ~~and as of that date is repealed, unless a later enacted statute, that~~
3 ~~is enacted before January 1, 2011, deletes or extends that date.~~

4 SEC. 2. Section 186.22 of the Penal Code, as added by Section
5 2 of Chapter 171 of the Statutes of 2009, is repealed.

6 ~~186.22. (a) Any person who actively participates in any~~
7 ~~criminal street gang with knowledge that its members engage in~~
8 ~~or have engaged in a pattern of criminal gang activity, and who~~
9 ~~willfully promotes, furthers, or assists in any felonious criminal~~
10 ~~conduct by members of that gang, shall be punished by~~
11 ~~imprisonment in a county jail for a period not to exceed one year,~~
12 ~~or by imprisonment in the state prison for 16 months, or two or~~
13 ~~three years.~~

14 ~~(b) (1) Except as provided in paragraphs (4) and (5), any person~~
15 ~~who is convicted of a felony committed for the benefit of, at the~~
16 ~~direction of, or in association with any criminal street gang, with~~
17 ~~the specific intent to promote, further, or assist in any criminal~~
18 ~~conduct by gang members, shall, upon conviction of that felony,~~
19 ~~in addition and consecutive to the punishment prescribed for the~~
20 ~~felony or attempted felony of which he or she has been convicted,~~
21 ~~be punished as follows:~~

22 ~~(A) Except as provided in subparagraphs (B) and (C), the person~~
23 ~~shall be punished by an additional term of two, three, or four years~~
24 ~~at the court's discretion.~~

25 ~~(B) If the felony is a serious felony, as defined in subdivision~~
26 ~~(e) of Section 1192.7, the person shall be punished by an additional~~
27 ~~term of five years.~~

28 ~~(C) If the felony is a violent felony, as defined in subdivision~~
29 ~~(e) of Section 667.5, the person shall be punished by an additional~~
30 ~~term of 10 years.~~

31 ~~(2) If the underlying felony described in paragraph (1) is~~
32 ~~committed on the grounds of, or within 1,000 feet of, a public or~~
33 ~~private elementary, vocational, junior high, or high school, during~~
34 ~~hours in which the facility is open for classes or school-related~~
35 ~~programs or when minors are using the facility, that fact shall be~~
36 ~~a circumstance in aggravation of the crime in imposing a term~~
37 ~~under paragraph (1).~~

38 ~~(3) The court shall order the imposition of the middle term of~~
39 ~~the sentence enhancement, unless there are circumstances in~~
40 ~~aggravation or mitigation. The court shall state the reasons for its~~

1 choice of sentencing enhancements on the record at the time of
2 the sentencing.

3 ~~(4) Any person who is convicted of a felony enumerated in this~~
4 ~~paragraph committed for the benefit of, at the direction of, or in~~
5 ~~association with any criminal street gang, with the specific intent~~
6 ~~to promote, further, or assist in any criminal conduct by gang~~
7 ~~members, shall, upon conviction of that felony, be sentenced to~~
8 ~~an indeterminate term of life imprisonment with a minimum term~~
9 ~~of the indeterminate sentence calculated as the greater of:~~

10 ~~(A) The term determined by the court pursuant to Section 1170~~
11 ~~for the underlying conviction, including any enhancement~~
12 ~~applicable under Chapter 4.5 (commencing with Section 1170) of~~
13 ~~Title 7 of Part 2, or any period prescribed by Section 3046, if the~~
14 ~~felony is any of the offenses enumerated in subparagraph (B) or~~
15 ~~(C) of this paragraph.~~

16 ~~(B) Imprisonment in the state prison for 15 years, if the felony~~
17 ~~is a home invasion robbery, in violation of subparagraph (A) of~~
18 ~~paragraph (1) of subdivision (a) of Section 213; carjacking, as~~
19 ~~defined in Section 215; a felony violation of Section 246; or a~~
20 ~~violation of Section 12022.55.~~

21 ~~(C) Imprisonment in the state prison for seven years, if the~~
22 ~~felony is extortion, as defined in Section 519; or threats to victims~~
23 ~~and witnesses, as defined in Section 136.1.~~

24 ~~(5) Except as provided in paragraph (4), any person who violates~~
25 ~~this subdivision in the commission of a felony punishable by~~
26 ~~imprisonment in the state prison for life shall not be paroled until~~
27 ~~a minimum of 15 calendar years have been served.~~

28 ~~(e) If the court grants probation or suspends the execution of~~
29 ~~sentence imposed upon the defendant for a violation of subdivision~~
30 ~~(a), or in cases involving a true finding of the enhancement~~
31 ~~enumerated in subdivision (b), the court shall require that the~~
32 ~~defendant serve a minimum of 180 days in a county jail as a~~
33 ~~condition thereof.~~

34 ~~(d) Any person who is convicted of a public offense punishable~~
35 ~~as a felony or a misdemeanor, which is committed for the benefit~~
36 ~~of, at the direction of or in association with, any criminal street~~
37 ~~gang with the specific intent to promote, further, or assist in any~~
38 ~~criminal conduct by gang members, shall be punished by~~
39 ~~imprisonment in the county jail not to exceed one year, or by~~
40 ~~imprisonment in the state prison for one, two, or three years,~~

1 provided that any person sentenced to imprisonment in the county
2 jail shall be imprisoned for a period not to exceed one year, but
3 not less than 180 days, and shall not be eligible for release upon
4 completion of sentence, parole, or any other basis, until he or she
5 has served 180 days. If the court grants probation or suspends the
6 execution of sentence imposed upon the defendant, it shall require
7 as a condition thereof that the defendant serve 180 days in a county
8 jail.

9 (e) ~~As used in this chapter, “pattern of criminal gang activity”~~
10 ~~means the commission of, attempted commission of, conspiracy~~
11 ~~to commit, or solicitation of, sustained juvenile petition for, or~~
12 ~~conviction of two or more of the following offenses, provided at~~
13 ~~least one of these offenses occurred after the effective date of this~~
14 ~~chapter and the last of those offenses occurred within three years~~
15 ~~after a prior offense, and the offenses were committed on separate~~
16 ~~occasions, or by two or more persons:~~

17 (1) ~~Assault with a deadly weapon or by means of force likely~~
18 ~~to produce great bodily injury, as defined in Section 245.~~

19 (2) ~~Robbery, as defined in Chapter 4 (commencing with Section~~
20 ~~211) of Title 8 of Part 1.~~

21 (3) ~~Unlawful homicide or manslaughter, as defined in Chapter~~
22 ~~1 (commencing with Section 187) of Title 8 of Part 1.~~

23 (4) ~~The sale, possession for sale, transportation, manufacture,~~
24 ~~offer for sale, or offer to manufacture controlled substances as~~
25 ~~defined in Sections 11054, 11055, 11056, 11057, and 11058 of~~
26 ~~the Health and Safety Code.~~

27 (5) ~~Shooting at an inhabited dwelling or occupied motor vehicle,~~
28 ~~as defined in Section 246.~~

29 (6) ~~Discharging or permitting the discharge of a firearm from~~
30 ~~a motor vehicle, as defined in subdivisions (a) and (b) of Section~~
31 ~~12034.~~

32 (7) ~~Arson, as defined in Chapter 1 (commencing with Section~~
33 ~~450) of Title 13.~~

34 (8) ~~The intimidation of witnesses and victims, as defined in~~
35 ~~Section 136.1.~~

36 (9) ~~Grand theft, as defined in subdivision (a) or (c) of Section~~
37 ~~487.~~

38 (10) ~~Grand theft of any firearm, vehicle, trailer, or vessel.~~

39 (11) ~~Burglary, as defined in Section 459.~~

40 (12) ~~Rape, as defined in Section 261.~~

- 1 ~~(13) Looting, as defined in Section 463.~~
- 2 ~~(14) Money laundering, as defined in Section 186.10.~~
- 3 ~~(15) Kidnapping, as defined in Section 207.~~
- 4 ~~(16) Mayhem, as defined in Section 203.~~
- 5 ~~(17) Aggravated mayhem, as defined in Section 205.~~
- 6 ~~(18) Torture, as defined in Section 206.~~
- 7 ~~(19) Felony extortion, as defined in Sections 518 and 520.~~
- 8 ~~(20) Felony vandalism, as defined in paragraph (1) of~~
- 9 ~~subdivision (b) of Section 594.~~
- 10 ~~(21) Carjacking, as defined in Section 215.~~
- 11 ~~(22) The sale, delivery, or transfer of a firearm, as defined in~~
- 12 ~~Section 12072.~~
- 13 ~~(23) Possession of a pistol, revolver, or other firearm capable~~
- 14 ~~of being concealed upon the person in violation of paragraph (1)~~
- 15 ~~of subdivision (a) of Section 12101.~~
- 16 ~~(24) Threats to commit crimes resulting in death or great bodily~~
- 17 ~~injury, as defined in Section 422.~~
- 18 ~~(25) Theft and unlawful taking or driving of a vehicle, as defined~~
- 19 ~~in Section 10851 of the Vehicle Code.~~
- 20 ~~(26) Felony theft of an access card or account information, as~~
- 21 ~~defined in Section 484e.~~
- 22 ~~(27) Counterfeiting, designing, using, attempting to use an~~
- 23 ~~access card, as defined in Section 484f.~~
- 24 ~~(28) Felony fraudulent use of an access card or account~~
- 25 ~~information, as defined in Section 484g.~~
- 26 ~~(29) Unlawful use of personal identifying information to obtain~~
- 27 ~~credit, goods, services, or medical information, as defined in~~
- 28 ~~Section 530.5.~~
- 29 ~~(30) Wrongfully obtaining Department of Motor Vehicles~~
- 30 ~~documentation, as defined in Section 529.7.~~
- 31 ~~(31) Prohibited possession of a firearm in violation of Section~~
- 32 ~~12021.~~
- 33 ~~(32) Carrying a concealed firearm in violation of Section 12025.~~
- 34 ~~(33) Carrying a loaded firearm in violation of Section 12031.~~
- 35 ~~(f) As used in this chapter, “criminal street gang” means any~~
- 36 ~~ongoing organization, association, or group of three or more~~
- 37 ~~persons, whether formal or informal, having as one of its primary~~
- 38 ~~activities the commission of one or more of the criminal acts~~
- 39 ~~enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),~~
- 40 ~~inclusive, of subdivision (e), having a common name or common~~

1 identifying sign or symbol, and whose members individually or
2 collectively engage in or have engaged in a pattern of criminal
3 gang activity.

4 (g) Notwithstanding any other law, the court may strike the
5 additional punishment for the enhancements provided in this
6 section or refuse to impose the minimum jail sentence for
7 misdemeanors in an unusual case where the interests of justice
8 would best be served, if the court specifies on the record and enters
9 into the minutes the circumstances indicating that the interests of
10 justice would best be served by that disposition.

11 (h) Notwithstanding any other provision of law, for each person
12 committed to the Division of Juvenile Facilities for a conviction
13 pursuant to subdivision (a) or (b) of this section, the offense shall
14 be deemed one for which the state shall pay the rate of 100 percent
15 of the per capita institutional cost of the Division of Juvenile
16 Facilities, pursuant to Section 912.5 of the Welfare and Institutions
17 Code.

18 (i) In order to secure a conviction or sustain a juvenile petition,
19 pursuant to subdivision (a) it is not necessary for the prosecution
20 to prove that the person devotes all, or a substantial part, of his or
21 her time or efforts to the criminal street gang, nor is it necessary
22 to prove that the person is a member of the criminal street gang.
23 Active participation in the criminal street gang is all that is
24 required.

25 (j) A pattern of gang activity may be shown by the commission
26 of one or more of the offenses enumerated in paragraphs (26) to
27 (30), inclusive, of subdivision (e), and the commission of one or
28 more of the offenses enumerated in paragraphs (1) to (25),
29 inclusive, or (31) to (33), inclusive of subdivision (e). A pattern
30 of gang activity cannot be established solely by proof of
31 commission of offenses enumerated in paragraphs (26) to (30),
32 inclusive, of subdivision (e), alone.

33 (k) This section shall become operative on January 1, 2011.

34 SEC. 3. Section 186.33 of the Penal Code, as amended by
35 Section 3 of Chapter 171 of the Statutes of 2009, is amended to
36 read:

37 186.33. (a) Any person required to register pursuant to Section
38 186.30 who knowingly violates any of its provisions is guilty of
39 a misdemeanor.

1 (b) (1) Any person who knowingly fails to register pursuant to
 2 Section 186.30 and is subsequently convicted of, or any person
 3 for whom a petition is subsequently sustained for a violation of,
 4 any of the offenses specified in Section 186.30, shall be punished
 5 by an additional term of imprisonment in the state prison for 16
 6 months, or 2, or 3 years. The court shall select the sentence
 7 enhancement which, in the court’s discretion, best serves the
 8 interests of justice and shall state the reasons for its choice on the
 9 record at the time of sentencing in accordance with the provisions
 10 of subdivision (d) of Section 1170.1.

11 (2) The existence of any fact bringing a person under this
 12 subdivision shall be alleged in the information, indictment, or
 13 petition, and be either admitted by the defendant or minor in open
 14 court, or found to be true or not true by the trier of fact.

15 ~~(e) This section shall remain in effect only until January 1, 2011,~~
 16 ~~and as of that date is repealed, unless a later enacted statute, that~~
 17 ~~is enacted before January 1, 2011, deletes or extends that date.~~

18 SEC. 4. Section 186.33 of the Penal Code, as added by Section
 19 4 of Chapter 171 of the Statutes of 2009, is repealed.

20 ~~186.33. (a) Any person required to register pursuant to Section~~
 21 ~~186.30 who knowingly violates any of its provisions is guilty of~~
 22 ~~a misdemeanor.~~

23 ~~(b) (1) Any person who knowingly fails to register pursuant to~~
 24 ~~Section 186.30 and is subsequently convicted of, or any person~~
 25 ~~for whom a petition is subsequently sustained for a violation of,~~
 26 ~~any of the offenses specified in Section 186.30, shall be punished~~
 27 ~~by an additional term of imprisonment in the state prison for 16~~
 28 ~~months, or two, or three years. The court shall order imposition~~
 29 ~~of the middle term unless there are circumstances in aggravation~~
 30 ~~or mitigation. The court shall state its reasons for the enhancement~~
 31 ~~choice on the record at the time of sentencing.~~

32 ~~(2) The existence of any fact bringing a person under this~~
 33 ~~subdivision shall be alleged in the information, indictment, or~~
 34 ~~petition, and be either admitted by the defendant or minor in open~~
 35 ~~court, or found to be true or not true by the trier of fact.~~

36 ~~(e) This section shall become operative on January 1, 2011.~~

37 SEC. 5. Section 1170 of the Penal Code, as amended by Section
 38 1 of Chapter 416 of the Statutes of 2008, is amended to read:

39 1170. (a) (1) The Legislature finds and declares that the
 40 purpose of imprisonment for crime is punishment. This purpose

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

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

21 (3) In any case in which the punishment prescribed by statute
22 for a person convicted of a public offense is a term of imprisonment
23 in the state prison of any specification of three time periods, the
24 court shall sentence the defendant to one of the terms of
25 imprisonment specified unless the convicted person is given any
26 other disposition provided by law, including a fine, jail, probation,
27 or the suspension of imposition or execution of sentence or is
28 sentenced pursuant to subdivision (b) of Section 1168 because he
29 or she had committed his or her crime prior to July 1, 1977. In
30 sentencing the convicted person, the court shall apply the
31 sentencing rules of the Judicial Council. The court, unless it
32 determines that there are circumstances in mitigation of the
33 punishment prescribed, shall also impose any other term that it is
34 required by law to impose as an additional term. Nothing in this
35 article shall affect any provision of law that imposes the death
36 penalty, that authorizes or restricts the granting of probation or
37 suspending the execution or imposition of sentence, or expressly
38 provides for imprisonment in the state prison for life. In any case
39 in which the amount of preimprisonment credit under Section
40 2900.5 or any other provision of law is equal to or exceeds any

1 sentence imposed pursuant to this chapter, the entire sentence shall
2 be deemed to have been served and the defendant shall not be
3 actually delivered to the custody of the secretary. The court shall
4 advise the defendant that he or she shall serve a period of parole
5 and order the defendant to report to the parole office closest to the
6 defendant's last legal residence, unless the in-custody credits equal
7 the total sentence, including both confinement time and the period
8 of parole. The sentence shall be deemed a separate prior prison
9 term under Section 667.5, and a copy of the judgment and other
10 necessary documentation shall be forwarded to the secretary.

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

30 (c) The court shall state the reasons for its sentence choice on
31 the record at the time of sentencing. The court shall also inform
32 the defendant that as part of the sentence after expiration of the
33 term he or she may be on parole for a period as provided in Section
34 3000.

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

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

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

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

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

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

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

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

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

36 (4) Any physician employed by the department who determines
37 that a prisoner has six months or less to live shall notify the chief
38 medical officer of the prognosis. If the chief medical officer
39 concurs with the prognosis, he or she shall notify the warden.
40 Within 48 hours of receiving notification, the warden or the

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

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

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

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

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

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

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

18 (f) Any sentence imposed under this article shall be subject to
19 the provisions of Sections 3000 and 3057 and any other applicable
20 provisions of law.

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

24 ~~(h) This section shall remain in effect only until January 1, 2011,~~
25 ~~and as of that date is repealed, unless a later enacted statute, that~~
26 ~~is enacted before that date, deletes or extends that date.~~

27 SEC. 6. Section 1170 of the Penal Code, as amended by Section
28 2 of Chapter 416 of the Statutes of 2008, is repealed.

29 ~~1170. (a) (1) The Legislature finds and declares that the~~
30 ~~purpose of imprisonment for crime is punishment. This purpose~~
31 ~~is best served by terms proportionate to the seriousness of the~~
32 ~~offense with provision for uniformity in the sentences of offenders~~
33 ~~committing the same offense under similar circumstances. The~~
34 ~~Legislature further finds and declares that the elimination of~~
35 ~~disparity and the provision of uniformity of sentences can best be~~
36 ~~achieved by determinate sentences fixed by statute in proportion~~
37 ~~to the seriousness of the offense as determined by the Legislature~~
38 ~~to be imposed by the court with specified discretion.~~

39 ~~(2) Notwithstanding paragraph (1), the Legislature further finds~~
40 ~~and declares that programs should be available for inmates,~~

1 including, but not limited to, educational programs, that are
2 designed to prepare nonviolent felony offenders for successful
3 reentry into the community. The Legislature encourages the
4 development of policies and programs designed to educate and
5 rehabilitate nonviolent felony offenders. In implementing this
6 section, the Department of Corrections and Rehabilitation is
7 encouraged to give priority enrollment in programs to promote
8 successful return to the community to an inmate with a short
9 remaining term of commitment and a release date that would allow
10 him or her adequate time to complete the program.

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

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

22 ~~(c) The court shall state the reasons for its sentence choice on~~
23 ~~the record at the time of sentencing. The court shall also inform~~
24 ~~the defendant that as part of the sentence after expiration of the~~
25 ~~term he or she may be on parole for a period as provided in Section~~
26 ~~3000.~~

27 ~~(d) When a defendant subject to this section or subdivision (b)~~
28 ~~of Section 1168 has been sentenced to be imprisoned in the state~~
29 ~~prison and has been committed to the custody of the secretary, the~~
30 ~~court may, within 120 days of the date of commitment on its own~~
31 ~~motion, or at any time upon the recommendation of the secretary~~
32 ~~or the Board of Parole Hearings, recall the sentence and~~
33 ~~commitment previously ordered and resentence the defendant in~~
34 ~~the same manner as if he or she had not previously been sentenced,~~
35 ~~provided the new sentence, if any, is no greater than the initial~~
36 ~~sentence. The resentence under this subdivision shall apply the~~
37 ~~sentencing rules of the Judicial Council so as to eliminate disparity~~
38 ~~of sentences and to promote uniformity of sentencing. Credit shall~~
39 ~~be given for time served.~~

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

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

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

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

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

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

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

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

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

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

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

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

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

34 ~~(9) If the court grants the recall and resentencing application,~~
35 ~~the prisoner shall be released by the department within 48 hours~~
36 ~~of receipt of the court's order, unless a longer time period is agreed~~
37 ~~to by the inmate. At the time of release, the warden or the warden's~~
38 ~~representative shall ensure that the prisoner has each of the~~
39 ~~following in his or her possession: a discharge medical summary,~~
40 ~~full medical records, state identification, parole medications, and~~

1 ~~all property belonging to the prisoner. After discharge, any~~
2 ~~additional records shall be sent to the prisoner's forwarding~~
3 ~~address.~~

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

11 ~~(f) Any sentence imposed under this article shall be subject to~~
12 ~~the provisions of Sections 3000 and 3057 and any other applicable~~
13 ~~provisions of law.~~

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

17 ~~(h) This section shall become operative on January 1, 2011.~~

18 SEC. 7. Section 1170.1 of the Penal Code, as amended by
19 Section 5 of Chapter 171 of the Statutes of 2009, is amended to
20 read:

21 1170.1. (a) Except as otherwise provided by law, and subject
22 to Section 654, when any person is convicted of two or more
23 felonies, whether in the same proceeding or court or in different
24 proceedings or courts, and whether by judgment rendered by the
25 same or by a different court, and a consecutive term of
26 imprisonment is imposed under Sections 669 and 1170, the
27 aggregate term of imprisonment for all these convictions shall be
28 the sum of the principal term, the subordinate term, and any
29 additional term imposed for applicable enhancements for prior
30 convictions, prior prison terms, and Section 12022.1. The principal
31 term shall consist of the greatest term of imprisonment imposed
32 by the court for any of the crimes, including any term imposed for
33 applicable specific enhancements. The subordinate term for each
34 consecutive offense shall consist of one-third of the middle term
35 of imprisonment prescribed for each other felony conviction for
36 which a consecutive term of imprisonment is imposed, and shall
37 include one-third of the term imposed for any specific
38 enhancements applicable to those subordinate offenses.

39 (b) If a person is convicted of two or more violations of
40 kidnapping, as defined in Section 207, involving separate victims,

1 the subordinate term for each consecutive offense of kidnapping
2 shall consist of the full middle term and shall include the full term
3 imposed for specific enhancements applicable to those subordinate
4 offenses.

5 (c) In the case of any person convicted of one or more felonies
6 committed while the person is confined in a state prison or is
7 subject to reimprisonment for escape from custody and the law
8 either requires the terms to be served consecutively or the court
9 imposes consecutive terms, the term of imprisonment for all the
10 convictions that the person is required to serve consecutively shall
11 commence from the time the person would otherwise have been
12 released from prison. If the new offenses are consecutive with each
13 other, the principal and subordinate terms shall be calculated as
14 provided in subdivision (a). This subdivision shall be applicable
15 in cases of convictions of more than one offense in the same or
16 different proceedings.

17 (d) When the court imposes a prison sentence for a felony
18 pursuant to Section 1170 or subdivision (b) of Section 1168, the
19 court shall also impose, in addition and consecutive to the offense
20 of which the person has been convicted, the additional terms
21 provided for any applicable enhancements. If an enhancement is
22 punishable by one of three terms, the court shall, in its discretion,
23 impose the term that best serves the interest of justice, and state
24 the reasons for its sentence choice on the record at the time of
25 sentencing. The court shall also impose any other additional term
26 that the court determines in its discretion or as required by law
27 shall run consecutive to the term imposed under Section 1170 or
28 subdivision (b) of Section 1168. In considering the imposition of
29 the additional term, the court shall apply the sentencing rules of
30 the Judicial Council.

31 (e) All enhancements shall be alleged in the accusatory pleading
32 and either admitted by the defendant in open court or found to be
33 true by the trier of fact.

34 (f) When two or more enhancements may be imposed for being
35 armed with or using a dangerous or deadly weapon or a firearm
36 in the commission of a single offense, only the greatest of those
37 enhancements shall be imposed for that offense. This subdivision
38 shall not limit the imposition of any other enhancements applicable
39 to that offense, including an enhancement for the infliction of great
40 bodily injury.

1 (g) When two or more enhancements may be imposed for the
2 infliction of great bodily injury on the same victim in the
3 commission of a single offense, only the greatest of those
4 enhancements shall be imposed for that offense. This subdivision
5 shall not limit the imposition of any other enhancements applicable
6 to that offense, including an enhancement for being armed with
7 or using a dangerous or deadly weapon or a firearm.

8 (h) For any violation of an offense specified in Section 667.6,
9 the number of enhancements that may be imposed shall not be
10 limited, regardless of whether the enhancements are pursuant to
11 this section, Section 667.6, or some other provision of law. Each
12 of the enhancements shall be a full and separately served term.

13 ~~(i) This section shall remain in effect only until January 1, 2011,~~
14 ~~and as of that date is repealed, unless a later enacted statute, that~~
15 ~~is enacted before January 1, 2011, deletes or extends that date.~~

16 SEC. 8. Section 1170.1 of the Penal Code, as added by Section
17 6 of Chapter 171 of the Statutes of 2009, is repealed.

18 ~~1170.1. (a) Except as otherwise provided by law, and subject~~
19 ~~to Section 654, when any person is convicted of two or more~~
20 ~~felonies, whether in the same proceeding or court or in different~~
21 ~~proceedings or courts, and whether by judgment rendered by the~~
22 ~~same or by a different court, and a consecutive term of~~
23 ~~imprisonment is imposed under Sections 669 and 1170, the~~
24 ~~aggregate term of imprisonment for all these convictions shall be~~
25 ~~the sum of the principal term, the subordinate term, and any~~
26 ~~additional term imposed for applicable enhancements for prior~~
27 ~~convictions, prior prison terms, and Section 12022.1. The principal~~
28 ~~term shall consist of the greatest term of imprisonment imposed~~
29 ~~by the court for any of the crimes, including any term imposed for~~
30 ~~applicable specific enhancements. The subordinate term for each~~
31 ~~consecutive offense shall consist of one-third of the middle term~~
32 ~~of imprisonment prescribed for each other felony conviction for~~
33 ~~which a consecutive term of imprisonment is imposed, and shall~~
34 ~~include one-third of the term imposed for any specific~~
35 ~~enhancements applicable to those subordinate offenses.~~

36 ~~(b) If a person is convicted of two or more violations of~~
37 ~~kidnapping, as defined in Section 207, involving separate victims,~~
38 ~~the subordinate term for each consecutive offense of kidnapping~~
39 ~~shall consist of the full middle term and shall include the full term~~

1 imposed for specific enhancements applicable to those subordinate
2 offenses.

3 ~~(e) In the case of any person convicted of one or more felonies
4 committed while the person is confined in a state prison or is
5 subject to reimprisonment for escape from custody and the law
6 either requires the terms to be served consecutively or the court
7 imposes consecutive terms, the term of imprisonment for all the
8 convictions that the person is required to serve consecutively shall
9 commence from the time the person would otherwise have been
10 released from prison. If the new offenses are consecutive with each
11 other, the principal and subordinate terms shall be calculated as
12 provided in subdivision (a). This subdivision shall be applicable
13 in cases of convictions of more than one offense in the same or
14 different proceedings.~~

15 ~~(d) When the court imposes a prison sentence for a felony
16 pursuant to Section 1170 or subdivision (b) of Section 1168, the
17 court shall also impose, in addition and consecutive to the offense
18 of which the person has been convicted, the additional terms
19 provided for any applicable enhancements. If an enhancement is
20 punishable by one of three terms, the court shall impose the middle
21 term unless there are circumstances in aggravation or mitigation,
22 and state the reasons for its sentence choice, other than the middle
23 term, on the record at the time of sentencing. The court shall also
24 impose any other additional term that the court determines in its
25 discretion or as required by law shall run consecutive to the term
26 imposed under Section 1170 or subdivision (b) of Section 1168.
27 In considering the imposition of the additional term, the court shall
28 apply the sentencing rules of the Judicial Council.~~

29 ~~(e) All enhancements shall be alleged in the accusatory pleading
30 and either admitted by the defendant in open court or found to be
31 true by the trier of fact.~~

32 ~~(f) When two or more enhancements may be imposed for being
33 armed with or using a dangerous or deadly weapon or a firearm
34 in the commission of a single offense, only the greatest of those
35 enhancements shall be imposed for that offense. This subdivision
36 shall not limit the imposition of any other enhancements applicable
37 to that offense, including an enhancement for the infliction of great
38 bodily injury.~~

39 ~~(g) When two or more enhancements may be imposed for the
40 infliction of great bodily injury on the same victim in the~~

1 ~~commission of a single offense, only the greatest of those~~
2 ~~enhancements shall be imposed for that offense. This subdivision~~
3 ~~shall not limit the imposition of any other enhancements applicable~~
4 ~~to that offense, including an enhancement for being armed with~~
5 ~~or using a dangerous or deadly weapon or a firearm.~~

6 ~~(h) For any violation of an offense specified in Section 667.6,~~
7 ~~the number of enhancements that may be imposed shall not be~~
8 ~~limited, regardless of whether the enhancements are pursuant to~~
9 ~~this section, Section 667.6, or some other provision of law. Each~~
10 ~~of the enhancements shall be a full and separately served term.~~

11 ~~(i) This section shall become operative on January 1, 2011.~~

12 SEC. 9. Section 1170.3 of the Penal Code, as amended by
13 Section 146 of Chapter 140 of the Statutes of 2009, is amended to
14 read:

15 1170.3. The Judicial Council shall seek to promote uniformity
16 in sentencing under Section 1170 by:

17 (a) The adoption of rules providing criteria for the consideration
18 of the trial judge at the time of sentencing regarding the court's
19 decision to:

- 20 (1) Grant or deny probation.
- 21 (2) Impose the lower, middle, or upper prison term.
- 22 (3) Impose concurrent or consecutive sentences.
- 23 (4) Determine whether or not to impose an enhancement where
24 that determination is permitted by law.

25 (b) The adoption of rules standardizing the minimum content
26 and the sequential presentation of material in probation officer
27 reports submitted to the court.

28 ~~(e) This section shall remain in effect only until January 1, 2011,~~
29 ~~and as of that date is repealed, unless a later enacted statute, that~~
30 ~~is enacted before January 1, 2011, deletes or extends that date.~~

31 SEC. 10. Section 1170.3 of the Penal Code, as amended by
32 Section 147 of Chapter 140 of the Statutes of 2009, is repealed.

33 ~~1170.3. The Judicial Council shall seek to promote uniformity~~
34 ~~in sentencing under Section 1170 by:~~

35 ~~(a) The adoption of rules providing criteria for the consideration~~
36 ~~of the trial judge at the time of sentencing regarding the court's~~
37 ~~decision to:~~

- 38 ~~(1) Grant or deny probation.~~
- 39 ~~(2) Impose the lower or upper prison term.~~
- 40 ~~(3) Impose concurrent or consecutive sentences.~~

1 ~~(4) Determine whether or not to impose an enhancement where~~
2 ~~that determination is permitted by law.~~

3 ~~(b) The adoption of rules standardizing the minimum content~~
4 ~~and the sequential presentation of material in probation officer~~
5 ~~reports submitted to the court.~~

6 ~~(c) This section shall become operative on January 1, 2011.~~

7 SEC. 11. Section 12021.5 of the Penal Code, as amended by
8 Section 7 of Chapter 171 of the Statutes of 2009, is amended to
9 read:

10 12021.5. (a) Every person who carries a loaded or unloaded
11 firearm on his or her person, or in a vehicle, during the commission
12 or attempted commission of any street gang crimes described in
13 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
14 the felony or attempted felony, be punished by an additional term
15 of imprisonment in the state prison for one, two, or three years.
16 The court shall select the sentence enhancement which, in the
17 court's discretion, best serves the interests of justice and shall state
18 the reasons for its choice on the record at the time of sentence, in
19 accordance with the provisions of subdivision (d) of Section
20 1170.1.

21 (b) Every person who carries a loaded or unloaded firearm
22 together with a detachable shotgun magazine, a detachable pistol
23 magazine, a detachable magazine, or a belt-feeding device on his
24 or her person, or in a vehicle, during the commission or attempted
25 commission of any street gang crimes described in subdivision (a)
26 or (b) of Section 186.22, shall, upon conviction of the felony or
27 attempted felony, be punished by an additional term of
28 imprisonment in the state prison for two, three, or four years. The
29 court shall select the sentence enhancement which, in the court's
30 discretion, best serves the interests of justice and shall state the
31 reasons for its choice on the record at the time of sentence, in
32 accordance with the provisions of subdivision (d) of Section
33 1170.1.

34 (c) As used in this section, the following definitions shall apply:

35 (1) "Detachable magazine" means a device that is designed or
36 redesigned to do all of the following:

37 (A) To be attached to a rifle that is designed or redesigned to
38 fire ammunition.

39 (B) To be attached to, and detached from, a rifle that is designed
40 or redesigned to fire ammunition.

1 (C) To feed ammunition continuously and directly into the
 2 loading mechanism of a rifle that is designed or redesigned to fire
 3 ammunition.

4 (2) “Detachable pistol magazine” means a device that is
 5 designed or redesigned to do all of the following:

6 (A) To be attached to a semiautomatic firearm that is not a rifle
 7 or shotgun that is designed or redesigned to fire ammunition.

8 (B) To be attached to, and detached from, a firearm that is not
 9 a rifle or shotgun that is designed or redesigned to fire ammunition.

10 (C) To feed ammunition continuously and directly into the
 11 loading mechanism of a firearm that is not a rifle or a shotgun that
 12 is designed or redesigned to fire ammunition.

13 (3) “Detachable shotgun magazine” means a device that is
 14 designed or redesigned to do all of the following:

15 (A) To be attached to a firearm that is designed or redesigned
 16 to fire a fixed shotgun shell through a smooth or rifled bore.

17 (B) To be attached to, and detached from, a firearm that is
 18 designed or redesigned to fire a fixed shotgun shell through a
 19 smooth bore.

20 (C) To feed fixed shotgun shells continuously and directly into
 21 the loading mechanism of a firearm that is designed or redesigned
 22 to fire a fixed shotgun shell.

23 (4) “Belt-feeding device” means a device that is designed or
 24 redesigned to continuously feed ammunition into the loading
 25 mechanism of a machinegun or a semiautomatic firearm.

26 (5) “Rifle” shall have the same meaning as specified in
 27 paragraph (20) of subdivision (c) of Section 12020.

28 (6) “Shotgun” shall have the same meaning as specified in
 29 paragraph (21) of subdivision (c) of Section 12020.

30 ~~(d) This section shall remain in effect only until January 1, 2011,~~
 31 ~~and as of that date is repealed, unless a later enacted statute, that~~
 32 ~~is enacted before January 1, 2011, deletes or extends that date.~~

33 SEC. 12. Section 12021.5 of the Penal Code, as added by
 34 Section 8 of Chapter 171 of the Statutes of 2009, is repealed.

35 ~~12021.5. (a) Every person who carries a loaded or unloaded~~
 36 ~~firearm on his or her person, or in a vehicle, during the commission~~
 37 ~~or attempted commission of any street gang crimes described in~~
 38 ~~subdivision (a) or (b) of Section 186.22, shall, upon conviction of~~
 39 ~~the felony or attempted felony, be punished by an additional term~~
 40 ~~of imprisonment in the state prison for one, two, or three years in~~

1 the court's discretion. The court shall impose the middle term
2 unless there are circumstances in aggravation or mitigation. The
3 court shall state the reasons for its enhancement choice on the
4 record at the time of sentence.

5 (b) Every person who carries a loaded or unloaded firearm
6 together with a detachable shotgun magazine, a detachable pistol
7 magazine, a detachable magazine, or a belt-feeding device on his
8 or her person, or in a vehicle, during the commission or attempted
9 commission of any street gang crimes described in subdivision (a)
10 or (b) of Section 186.22, shall, upon conviction of the felony or
11 attempted felony, be punished by an additional term of
12 imprisonment in the state prison for two, three, or four years in
13 the court's discretion. The court shall impose the middle term
14 unless there are circumstances in aggravation or mitigation. The
15 court shall state the reasons for its enhancement choice on the
16 record at the time of sentence.

17 (e) As used in this section, the following definitions shall apply:

18 (1) "Detachable magazine" means a device that is designed or
19 redesigned to do all of the following:

20 (A) To be attached to a rifle that is designed or redesigned to
21 fire ammunition.

22 (B) To be attached to, and detached from, a rifle that is designed
23 or redesigned to fire ammunition.

24 (C) To feed ammunition continuously and directly into the
25 loading mechanism of a rifle that is designed or redesigned to fire
26 ammunition.

27 (2) "Detachable pistol magazine" means a device that is
28 designed or redesigned to do all of the following:

29 (A) To be attached to a semiautomatic firearm that is not a rifle
30 or shotgun that is designed or redesigned to fire ammunition.

31 (B) To be attached to, and detached from, a firearm that is not
32 a rifle or shotgun that is designed or redesigned to fire ammunition.

33 (C) To feed ammunition continuously and directly into the
34 loading mechanism of a firearm that is not a rifle or a shotgun that
35 is designed or redesigned to fire ammunition.

36 (3) "Detachable shotgun magazine" means a device that is
37 designed or redesigned to do all of the following:

38 (A) To be attached to a firearm that is designed or redesigned
39 to fire a fixed shotgun shell through a smooth or rifled bore.

1 ~~(B) To be attached to, and detached from, a firearm that is~~
2 ~~designed or redesigned to fire a fixed shotgun shell through a~~
3 ~~smooth bore.~~

4 ~~(C) To feed fixed shotgun shells continuously and directly into~~
5 ~~the loading mechanism of a firearm that is designed or redesigned~~
6 ~~to fire a fixed shotgun shell.~~

7 ~~(4) “Belt-feeding device” means a device that is designed or~~
8 ~~redesigned to continuously feed ammunition into the loading~~
9 ~~mechanism of a machinegun or a semiautomatic firearm.~~

10 ~~(5) “Rifle” shall have the same meaning as specified in~~
11 ~~paragraph (20) of subdivision (e) of Section 12020.~~

12 ~~(6) “Shotgun” shall have the same meaning as specified in~~
13 ~~paragraph (21) of subdivision (e) of Section 12020.~~

14 ~~(d) This section shall become operative on January 1, 2011.~~

15 SEC. 13. Section 12022.2 of the Penal Code, as amended by
16 Section 9 of Chapter 171 of the Statutes of 2009, is amended to
17 read:

18 12022.2. (a) Any person who, while armed with a firearm in
19 the commission or attempted commission of any felony, has in his
20 or her immediate possession ammunition for the firearm designed
21 primarily to penetrate metal or armor, shall upon conviction of
22 that felony or attempted felony, in addition and consecutive to the
23 punishment prescribed for the felony or attempted felony, be
24 punished by an additional term of 3, 4, or 10 years. The court shall
25 select the sentence enhancement which, in the court’s discretion,
26 best serves the interests of justice and shall state the reasons for
27 its choice on the record at the time of the sentence in accordance
28 with the provisions of subdivision (d) of Section 1170.1.

29 (b) Any person who wears a body vest in the commission or
30 attempted commission of a violent offense, as defined in
31 subdivision (b) of Section 12021.1, shall, upon conviction of that
32 felony or attempted felony, in addition and consecutive to the
33 punishment prescribed for the felony or attempted felony of which
34 he or she has been convicted, be punished by an additional term
35 of one, two, or five years. The court shall select the sentence
36 enhancement which, in the court’s discretion, best serves the
37 interests of justice and shall state the reasons for its choice on the
38 record at the time of the sentence in accordance with the provisions
39 of subdivision (d) of Section 1170.1.

1 (c) As used in this section, “body vest” means any
2 bullet-resistant material intended to provide ballistic and trauma
3 protection for the wearer.

4 ~~(d) This section shall remain in effect only until January 1, 2011,~~
5 ~~and as of that date is repealed, unless a later enacted statute, that~~
6 ~~is enacted before January 1, 2011, deletes or extends that date.~~

7 SEC. 14. Section 12022.2 of the Penal Code, as added by
8 Section 10 of Chapter 171 of the Statutes of 2009, is repealed.

9 ~~12022.2. (a) Any person who, while armed with a firearm in~~
10 ~~the commission or attempted commission of any felony, has in his~~
11 ~~or her immediate possession ammunition for the firearm designed~~
12 ~~primarily to penetrate metal or armor, shall upon conviction of~~
13 ~~that felony or attempted felony, in addition and consecutive to the~~
14 ~~punishment prescribed for the felony or attempted felony, be~~
15 ~~punished by an additional term of three, four, or 10 years. The~~
16 ~~court shall order the middle term unless there are circumstances~~
17 ~~in aggravation or mitigation. The court shall state the reasons for~~
18 ~~its enhancement choice on the record at the time of the sentence.~~

19 ~~(b) Any person who wears a body vest in the commission or~~
20 ~~attempted commission of a violent offense, as defined in~~
21 ~~subdivision (b) of Section 12021.1, shall, upon conviction of that~~
22 ~~felony or attempted felony, in addition and consecutive to the~~
23 ~~punishment prescribed for the felony or attempted felony of which~~
24 ~~he or she has been convicted, be punished by an additional term~~
25 ~~of one, two, or five years. The court shall order the middle term~~
26 ~~unless there are circumstances in aggravation or mitigation. The~~
27 ~~court shall state the reasons for its enhancement choice on the~~
28 ~~record at the time of the sentence.~~

29 ~~(e) As used in this section, “body vest” means any~~
30 ~~bullet-resistant material intended to provide ballistic and trauma~~
31 ~~protection for the wearer.~~

32 ~~(d) This section shall become operative on January 1, 2011.~~

33 SEC. 15. Section 12022.4 of the Penal Code, as amended by
34 Section 11 of Chapter 171 of the Statutes of 2009, is amended to
35 read:

36 12022.4. ~~(a)~~ Any person who, during the commission or
37 attempted commission of a felony, furnishes or offers to furnish
38 a firearm to another for the purpose of aiding, abetting, or enabling
39 that person or any other person to commit a felony shall, in addition
40 and consecutive to the punishment prescribed by the felony or

1 attempted felony of which the person has been convicted, be
2 punished by an additional term of one, two, or three years in the
3 state prison. The court shall select the sentence enhancement which,
4 in the court's discretion, best serves the interests of justice and
5 shall state the reasons for its choice on the record at the time of
6 the sentence, in accordance with the provisions of subdivision (d)
7 of Section 1170.1. The additional term provided in this section
8 shall not be imposed unless the fact of the furnishing is charged
9 in the accusatory pleading and admitted or found to be true by the
10 trier of fact.

11 ~~(b) This section shall remain in effect only until January 1, 2011,~~
12 ~~and as of that date is repealed, unless a later enacted statute, that~~
13 ~~is enacted before January 1, 2011, deletes or extends that date.~~

14 SEC. 16. Section 12022.4 of the Penal Code, as added by
15 Section 12 of Chapter 171 of the Statutes of 2009, is repealed.

16 ~~12022.4. (a) Any person who, during the commission or~~
17 ~~attempted commission of a felony, furnishes or offers to furnish~~
18 ~~a firearm to another for the purpose of aiding, abetting, or enabling~~
19 ~~that person or any other person to commit a felony shall, in addition~~
20 ~~and consecutive to the punishment prescribed by the felony or~~
21 ~~attempted felony of which the person has been convicted, be~~
22 ~~punished by an additional term of one, two, or three years in the~~
23 ~~state prison. The court shall order the middle term unless there are~~
24 ~~circumstances in aggravation or mitigation. The court shall state~~
25 ~~the reasons for its enhancement choice on the record at the time~~
26 ~~of the sentence. The additional term provided in this section shall~~
27 ~~not be imposed unless the fact of the furnishing is charged in the~~
28 ~~accusatory pleading and admitted or found to be true by the trier~~
29 ~~of fact.~~

30 ~~(b) This section shall become operative on January 1, 2011.~~