

AMENDED IN ASSEMBLY MARCH 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2263**

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**Introduced by Assembly Member Yamada**

February 18, 2010

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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 amended, 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~~ *extend to January 1, 2012*, 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. *The bill would also make conforming changes.*

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

1 hours in which the facility is open for classes or school-related  
2 programs or when minors are using the facility, that fact shall be  
3 a circumstance in aggravation of the crime in imposing a term  
4 under paragraph (1).

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

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

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

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

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

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

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

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

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

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

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

28 (3) Unlawful homicide or manslaughter, as defined in Chapter  
29 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

36 (6) Discharging or permitting the discharge of a firearm from  
37 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
38 12034.

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

- 1 (8) The intimidation of witnesses and victims, as defined in  
2 Section 136.1.
- 3 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
4 487.
- 5 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 6 (11) Burglary, as defined in Section 459.
- 7 (12) Rape, as defined in Section 261.
- 8 (13) Looting, as defined in Section 463.
- 9 (14) Money laundering, as defined in Section 186.10.
- 10 (15) Kidnapping, as defined in Section 207.
- 11 (16) Mayhem, as defined in Section 203.
- 12 (17) Aggravated mayhem, as defined in Section 205.
- 13 (18) Torture, as defined in Section 206.
- 14 (19) Felony extortion, as defined in Sections 518 and 520.
- 15 (20) Felony vandalism, as defined in paragraph (1) of  
16 subdivision (b) of Section 594.
- 17 (21) Carjacking, as defined in Section 215.
- 18 (22) The sale, delivery, or transfer of a firearm, as defined in  
19 Section 12072.
- 20 (23) Possession of a pistol, revolver, or other firearm capable  
21 of being concealed upon the person in violation of paragraph (1)  
22 of subdivision (a) of Section 12101.
- 23 (24) Threats to commit crimes resulting in death or great bodily  
24 injury, as defined in Section 422.
- 25 (25) Theft and unlawful taking or driving of a vehicle, as defined  
26 in Section 10851 of the Vehicle Code.
- 27 (26) Felony theft of an access card or account information, as  
28 defined in Section 484e.
- 29 (27) Counterfeiting, designing, using, *or* attempting to use an  
30 access card, as defined in Section 484f.
- 31 (28) Felony fraudulent use of an access card or account  
32 information, as defined in Section 484g.
- 33 (29) Unlawful use of personal identifying information to obtain  
34 credit, goods, services, or medical information, as defined in  
35 Section 530.5.
- 36 (30) Wrongfully obtaining Department of Motor Vehicles  
37 documentation, as defined in Section 529.7.
- 38 (31) Prohibited possession of a firearm in violation of Section  
39 12021.
- 40 (32) Carrying a concealed firearm in violation of Section 12025.

1 (33) Carrying a loaded firearm in violation of Section 12031.

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

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

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

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

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

1 (k) This section shall remain in effect only until January 1, ~~2011~~  
2 2012, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
4 that date.

5 *SEC. 2. Section 186.22 of the Penal Code, as added by Section*  
6 *2 of Chapter 171 of the Statutes of 2009, is amended to read:*

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

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

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

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

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

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

39 (3) The court shall order the imposition of the middle term of  
40 the sentence enhancement, unless there are circumstances in

1 aggravation or mitigation. The court shall state the reasons for its  
2 choice of sentencing enhancements on the record at the time of  
3 the sentencing.

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

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

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

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

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

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

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



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

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

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

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

22 (3) Unlawful homicide or manslaughter, as defined in Chapter  
23 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

30 (6) Discharging or permitting the discharge of a firearm from  
31 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
32 12034.

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

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

37 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
38 487.

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

40 (11) Burglary, as defined in Section 459.

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

1 inclusive, of subdivision (e), having a common name or common  
2 identifying sign or symbol, and whose members individually or  
3 collectively engage in or have engaged in a pattern of criminal  
4 gang activity.

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

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

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

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

34 (k) This section shall become operative on January 1, ~~2011~~  
35 2012.

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

1 186.33. (a) Any person required to register pursuant to Section  
 2 186.30 who knowingly violates any of its provisions is guilty of  
 3 a misdemeanor.

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

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

18 (c) This section shall remain in effect only until January 1, ~~2011~~  
 19 2012, and as of that date is repealed, unless a later enacted statute,  
 20 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
 21 that date.

22 *SEC. 4. Section 186.33 of the Penal Code, as added by Section*  
 23 *4 of Chapter 171 of the Statutes of 2009, is amended to read:*

24 186.33. (a) Any person required to register pursuant to Section  
 25 186.30 who knowingly violates any of its provisions is guilty of  
 26 a misdemeanor.

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

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

1 (c) This section shall become operative on January 1, ~~2011~~  
2 2012.

3 *SEC. 5. Section 1170 of the Penal Code, as amended by Section*  
4 *1 of Chapter 416 of the Statutes of 2008, is amended to read:*

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

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

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

1 article shall affect any provision of law that imposes the death  
2 penalty, that authorizes or restricts the granting of probation or  
3 suspending the execution or imposition of sentence, or expressly  
4 provides for imprisonment in the state prison for life. In any case  
5 in which the amount of preimprisonment credit under Section  
6 2900.5 or any other provision of law is equal to or exceeds any  
7 sentence imposed pursuant to this chapter, the entire sentence shall  
8 be deemed to have been served and the defendant shall not be  
9 actually delivered to the custody of the secretary. The court shall  
10 advise the defendant that he or she shall serve a period of parole  
11 and order the defendant to report to the parole office closest to the  
12 defendant's last legal residence, unless the in-custody credits equal  
13 the total sentence, including both confinement time and the period  
14 of parole. The sentence shall be deemed a separate prior prison  
15 term under Section 667.5, and a copy of the judgment and other  
16 necessary documentation shall be forwarded to the secretary.

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

36 (c) The court shall state the reasons for its sentence choice on  
37 the record at the time of sentencing. The court shall also inform  
38 the defendant that as part of the sentence after expiration of the  
39 term he or she may be on parole for a period as provided in Section  
40 3000.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

32 (h) This section shall remain in effect only until January 1, ~~2011~~  
33 ~~2012~~, and as of that date is repealed, unless a later enacted statute,  
34 that is enacted before that date, deletes or extends that date.

35 *SEC. 6. Section 1170 of the Penal Code, as amended by Section*  
36 *2 of Chapter 416 of the Statutes of 2008, is amended to read:*

37 1170. (a) (1) The Legislature finds and declares that the  
38 purpose of imprisonment for crime is punishment. This purpose  
39 is best served by terms proportionate to the seriousness of the  
40 offense with provision for uniformity in the sentences of offenders

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

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

19 (3) In any case in which the punishment prescribed by statute  
20 for a person convicted of a public offense is a term of imprisonment  
21 in the state prison of any specification of three time periods, the  
22 court shall sentence the defendant to one of the terms of  
23 imprisonment specified unless the convicted person is given any  
24 other disposition provided by law, including a fine, jail, probation,  
25 or the suspension of imposition or execution of sentence or is  
26 sentenced pursuant to subdivision (b) of Section 1168 because he  
27 or she had committed his or her crime prior to July 1, 1977. In  
28 sentencing the convicted person, the court shall apply the  
29 sentencing rules of the Judicial Council. The court, unless it  
30 determines that there are circumstances in mitigation of the  
31 punishment prescribed, shall also impose any other term that it is  
32 required by law to impose as an additional term. Nothing in this  
33 article shall affect any provision of law that imposes the death  
34 penalty, that authorizes or restricts the granting of probation or  
35 suspending the execution or imposition of sentence, or expressly  
36 provides for imprisonment in the state prison for life. In any case  
37 in which the amount of preimprisonment credit under Section  
38 2900.5 or any other provision of law is equal to or exceeds any  
39 sentence imposed pursuant to this chapter, the entire sentence shall  
40 be deemed to have been served and the defendant shall not be

1 actually delivered to the custody of the secretary. The court shall  
2 advise the defendant that he or she shall serve a period of parole  
3 and order the defendant to report to the parole office closest to the  
4 defendant's last legal residence, unless the in-custody credits equal  
5 the total sentence, including both confinement time and the period  
6 of parole. The sentence shall be deemed a separate prior prison  
7 term under Section 667.5, and a copy of the judgment and other  
8 necessary documentation shall be forwarded to the secretary.

9 (b) When a judgment of imprisonment is to be imposed and the  
10 statute specifies three possible terms, the court shall order  
11 imposition of the middle term, unless there are circumstances in  
12 aggravation or mitigation of the crime. At least four days prior to  
13 the time set for imposition of judgment, either party or the victim,  
14 or the family of the victim if the victim is deceased, may submit  
15 a statement in aggravation or mitigation to dispute facts in the  
16 record or the probation officer's report, or to present additional  
17 facts. In determining whether there are circumstances that justify  
18 imposition of the upper or lower term, the court may consider the  
19 record in the case, the probation officer's report, other reports,  
20 including reports received pursuant to Section 1203.03, and  
21 statements in aggravation or mitigation submitted by the  
22 prosecution, the defendant, or the victim, or the family of the victim  
23 if the victim is deceased, and any further evidence introduced at  
24 the sentencing hearing. The court shall set forth on the record the  
25 facts and reasons for imposing the upper or lower term. The court  
26 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 subparagraphs (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 become operative on January 1, ~~2011~~  
25 2012.

26 *SEC. 7. Section 1170.1 of the Penal Code, as amended by*  
27 *Section 5 of Chapter 171 of the Statutes of 2009, is amended to*  
28 *read:*

29 1170.1. (a) Except as otherwise provided by law, and subject  
30 to Section 654, when any person is convicted of two or more  
31 felonies, whether in the same proceeding or court or in different  
32 proceedings or courts, and whether by judgment rendered by the  
33 same or by a different court, and a consecutive term of  
34 imprisonment is imposed under Sections 669 and 1170, the  
35 aggregate term of imprisonment for all these convictions shall be  
36 the sum of the principal term, the subordinate term, and any  
37 additional term imposed for applicable enhancements for prior  
38 convictions, prior prison terms, and Section 12022.1. The principal  
39 term shall consist of the greatest term of imprisonment imposed  
40 by the court for any of the crimes, including any term imposed for

1 applicable specific enhancements. The subordinate term for each  
2 consecutive offense shall consist of one-third of the middle term  
3 of imprisonment prescribed for each other felony conviction for  
4 which a consecutive term of imprisonment is imposed, and shall  
5 include one-third of the term imposed for any specific  
6 enhancements applicable to those subordinate offenses.

7 (b) If a person is convicted of two or more violations of  
8 kidnapping, as defined in Section 207, involving separate victims,  
9 the subordinate term for each consecutive offense of kidnapping  
10 shall consist of the full middle term and shall include the full term  
11 imposed for specific enhancements applicable to those subordinate  
12 offenses.

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

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

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

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

11 (g) When two or more enhancements may be imposed for the  
 12 infliction of great bodily injury on the same victim in the  
 13 commission of a single offense, only the greatest of those  
 14 enhancements shall be imposed for that offense. This subdivision  
 15 shall not limit the imposition of any other enhancements applicable  
 16 to that offense, including an enhancement for being armed with  
 17 or using a dangerous or deadly weapon or a firearm.

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

23 (i) This section shall remain in effect only until January 1, ~~2011~~  
 24 2012, and as of that date is repealed, unless a later enacted statute,  
 25 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
 26 that date.

27 *SEC. 8. Section 1170.1 of the Penal Code, as added by Section*  
 28 *6 of Chapter 171 of the Statutes of 2009, is amended to read:*

29 1170.1. (a) Except as otherwise provided by law, and subject  
 30 to Section 654, when any person is convicted of two or more  
 31 felonies, whether in the same proceeding or court or in different  
 32 proceedings or courts, and whether by judgment rendered by the  
 33 same or by a different court, and a consecutive term of  
 34 imprisonment is imposed under Sections 669 and 1170, the  
 35 aggregate term of imprisonment for all these convictions shall be  
 36 the sum of the principal term, the subordinate term, and any  
 37 additional term imposed for applicable enhancements for prior  
 38 convictions, prior prison terms, and Section 12022.1. The principal  
 39 term shall consist of the greatest term of imprisonment imposed  
 40 by the court for any of the crimes, including any term imposed for



1 applicable specific enhancements. The subordinate term for each  
2 consecutive offense shall consist of one-third of the middle term  
3 of imprisonment prescribed for each other felony conviction for  
4 which a consecutive term of imprisonment is imposed, and shall  
5 include one-third of the term imposed for any specific  
6 enhancements applicable to those subordinate offenses.

7 (b) If a person is convicted of two or more violations of  
8 kidnapping, as defined in Section 207, involving separate victims,  
9 the subordinate term for each consecutive offense of kidnapping  
10 shall consist of the full middle term and shall include the full term  
11 imposed for specific enhancements applicable to those subordinate  
12 offenses.

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

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

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

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

11 (g) When two or more enhancements may be imposed for the  
 12 infliction of great bodily injury on the same victim in the  
 13 commission of a single offense, only the greatest of those  
 14 enhancements shall be imposed for that offense. This subdivision  
 15 shall not limit the imposition of any other enhancements applicable  
 16 to that offense, including an enhancement for being armed with  
 17 or using a dangerous or deadly weapon or a firearm.

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

23 (i) This section shall become operative on January 1, ~~2011~~ 2012.  
 24 *SEC. 9. Section 1170.3 of the Penal Code, as amended by*  
 25 *Section 146 of Chapter 140 of the Statutes of 2009, is amended to*  
 26 *read:*

27 1170.3. The Judicial Council shall seek to promote uniformity  
 28 in sentencing under Section 1170 by:

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

- 32 (1) Grant or deny probation.
- 33 (2) Impose the lower, middle, or upper prison term.
- 34 (3) Impose concurrent or consecutive sentences.
- 35 (4) Determine whether or not to impose an enhancement where  
 36 that determination is permitted by law.

37 (b) The adoption of rules standardizing the minimum content  
 38 and the sequential presentation of material in probation officer  
 39 reports submitted to the court.

1 ~~(e) 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 (c) *This section shall remain in effect only until January 1, 2012,*  
5 *and as of that date is repealed, unless a later enacted statute, that*  
6 *is enacted before January 1, 2012, deletes or extends that date.*

7 *SEC. 10. Section 1170.3 of the Penal Code, as amended by*  
8 *Section 147 of Chapter 140 of the Statutes of 2009, is amended to*  
9 *read:*

10 1170.3. The Judicial Council shall seek to promote uniformity  
11 in sentencing under Section 1170 by:

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

- 15 (1) Grant or deny probation.
- 16 (2) Impose the lower or upper prison term.
- 17 (3) Impose concurrent or consecutive sentences.
- 18 (4) Determine whether or not to impose an enhancement where  
19 that determination is permitted by law.

20 (b) The adoption of rules standardizing the minimum content  
21 and the sequential presentation of material in probation officer  
22 reports submitted to the court.

23 (c) This section shall become operative on January 1, ~~2011~~  
24 ~~2012~~.

25 *SEC. 11. Section 12021.5 of the Penal Code, as amended by*  
26 *Section 7 of Chapter 171 of the Statutes of 2009, is amended to*  
27 *read:*

28 12021.5. (a) Every person who carries a loaded or unloaded  
29 firearm on his or her person, or in a vehicle, during the commission  
30 or attempted commission of any street gang crimes described in  
31 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
32 the felony or attempted felony, be punished by an additional term  
33 of imprisonment in the state prison for one, two, or three years.  
34 The court shall select the sentence enhancement which, in the  
35 court's discretion, best serves the interests of justice and shall state  
36 the reasons for its choice on the record at the time of sentence, in  
37 accordance with the provisions of subdivision (d) of Section  
38 1170.1.

39 (b) Every person who carries a loaded or unloaded firearm  
40 together with a detachable shotgun magazine, a detachable pistol

1 magazine, a detachable magazine, or a belt-feeding device on his  
2 or her person, or in a vehicle, during the commission or attempted  
3 commission of any street gang crimes described in subdivision (a)  
4 or (b) of Section 186.22, shall, upon conviction of the felony or  
5 attempted felony, be punished by an additional term of  
6 imprisonment in the state prison for two, three, or four years. The  
7 court shall select the sentence enhancement which, in the court's  
8 discretion, best serves the interests of justice and shall state the  
9 reasons for its choice on the record at the time of sentence, in  
10 accordance with the provisions of subdivision (d) of Section  
11 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (d) This section shall remain in effect only until January 1, ~~2011~~  
9 2012, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
11 that date.

12 *SEC. 12. Section 12021.5 of the Penal Code, as added by*  
13 *Section 8 of Chapter 171 of the Statutes of 2009, is amended to*  
14 *read:*

15 12021.5. (a) Every person who carries a loaded or unloaded  
16 firearm on his or her person, or in a vehicle, during the commission  
17 or attempted commission of any street gang crimes described in  
18 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
19 the felony or attempted felony, be punished by an additional term  
20 of imprisonment in the state prison for one, two, or three years in  
21 the court’s discretion. The court shall impose the middle term  
22 unless there are circumstances in aggravation or mitigation. The  
23 court shall state the reasons for its enhancement choice on the  
24 record at the time of sentence.

25 (b) Every person who carries a loaded or unloaded firearm  
26 together with a detachable shotgun magazine, a detachable pistol  
27 magazine, a detachable magazine, or a belt-feeding device on his  
28 or her person, or in a vehicle, during the commission or attempted  
29 commission of any street gang crimes described in subdivision (a)  
30 or (b) of Section 186.22, shall, upon conviction of the felony or  
31 attempted felony, be punished by an additional term of  
32 imprisonment in the state prison for two, three, or four years in  
33 the court’s discretion. The court shall impose the middle term  
34 unless there are circumstances in aggravation or mitigation. The  
35 court shall state the reasons for its enhancement choice on the  
36 record at the time of sentence.

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

38 (1) “Detachable magazine” means a device that is designed or  
39 redesigned to do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) This section shall become operative on January 1, ~~2011~~  
35 2012.

36 *SEC. 13. Section 12022.2 of the Penal Code, as amended by*  
37 *Section 9 of Chapter 171 of the Statutes of 2009, is amended to*  
38 *read:*

39 12022.2. (a) Any person who, while armed with a firearm in  
40 the commission or attempted commission of any felony, has in his

1 or her immediate possession ammunition for the firearm designed  
2 primarily to penetrate metal or armor, shall upon conviction of  
3 that felony or attempted felony, in addition and consecutive to the  
4 punishment prescribed for the felony or attempted felony, be  
5 punished by an additional term of 3, 4, or 10 years. The court shall  
6 select the sentence enhancement which, in the court's discretion,  
7 best serves the interests of justice and shall state the reasons for  
8 its choice on the record at the time of the sentence in accordance  
9 with the provisions of subdivision (d) of Section 1170.1.

10 (b) Any person who wears a body vest in the commission or  
11 attempted commission of a violent offense, as defined in  
12 subdivision (b) of Section 12021.1, shall, upon conviction of that  
13 felony or attempted felony, in addition and consecutive to the  
14 punishment prescribed for the felony or attempted felony of which  
15 he or she has been convicted, be punished by an additional term  
16 of one, two, or five years. The court shall select the sentence  
17 enhancement which, in the court's discretion, best serves the  
18 interests of justice and shall state the reasons for its choice on the  
19 record at the time of the sentence in accordance with the provisions  
20 of subdivision (d) of Section 1170.1.

21 (c) As used in this section, "body vest" means any  
22 bullet-resistant material intended to provide ballistic and trauma  
23 protection for the wearer.

24 (d) This section shall remain in effect only until January 1, ~~2011~~  
25 ~~2012~~, and as of that date is repealed, unless a later enacted statute,  
26 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
27 that date.

28 *SEC. 14. Section 12022.2 of the Penal Code, as added by*  
29 *Section 10 of Chapter 171 of the Statutes of 2009, is amended to*  
30 *read:*

31 12022.2. (a) Any person who, while armed with a firearm in  
32 the commission or attempted commission of any felony, has in his  
33 or her immediate possession ammunition for the firearm designed  
34 primarily to penetrate metal or armor, shall upon conviction of  
35 that felony or attempted felony, in addition and consecutive to the  
36 punishment prescribed for the felony or attempted felony, be  
37 punished by an additional term of three, four, or 10 years. The  
38 court shall order the middle term unless there are circumstances  
39 in aggravation or mitigation. The court shall state the reasons for  
40 its enhancement choice on the record at the time of the sentence.

1 (b) Any person who wears a body vest in the commission or  
2 attempted commission of a violent offense, as defined in  
3 subdivision (b) of Section 12021.1, shall, upon conviction of that  
4 felony or attempted felony, in addition and consecutive to the  
5 punishment prescribed for the felony or attempted felony of which  
6 he or she has been convicted, be punished by an additional term  
7 of one, two, or five years. The court shall order the middle term  
8 unless there are circumstances in aggravation or mitigation. The  
9 court shall state the reasons for its enhancement choice on the  
10 record at the time of the sentence.

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

14 (d) This section shall become operative on January 1, ~~2011~~  
15 ~~2012~~.

16 *SEC. 15. Section 12022.4 of the Penal Code, as amended by*  
17 *Section 11 of Chapter 171 of the Statutes of 2009, is amended to*  
18 *read:*

19 12022.4. (a) Any person who, during the commission or  
20 attempted commission of a felony, furnishes or offers to furnish  
21 a firearm to another for the purpose of aiding, abetting, or enabling  
22 that person or any other person to commit a felony shall, in addition  
23 and consecutive to the punishment prescribed by the felony or  
24 attempted felony of which the person has been convicted, be  
25 punished by an additional term of one, two, or three years in the  
26 state prison. The court shall select the sentence enhancement which,  
27 in the court’s discretion, best serves the interests of justice and  
28 shall state the reasons for its choice on the record at the time of  
29 the sentence, in accordance with the provisions of subdivision (d)  
30 of Section 1170.1. The additional term provided in this section  
31 shall not be imposed unless the fact of the furnishing is charged  
32 in the accusatory pleading and admitted or found to be true by the  
33 trier of fact.

34 (b) This section shall remain in effect only until January 1, ~~2011~~  
35 ~~2012~~, and as of that date is repealed, unless a later enacted statute,  
36 that is enacted before January 1, ~~2011~~ 2012, deletes or extends  
37 that date.

38 *SEC. 16. Section 12022.4 of the Penal Code, as added by*  
39 *Section 12 of Chapter 171 of the Statutes of 2009, is amended to*  
40 *read:*



1 12022.4. (a) Any person who, during the commission or  
2 attempted commission of a felony, furnishes or offers to furnish  
3 a firearm to another for the purpose of aiding, abetting, or enabling  
4 that person or any other person to commit a felony shall, in addition  
5 and consecutive to the punishment prescribed by the felony or  
6 attempted felony of which the person has been convicted, be  
7 punished by an additional term of one, two, or three years in the  
8 state prison. The court shall order the middle term unless there are  
9 circumstances in aggravation or mitigation. The court shall state  
10 the reasons for its enhancement choice on the record at the time  
11 of the sentence. The additional term provided in this section shall  
12 not be imposed unless the fact of the furnishing is charged in the  
13 accusatory pleading and admitted or found to be true by the trier  
14 of fact.

15 (b) This section shall become operative on January 1, ~~2011~~  
16 *2012*.

17  
18  
19 **All matter omitted in this version of the bill**  
20 **appears in the bill as introduced in the**  
21 **Assembly, February 18, 2010. (JR11)**  
22