

AMENDED IN SENATE AUGUST 20, 2010
AMENDED IN ASSEMBLY MARCH 22, 2010
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2263

Introduced by Assembly Member Yamada

February 18, 2010

An act to amend 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 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 incorporate amendments to Section 1170 of the Penal Code proposed by SB 399, contingent on the prior enactment of that bill.

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 $\frac{2}{3}$ vote of the membership of each house, and therefore requires a $\frac{2}{3}$ vote.

Vote: $\frac{2}{3}$. 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.

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

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

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

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

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

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

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

38 (c) If the court grants probation or suspends the execution of
39 sentence imposed upon the defendant for a violation of subdivision
40 (a), or in cases involving a true finding of the enhancement

1 enumerated in subdivision (b), the court shall require that the
2 defendant serve a minimum of 180 days in a county jail as a
3 condition thereof.

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

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

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

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

31 (3) Unlawful homicide or manslaughter, as defined in Chapter
32 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

- 1 (6) Discharging or permitting the discharge of a firearm from
2 a motor vehicle, as defined in subdivisions (a) and (b) of Section
3 12034.
- 4 (7) Arson, as defined in Chapter 1 (commencing with Section
5 450) of Title 13.
- 6 (8) The intimidation of witnesses and victims, as defined in
7 Section 136.1.
- 8 (9) Grand theft, as defined in subdivision (a) or (c) of Section
9 487.
- 10 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 11 (11) Burglary, as defined in Section 459.
- 12 (12) Rape, as defined in Section 261.
- 13 (13) Looting, as defined in Section 463.
- 14 (14) Money laundering, as defined in Section 186.10.
- 15 (15) Kidnapping, as defined in Section 207.
- 16 (16) Mayhem, as defined in Section 203.
- 17 (17) Aggravated mayhem, as defined in Section 205.
- 18 (18) Torture, as defined in Section 206.
- 19 (19) Felony extortion, as defined in Sections 518 and 520.
- 20 (20) Felony vandalism, as defined in paragraph (1) of
21 subdivision (b) of Section 594.
- 22 (21) Carjacking, as defined in Section 215.
- 23 (22) The sale, delivery, or transfer of a firearm, as defined in
24 Section 12072.
- 25 (23) Possession of a pistol, revolver, or other firearm capable
26 of being concealed upon the person in violation of paragraph (1)
27 of subdivision (a) of Section 12101.
- 28 (24) Threats to commit crimes resulting in death or great bodily
29 injury, as defined in Section 422.
- 30 (25) Theft and unlawful taking or driving of a vehicle, as defined
31 in Section 10851 of the Vehicle Code.
- 32 (26) Felony theft of an access card or account information, as
33 defined in Section 484e.
- 34 (27) Counterfeiting, designing, using, or attempting to use an
35 access card, as defined in Section 484f.
- 36 (28) Felony fraudulent use of an access card or account
37 information, as defined in Section 484g.
- 38 (29) Unlawful use of personal identifying information to obtain
39 credit, goods, services, or medical information, as defined in
40 Section 530.5.

1 (30) Wrongfully obtaining Department of Motor Vehicles
2 documentation, as defined in Section 529.7.

3 (31) Prohibited possession of a firearm in violation of Section
4 12021.

5 (32) Carrying a concealed firearm in violation of Section 12025.

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

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

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

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

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

37 (j) A pattern of gang activity may be shown by the commission
38 of one or more of the offenses enumerated in paragraphs (26) to
39 (30), inclusive, of subdivision (e), and the commission of one or
40 more of the offenses enumerated in paragraphs (1) to (25),

1 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern
2 of gang activity cannot be established solely by proof of
3 commission of offenses enumerated in paragraphs (26) to (30),
4 inclusive, of subdivision (e), alone.

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

8 SEC. 2. Section 186.22 of the Penal Code, as added by Section
9 2 of Chapter 171 of the Statutes of 2009, is amended to read:

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

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

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

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

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

35 (2) If the underlying felony described in paragraph (1) is
36 committed on the grounds of, or within 1,000 feet of, a public or
37 private elementary, vocational, junior high, or high school, during
38 hours in which the facility is open for classes or school-related
39 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 order the imposition of the middle term of
4 the sentence enhancement, unless there are circumstances in
5 aggravation or mitigation. The court shall state the reasons for its
6 choice of sentencing enhancements on the record at the time of
7 the sentencing.

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, or 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.

39 (k) This section shall become operative on January 1, 2012.

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

4 186.33. (a) Any person required to register pursuant to Section
5 186.30 who knowingly violates any of its provisions is guilty of
6 a misdemeanor.

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

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

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

24 SEC. 4. Section 186.33 of the Penal Code, as added by Section
25 4 of Chapter 171 of the Statutes of 2009, is amended to read:

26 186.33. (a) Any person required to register pursuant to Section
27 186.30 who knowingly violates any of its provisions is guilty of
28 a misdemeanor.

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

38 (2) The existence of any fact bringing a person under this
39 subdivision shall be alleged in the information, indictment, or

1 petition, and be either admitted by the defendant or minor in open
2 court, or found to be true or not true by the trier of fact.

3 (c) This section shall become operative on January 1, 2012.

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

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

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

28 (3) In any case in which the punishment prescribed by statute
29 for a person convicted of a public offense is a term of imprisonment
30 in the state prison of any specification of three time periods, the
31 court shall sentence the defendant to one of the terms of
32 imprisonment specified unless the convicted person is given any
33 other disposition provided by law, including a fine, jail, probation,
34 or the suspension of imposition or execution of sentence or is
35 sentenced pursuant to subdivision (b) of Section 1168 because he
36 or she had committed his or her crime prior to July 1, 1977. In
37 sentencing the convicted person, the court shall apply the
38 sentencing rules of the Judicial Council. The court, unless it
39 determines that there are circumstances in mitigation of the
40 punishment prescribed, shall also impose any other term that it is

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

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

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

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

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

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

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

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

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

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

37 The Board of Parole Hearings shall make findings pursuant to
38 this subdivision before making a recommendation for resentence
39 or recall to the court. This subdivision does not apply to a prisoner
40 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, 2012,
33 and as of that date is repealed, unless a later enacted statute, that
34 is enacted before that date, deletes or extends that date.

35 *SEC. 5.5. Section 1170 of the Penal Code, as amended by*
36 *Section 1 of Chapter 416 of the Statutes of 2008, is amended to*
37 *read:*

38 1170. (a) (1) The Legislature finds and declares that the
39 purpose of imprisonment for crime is punishment. This purpose
40 is best served by terms proportionate to the seriousness of the

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

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

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

1 this chapter, the entire sentence shall be deemed to have been
2 served and the defendant shall not be actually delivered to the
3 custody of the secretary. The court shall advise the defendant that
4 he or she shall serve a period of parole and order the defendant to
5 report to the parole office closest to the defendant's last legal
6 residence, unless the in-custody credits equal the total sentence,
7 including both confinement time and the period of parole. The
8 sentence shall be deemed a separate prior prison term under Section
9 667.5, and a copy of the judgment and other necessary
10 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~~ *court resentencing* under this subdivision
5 shall apply the sentencing rules of the Judicial Council so as to
6 eliminate disparity of sentences and to promote uniformity of
7 sentencing. Credit shall be given for time served.

8 *(e) (1) When a defendant who was under 18 years of age at the*
9 *time of the commission of the offense for which the defendant was*
10 *sentenced to imprisonment for life without the possibility of parole*
11 *has served at least 15 years of that sentence, the defendant may*
12 *submit to the sentencing court a petition for recall and*
13 *resentencing. Defendants who have served 15 or more years but*
14 *less than 25 years as of January 1, 2011, shall be permitted to*
15 *submit a petition for recall and resentencing as follows:*

16 *(A) Those defendants who entered custody prior to July 1, 1993,*
17 *may submit a petition in 2011.*

18 *(B) Those defendants who entered custody on or after July 1,*
19 *1993, but prior to January 1, 1994, may submit a petition in 2012.*

20 *(C) Those defendants who entered custody on or after January*
21 *1, 1994, but prior to July 1, 1994, may submit a petition in 2013.*

22 *(D) Those defendants who entered custody on or after July 1,*
23 *1994, but prior to January 1, 1996, may submit a petition in 2014.*

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

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

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

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

38 *(D) The defendant has performed acts that tend to indicate*
39 *remorse and rehabilitation or the potential for rehabilitation,*
40 *including, but not limited to, availing himself or herself of*

1 *rehabilitative, educational, or vocational programs, if those*
2 *programs have been available at his or her classification level*
3 *and facility, using self-study for self-improvement, or showing*
4 *evidence of remorse.*

5 *(3) In addition, all petitions shall include a statement describing*
6 *the defendant's remorse and work towards rehabilitation.*

7 *(4) If any of the information required in paragraph (2) or (3)*
8 *is missing from the petition, or if proof of service on the*
9 *prosecuting agency is not provided, the court shall return the*
10 *petition to the defendant and advise the defendant that the matter*
11 *cannot be considered without the missing information. The*
12 *defendant may resubmit a petition with the information or proof*
13 *of service.*

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

18 *(6) If the court finds by a preponderance of the evidence that*
19 *the statements in the petition are true, the court shall hold a*
20 *hearing to consider whether to recall the sentence and commitment*
21 *previously ordered and to resentence the defendant to the sentence*
22 *of 25 years to life in prison. Victims, or victim family members if*
23 *the victim is deceased, shall retain their right to participate in the*
24 *hearing.*

25 *(7) The factors that the court may consider when determining*
26 *whether to recall and resentence include, but are not limited to,*
27 *the following:*

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

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

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

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

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

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

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

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

19 (8) *The court shall have the discretion to recall the sentence*
20 *and commitment previously ordered and to resentence the*
21 *defendant to 25 years to life in prison. The discretion of the court*
22 *shall be exercised in consideration of the criteria in paragraph*
23 *(7). Victims, or victim family members if the victim is deceased,*
24 *shall be notified of the resentencing hearing and shall retain their*
25 *right to participate in the hearing.*

26 (9) *If the sentence is not recalled, the defendant may submit*
27 *another petition for recall and resentencing to the sentencing court*
28 *when the defendant has been committed to the custody of the*
29 *department for at least 20 years. If recall and resentencing is not*
30 *granted under that petition, the defendant may file another petition*
31 *alleging a substantial change in circumstances after having served*
32 *24 years, but prior to having completed 25 years of imprisonment.*
33 *The judge shall have the discretion as to whether to permit a final*
34 *hearing at that time.*

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

40 (11) *This subdivision shall have retroactive application.*

1 (e)

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

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

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

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

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

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

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

30 (4) Any physician employed by the department who determines
31 that a prisoner has six months or less to live shall notify the chief
32 medical officer of the prognosis. If the chief medical officer
33 concurs with the prognosis, he or she shall notify the warden.
34 Within 48 hours of receiving notification, the warden or the
35 warden's representative shall notify the prisoner of the recall and
36 resentencing procedures, and shall arrange for the prisoner to
37 designate a family member or other outside agent to be notified
38 as to the prisoner's medical condition and prognosis, and as to the
39 recall and resentencing procedures. If the inmate is deemed
40 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)~~

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

15 ~~(g)~~

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

19 ~~(h)~~

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

23 SEC. 6. Section 1170 of the Penal Code, as amended by Section
24 2 of Chapter 416 of the Statutes of 2008, is amended to read:

25 1170. (a) (1) The Legislature finds and declares that the
26 purpose of imprisonment for crime is punishment. This purpose
27 is best served by terms proportionate to the seriousness of the
28 offense with provision for uniformity in the sentences of offenders
29 committing the same offense under similar circumstances. The
30 Legislature further finds and declares that the elimination of
31 disparity and the provision of uniformity of sentences can best be
32 achieved by determinate sentences fixed by statute in proportion
33 to the seriousness of the offense as determined by the Legislature
34 to be imposed by the court with specified discretion.

35 (2) Notwithstanding paragraph (1), the Legislature further finds
36 and declares that programs should be available for inmates,
37 including, but not limited to, educational programs, that are
38 designed to prepare nonviolent felony offenders for successful
39 reentry into the community. The Legislature encourages the
40 development of policies and programs designed to educate and

1 rehabilitate nonviolent felony offenders. In implementing this
2 section, the Department of Corrections and Rehabilitation is
3 encouraged to give priority enrollment in programs to promote
4 successful return to the community to an inmate with a short
5 remaining term of commitment and a release date that would allow
6 him or her adequate time to complete the program.

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

37 (b) When a judgment of imprisonment is to be imposed and the
38 statute specifies three possible terms, the court shall order
39 imposition of the middle term, unless there are circumstances in
40 aggravation or mitigation of the crime. At least four days prior to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (h) This section shall become operative on January 1, 2012.

12 *SEC. 6.5. Section 1170 of the Penal Code, as amended by*
13 *Section 2 of Chapter 416 of the Statutes of 2008, is amended to*
14 *read:*

15 1170. (a) (1) The Legislature finds and declares that the
16 purpose of imprisonment for crime is punishment. This purpose
17 is best served by terms proportionate to the seriousness of the
18 offense with provision for uniformity in the sentences of offenders
19 committing the same offense under similar circumstances. The
20 Legislature further finds and declares that the elimination of
21 disparity and the provision of uniformity of sentences can best be
22 achieved by determinate sentences fixed by statute in proportion
23 to the seriousness of the offense as determined by the Legislature
24 to be imposed by the court with specified discretion.

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

37 (3) In any case in which the punishment prescribed by statute
38 for a person convicted of a public offense is a term of imprisonment
39 in the state prison of any specification of three time periods, the
40 court shall sentence the defendant to one of the terms of

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

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

1 prosecution, the defendant, or the victim, or the family of the victim
2 if the victim is deceased, and any further evidence introduced at
3 the sentencing hearing. The court shall set forth on the record the
4 facts and reasons for imposing the upper or lower term. The court
5 may not impose an upper term by using the fact of any
6 enhancement upon which sentence is imposed under any provision
7 of law. A term of imprisonment shall not be specified if imposition
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on
10 the record at the time of sentencing. The court shall also inform
11 the defendant that as part of the sentence after expiration of the
12 term he or she may be on parole for a period as provided in Section
13 3000.

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

27 (e) (1) *When a defendant who was under 18 years of age at the*
28 *time of the commission of the offense for which the defendant was*
29 *sentenced to imprisonment for life without the possibility of parole*
30 *has served at least 15 years of that sentence, the defendant may*
31 *submit to the sentencing court a petition for recall and*
32 *resentencing. Defendants who have served 15 or more years but*
33 *less than 25 years as of January 1, 2011, shall be permitted to*
34 *submit a petition for recall and resentencing as follows:*

35 (A) *Those defendants who entered custody prior to July 1, 1993,*
36 *may submit a petition in 2011.*

37 (B) *Those defendants who entered custody on or after July 1,*
38 *1993, but prior to January 1, 1994, may submit a petition in 2012.*

39 (C) *Those defendants who entered custody on or after January*
40 *1, 1994, but prior to July 1, 1994, may submit a petition in 2013.*

1 (D) Those defendants who entered custody on or after July 1,
2 1994, but prior to January 1, 1996, may submit a petition in 2014.

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

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

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

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

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

24 (3) In addition, all petitions shall include a statement describing
25 the defendant's remorse and work towards rehabilitation.

26 (4) If any of the information required in paragraph (2) or (3)
27 is missing from the petition, or if proof of service on the
28 prosecuting agency is not provided, the court shall return the
29 petition to the defendant and advise the defendant that the matter
30 cannot be considered without the missing information. The
31 defendant may resubmit a petition with the information or proof
32 of service.

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

37 (6) If the court finds by a preponderance of the evidence that
38 the statements in the petition are true, the court shall hold a
39 hearing to consider whether to recall the sentence and commitment
40 previously ordered and to resentence the defendant to the sentence

1 of 25 years to life in prison. Victims, or victim family members if
2 the victim is deceased, shall retain the right to participate in the
3 hearing.

4 (7) The factors that the court may consider when determining
5 whether to recall and resentence include, but are not limited to,
6 the following:

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

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

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

15 (D) Prior to the offense for which the sentence is being
16 considered for recall, the defendant had insufficient adult support
17 or supervision and had suffered from psychological or physical
18 trauma, or significant stress.

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

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

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

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

37 (8) The court shall have the discretion to recall the sentence
38 and commitment previously ordered and to resentence the
39 defendant to 25 years to life in prison. The discretion of the court
40 shall be exercised in consideration of the criteria in paragraph

1 (7). Victims, or victim family members if the victim is deceased,
2 shall be notified of the resentencing hearing and shall retain their
3 right to participate in the hearing.

4 (9) If the sentence is not recalled, the defendant may submit
5 another petition for recall and resentencing to the sentencing court
6 when the defendant has been committed to the custody of the
7 department for at least 20 years. If recall and resentencing is not
8 granted under that petition, the defendant may file another petition
9 alleging a substantial change in circumstances after having served
10 24 years, but prior to having completed 25 years of imprisonment.
11 The judge shall have the discretion as to whether to permit a final
12 hearing at that time.

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

18 (11) This subdivision shall have retroactive application.

19 ~~(e)~~

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

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

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

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

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

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

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

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

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

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

1 have applied under this section. The board shall consider this
2 information and make an independent judgment pursuant to
3 paragraph (2) and make findings related thereto before rejecting
4 the request or making a recommendation to the court. This action
5 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

29 ~~(f)~~

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

33 ~~(g)~~

34 (h) A sentence to state prison for a determinate term for which
35 only one term is specified, is a sentence to state prison under this
36 section.

37 ~~(h)~~

38 (i) This section shall become operative on January 1, ~~2011~~ 2012.

1 SEC. 7. Section 1170.1 of the Penal Code, as amended by
2 Section 5 of Chapter 171 of the Statutes of 2009, is amended to
3 read:

4 1170.1. (a) Except as otherwise provided by law, and subject
5 to Section 654, when any person is convicted of two or more
6 felonies, whether in the same proceeding or court or in different
7 proceedings or courts, and whether by judgment rendered by the
8 same or by a different court, and a consecutive term of
9 imprisonment is imposed under Sections 669 and 1170, the
10 aggregate term of imprisonment for all these convictions shall be
11 the sum of the principal term, the subordinate term, and any
12 additional term imposed for applicable enhancements for prior
13 convictions, prior prison terms, and Section 12022.1. The principal
14 term shall consist of the greatest term of imprisonment imposed
15 by the court for any of the crimes, including any term imposed for
16 applicable specific enhancements. The subordinate term for each
17 consecutive offense shall consist of one-third of the middle term
18 of imprisonment prescribed for each other felony conviction for
19 which a consecutive term of imprisonment is imposed, and shall
20 include one-third of the term imposed for any specific
21 enhancements applicable to those subordinate offenses.

22 (b) If a person is convicted of two or more violations of
23 kidnapping, as defined in Section 207, involving separate victims,
24 the subordinate term for each consecutive offense of kidnapping
25 shall consist of the full middle term and shall include the full term
26 imposed for specific enhancements applicable to those subordinate
27 offenses.

28 (c) In the case of any person convicted of one or more felonies
29 committed while the person is confined in a state prison or is
30 subject to reimprisonment for escape from custody and the law
31 either requires the terms to be served consecutively or the court
32 imposes consecutive terms, the term of imprisonment for all the
33 convictions that the person is required to serve consecutively shall
34 commence from the time the person would otherwise have been
35 released from prison. If the new offenses are consecutive with each
36 other, the principal and subordinate terms shall be calculated as
37 provided in subdivision (a). This subdivision shall be applicable
38 in cases of convictions of more than one offense in the same or
39 different proceedings.

1 (d) When the court imposes a prison sentence for a felony
2 pursuant to Section 1170 or subdivision (b) of Section 1168, the
3 court shall also impose, in addition and consecutive to the offense
4 of which the person has been convicted, the additional terms
5 provided for any applicable enhancements. If an enhancement is
6 punishable by one of three terms, the court shall, in its discretion,
7 impose the term that best serves the interest of justice, and state
8 the reasons for its sentence choice on the record at the time of
9 sentencing. The court shall also impose any other additional term
10 that the court determines in its discretion or as required by law
11 shall run consecutive to the term imposed under Section 1170 or
12 subdivision (b) of Section 1168. In considering the imposition of
13 the additional term, the court shall apply the sentencing rules of
14 the Judicial Council.

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

18 (f) When two or more enhancements may be imposed for being
19 armed with or using a dangerous or deadly weapon or a firearm
20 in the commission of a single offense, only the greatest of those
21 enhancements shall be imposed for that offense. This subdivision
22 shall not limit the imposition of any other enhancements applicable
23 to that offense, including an enhancement for the infliction of great
24 bodily injury.

25 (g) When two or more enhancements may be imposed for the
26 infliction of great bodily injury on the same victim in the
27 commission of a single offense, only the greatest of those
28 enhancements shall be imposed for that offense. This subdivision
29 shall not limit the imposition of any other enhancements applicable
30 to that offense, including an enhancement for being armed with
31 or using a dangerous or deadly weapon or a firearm.

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

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

1 SEC. 8. Section 1170.1 of the Penal Code, as added by Section
2 6 of Chapter 171 of the Statutes of 2009, is amended to read:

3 1170.1. (a) Except as otherwise provided by law, and subject
4 to Section 654, when any person is convicted of two or more
5 felonies, whether in the same proceeding or court or in different
6 proceedings or courts, and whether by judgment rendered by the
7 same or by a different court, and a consecutive term of
8 imprisonment is imposed under Sections 669 and 1170, the
9 aggregate term of imprisonment for all these convictions shall be
10 the sum of the principal term, the subordinate term, and any
11 additional term imposed for applicable enhancements for prior
12 convictions, prior prison terms, and Section 12022.1. The principal
13 term shall consist of the greatest term of imprisonment imposed
14 by the court for any of the crimes, including any term imposed for
15 applicable specific enhancements. The subordinate term for each
16 consecutive offense shall consist of one-third of the middle term
17 of imprisonment prescribed for each other felony conviction for
18 which a consecutive term of imprisonment is imposed, and shall
19 include one-third of the term imposed for any specific
20 enhancements applicable to those subordinate offenses.

21 (b) If a person is convicted of two or more violations of
22 kidnapping, as defined in Section 207, involving separate victims,
23 the subordinate term for each consecutive offense of kidnapping
24 shall consist of the full middle term and shall include the full term
25 imposed for specific enhancements applicable to those subordinate
26 offenses.

27 (c) In the case of any person convicted of one or more felonies
28 committed while the person is confined in a state prison or is
29 subject to reimprisonment for escape from custody and the law
30 either requires the terms to be served consecutively or the court
31 imposes consecutive terms, the term of imprisonment for all the
32 convictions that the person is required to serve consecutively shall
33 commence from the time the person would otherwise have been
34 released from prison. If the new offenses are consecutive with each
35 other, the principal and subordinate terms shall be calculated as
36 provided in subdivision (a). This subdivision shall be applicable
37 in cases of convictions of more than one offense in the same or
38 different proceedings.

39 (d) When the court imposes a prison sentence for a felony
40 pursuant to Section 1170 or subdivision (b) of Section 1168, the

1 court shall also impose, in addition and consecutive to the offense
2 of which the person has been convicted, the additional terms
3 provided for any applicable enhancements. If an enhancement is
4 punishable by one of three terms, the court shall impose the middle
5 term unless there are circumstances in aggravation or mitigation,
6 and state the reasons for its sentence choice, other than the middle
7 term, on the record at the time of sentencing. The court shall also
8 impose any other additional term that the court determines in its
9 discretion or as required by law shall run consecutive to the term
10 imposed under Section 1170 or subdivision (b) of Section 1168.
11 In considering the imposition of the additional term, the court shall
12 apply the sentencing rules of the Judicial Council.

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

16 (f) When two or more enhancements may be imposed for being
17 armed with or using a dangerous or deadly weapon or a firearm
18 in the commission of a single offense, only the greatest of those
19 enhancements shall be imposed for that offense. This subdivision
20 shall not limit the imposition of any other enhancements applicable
21 to that offense, including an enhancement for the infliction of great
22 bodily injury.

23 (g) When two or more enhancements may be imposed for the
24 infliction of great bodily injury on the same victim in the
25 commission of a single offense, only the greatest of those
26 enhancements shall be imposed for that offense. This subdivision
27 shall not limit the imposition of any other enhancements applicable
28 to that offense, including an enhancement for being armed with
29 or using a dangerous or deadly weapon or a firearm.

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

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

36 SEC. 9. Section 1170.3 of the Penal Code, as amended by
37 Section 146 of Chapter 140 of the Statutes of 2009, is amended to
38 read:

39 1170.3. The Judicial Council shall seek to promote uniformity
40 in sentencing under Section 1170 by:

1 (a) The adoption of rules providing criteria for the consideration
2 of the trial judge at the time of sentencing regarding the court’s
3 decision to:

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

9 (b) The adoption of rules standardizing the minimum content
10 and the sequential presentation of material in probation officer
11 reports submitted to the court.

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

15 SEC. 10. Section 1170.3 of the Penal Code, as amended by
16 Section 147 of Chapter 140 of the Statutes of 2009, is amended to
17 read:

18 1170.3. The Judicial Council shall seek to promote uniformity
19 in sentencing under Section 1170 by:

20 (a) The adoption of rules providing criteria for the consideration
21 of the trial judge at the time of sentencing regarding the court’s
22 decision to:

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

28 (b) The adoption of rules standardizing the minimum content
29 and the sequential presentation of material in probation officer
30 reports submitted to the court.

31 (c) This section shall become operative on January 1, 2012.

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) This section shall remain in effect only until January 1, 2012,
17 and as of that date is repealed, unless a later enacted statute, that
18 is enacted before January 1, 2012, deletes or extends that date.

19 SEC. 12. Section 12021.5 of the Penal Code, as added by
20 Section 8 of Chapter 171 of the Statutes of 2009, is amended to
21 read:

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

32 (b) Every person who carries a loaded or unloaded firearm
33 together with a detachable shotgun magazine, a detachable pistol
34 magazine, a detachable magazine, or a belt-feeding device on his
35 or her person, or in a vehicle, during the commission or attempted
36 commission of any street gang crimes described in subdivision (a)
37 or (b) of Section 186.22, shall, upon conviction of the felony or
38 attempted felony, be punished by an additional term of
39 imprisonment in the state prison for two, three, or four years in
40 the court’s discretion. The court shall impose the middle term

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (d) This section shall become operative on January 1, 2012.

1 SEC. 13. Section 12022.2 of the Penal Code, as amended by
2 Section 9 of Chapter 171 of the Statutes of 2009, is amended to
3 read:

4 12022.2. (a) Any person who, while armed with a firearm in
5 the commission or attempted commission of any felony, has in his
6 or her immediate possession ammunition for the firearm designed
7 primarily to penetrate metal or armor, shall upon conviction of
8 that felony or attempted felony, in addition and consecutive to the
9 punishment prescribed for the felony or attempted felony, be
10 punished by an additional term of 3, 4, or 10 years. The court shall
11 select the sentence enhancement which, in the court's discretion,
12 best serves the interests of justice and shall state the reasons for
13 its choice on the record at the time of the sentence in accordance
14 with the provisions of subdivision (d) of Section 1170.1.

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

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

29 (d) This section shall remain in effect only until January 1, 2012,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2012, deletes or extends that date.

32 SEC. 14. Section 12022.2 of the Penal Code, as added by
33 Section 10 of Chapter 171 of the Statutes of 2009, is amended to
34 read:

35 12022.2. (a) Any person who, while armed with a firearm in
36 the commission or attempted commission of any felony, has in his
37 or her immediate possession ammunition for the firearm designed
38 primarily to penetrate metal or armor, shall upon conviction of
39 that felony or attempted felony, in addition and consecutive to the
40 punishment prescribed for the felony or attempted felony, be

1 punished by an additional term of three, four, or 10 years. The
2 court shall order the middle term unless there are circumstances
3 in aggravation or mitigation. The court shall state the reasons for
4 its enhancement choice on the record at the time of the sentence.

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

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

18 (d) This section shall become operative on January 1, 2012.

19 SEC. 15. Section 12022.4 of the Penal Code, as amended by
20 Section 11 of Chapter 171 of the Statutes of 2009, is amended to
21 read:

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

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

1 SEC. 16. Section 12022.4 of the Penal Code, as added by
2 Section 12 of Chapter 171 of the Statutes of 2009, is amended to
3 read:

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

18 (b) This section shall become operative on January 1, 2012.

19 *SEC. 17. Section 5.5 of this bill incorporates amendments to*
20 *Section 1170 of the Penal Code, as amended by Section 1 of*
21 *Chapter 416 of the Statutes of 2008, proposed by both this bill and*
22 *SB 399. It shall only become operative if (1) both bills are enacted*
23 *and become effective on or before January 1, 2011, (2) each bill*
24 *amends Section 1170 of the Penal Code, as amended by Section*
25 *1 of Chapter 416 of the Statutes of 2008, and (3) this bill is enacted*
26 *after SB 399, in which case Section 5 of this bill shall not become*
27 *operative.*

28 *SEC. 18. Section 6.5 of this bill incorporates amendments to*
29 *Section 1170 of the Penal Code, as amended by Section 2 of*
30 *Chapter 416 of the Statutes of 2008, proposed by both this bill and*
31 *SB 399. It shall only become operative if (1) both bills are enacted*
32 *and become effective on or before January 1, 2011, (2) each bill*
33 *amends Section 1170 of the Penal Code, as amended by Section*
34 *2 of Chapter 416 of the Statutes of 2008, and (3) this bill is enacted*
35 *after SB 399, in which case Section 6 of this bill shall not become*
36 *operative.*

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