

AMENDED IN SENATE SEPTEMBER 2, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

**ASSEMBLY BILL**

**No. 17**

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**Introduced by Assembly Member Blumenfield**

May 19, 2011

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~~An act relating to the Budget Act of 2011.~~ *An act to amend Sections 26605 and 30025 of the Government Code, to amend Sections 11355 and 11382 of the Health and Safety Code, to amend Sections 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, and 12025 of, to add Sections 1233.15, 3460, 3465, 4019.2, and 4115.56 to, and to repeal and add Section 2932 of, the Penal Code, to amend Section 9 of Chapter 136 of the Statutes of 2011, and to amend Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), relating to criminal justice realignment, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

AB 17, as amended, Blumenfield. ~~Budget Act of 2011.~~ *Criminal Justice Realignment of 2011.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2011.~~

*(1) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except for persons with a prior or current felony conviction for serious or violent felony, persons required to register as sex offenders, or persons convicted of a crime as part of a sentence enhancement, as specified, a felony punishable pursuant to specified provisions where the term is not specified in the underlying*

offense shall be punishable by a term of imprisonment in a county in a county jail for 16 months, or two or three years and a felony punishable by a term of imprisonment described in the underlying offense shall be punishable by imprisonment in a county jail. Those persons excepted from this requirement are subject to imprisonment in the state prison.

This bill would additionally require persons with a current or prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious or violent felony, as specified, and persons with prior juvenile adjudication where the defendant was 16 years of age or older at the time of the commission of a serious or violent felony or a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony offense, as specified, to serve the term of imprisonment in the state prison.

(2) Existing law provides that certain specified felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer are punishable by incarceration in state prison. If Chapter 15 of the Statutes of 2011 becomes operative, certain of those felonies shall instead be punishable by incarceration in county jail.

This bill would make various technical and conforming changes to provisions related to the incarceration of persons for felony convictions in county jail. The bill would make certain felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer punishable by incarceration in county jail pursuant to Chapter 15 of the Statutes of 2011 instead punishable by incarceration in state prison.

(3) Existing law provides for the enhancement of prison terms for new offenses because of prior prison terms, as specified. If Chapter 15 of the Statutes of 2011 becomes operative, a judge, when imposing a sentence pursuant to these provisions, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

This bill would provide that a term imposed under the above-referenced provision, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of a specified enhancement, and make conforming changes.

(4) Existing law provides that, except as specified, every felony is punishable by imprisonment in any of the state prisons for 16 months, or 2 or 3 years. If Chapter 15 of the Statutes of 2011 becomes operative, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or 2 or 3 years and where the term is specified for the term described in the underlying offense. Chapter 15 of the Statutes of 2011 requires that the punishment for certain felonies be served in state prison.

This bill would place specified parameters on the imposition of sentences under the provisions added by Chapter 15 of the Statutes of 2011. The bill would provide that when imposing a sentence pursuant to the above-reference provisions, the court may commit the defendant for term served in custody, as specified, or for a term as determined in accordance with the applicable sentencing law but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer, as specified.

(5) Existing law provides that the moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011. Existing law requires that the moneys be allocated equally by the county or city and county to the district attorney's office and the county public defender's office.

This bill would require that where no public defender's office is established, the moneys be allocated to the county for distribution for the same purpose.

(6) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, applies certain provisions relating to the denial of time credits to persons confined in local facilities pursuant to provisions added by Chapter 15 of the Statutes of 2011 providing for the incarceration of felons in local facilities, as specified.

This bill would repeal the amendments made by Chapter 15 of the Statutes of 2011, restore prior law, and instead subject these felons to other credit provisions applicable to persons confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, as specified. The bill would provide that no credits may be earned for periods of flash incarceration, as specified. The bill would provide that any inmate sentenced to county jail assigned to a conservation

*camp who is eligible to earn one day of credit for every one day of incarceration shall instead earn two days of credit for every one day of service and make related changes.*

*(7) Existing law provides that, except as specified, a prisoner sentenced to state prison under specified provisions, for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits are applicable to the prisoner.*

*This bill would delete the above-referenced provisions, thereby making other time credit provisions applicable to prisoners confined in or committed to specified local facilities applicable to the above-referenced prisoners.*

*(8) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except as specified, when specified persons who were not imprisoned for committing a violent felony, as defined, who have been released on parole from the state prison, and who have been on parole continuously for 6 months since release from confinement, within 30 days, shall be discharged from parole.*

*This bill would additionally make the above provision related to discharge from parole inapplicable to persons who were imprisoned for committing a serious felony or who are required to register as a sex offender, as specified.*

*(9) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, subjects certain persons released from state prison to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation, as specified.*

*This bill would provide that persons required to register as sex offenders and persons subject to life-time parole, as specified, who are released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to 3 years or the parole term the person was subject to at the time of the commission of the offense. The bill would make other conforming and related changes regarding the parole periods, revocations, search and seizure requirements, and the release of high-risk parolees.*

*(10) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, makes felons subject to postrelease supervision as established by the Postrelease Community Supervision Act of 2011 eligible to participate in reentry court programs, as specified, and would authorize*

counties to contract with the Department of Corrections and Rehabilitation in order to obtain day treatment and crisis care services for inmates with mental health problems who are released on postrelease community supervision.

This bill would instead authorize counties to contract with the department to obtain correctional clinical services. The bill would make changes to the postrelease community supervision agreement, require persons placed on postrelease supervision to be subject to search and seizure, and make other related changes regarding postrelease supervision sanctions, and revocations. The bill would require a supervising agency, upon determining that a person subject to postrelease supervision no longer permanently resides within its jurisdiction, where a change in residence was either approved or did not violate the terms and conditions of postrelease supervision, to transmit, within 2 weeks, the prison release packet to the designated supervising agency in the county in which the person permanently resides. By imposing additional duties on local agencies, the bill would create a state-mandated local program.

(11) Existing law provides that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correction facilities, as specified.

This bill would authorize, upon agreement with the sheriff or director of the county department of corrections, a board of supervisors to enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes. The bill would provide that when housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.

(12) Existing law provides that, except as specified, an inmate who is released on parole or postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law requires that specified information be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision. Existing law provides that, except as specified, the department shall be the agency primarily responsible

for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) and, if Chapter 15 of the Statutes of 2011 becomes operative, requires county agencies supervising inmates released to postrelease supervision to provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison, as specified.

This bill would additionally require the Department of Corrections and Rehabilitation to submit, via electronic transfer, to the Department of Justice data to be included in the supervised released file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision.

(13) The Budget Act of 2011 reduced the amount appropriated, \$95,254,000, for support of the Department of Corrections and Rehabilitation by \$77,406,000 to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for instate housing of state inmates.

This bill would instead reduced the amount appropriated by \$54,200,00 for those purposes.

(14) Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers, and the Administrative Office of the Courts to make certain calculations, including, among others, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison and the statewide probation failure rate.

This bill would additionally require, except for the Joint Legislative Budget Committee, the above-referenced entities to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 public safety realignment.

(15) This bill would include additional changes proposed by SB 9 and SB 576 contingent on the enactment of those bills.

(16) This bill would appropriate \$1,000 to the Department of Corrections and Rehabilitation for the purpose of state operations.

(17) *The bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.*

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

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

The

(19) *The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.*

*This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.*

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

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

1     SECTION 1. *This act is titled and may be cited as the 2011*  
2     *realignment Legislation addressing public safety.*

3     SEC. 2. *Section 26605 of the Government Code is amended to*  
4     *read:*

5     26605. Notwithstanding any other provision of law, except in  
6     counties in which the sheriff, as of July 1, 1993, is not in charge  
7     of and the sole and exclusive authority to keep the county jail and  
8     the prisoners in it, the sheriff shall take charge of and be the sole  
9     and exclusive authority to keep the county jail and the prisoners  
10    in it *including persons confined to the county jail pursuant to*  
11    *subdivision (b) of Section 3454 of the Penal Code for a violation*  
12    *of the terms and conditions of their postrelease community*  
13    *supervision, except for work furlough facilities where by county*

1 ordinance the work furlough administrator is someone other than  
2 the sheriff.

3 *SEC. 3. Section 30025 of the Government Code is amended to*  
4 *read:*

5 30025. (a) The Local Revenue Fund 2011 is hereby created  
6 in the State Treasury and shall receive all revenues, less refunds,  
7 derived from the taxes described in Sections 6051.15 and 6201.15;  
8 revenues as may be allocated to the fund pursuant to Sections  
9 11001.5 and 11005 of the Revenue and Taxation Code; and other  
10 moneys that may be specifically appropriated to the fund.

11 (b) The Trial Court Security Account, the Local Community  
12 Corrections Account, the Local Law Enforcement Services  
13 Account, the Mental Health Account, the District Attorney and  
14 Public Defender Account, the Juvenile Justice Account, the Health  
15 and Human Services Account, and the Reserve Account are hereby  
16 created within the Local Revenue Fund 2011.

17 (c) The Youthful Offender Block Grant Subaccount and the  
18 Juvenile Reentry Grant Subaccount are hereby created within the  
19 Juvenile Justice Account.

20 (d) The Adult Protective Services Subaccount, the Foster Care  
21 Subaccount, the Child Welfare Services Subaccount, the Adoptions  
22 Subaccount, the Adoption Assistance Program Subaccount, the  
23 Child Abuse Prevention Subaccount, the Women and Children's  
24 Residential Treatment Services Subaccount, the Drug Court  
25 Subaccount, the Nondrug Medi-Cal Substance Abuse Treatment  
26 Services Subaccount, and the Drug Medi-Cal Subaccount are  
27 hereby created within the Health and Human Services Account  
28 within the Local Revenue Fund 2011.

29 (e) Funds transferred to the Local Revenue Fund 2011 and its  
30 accounts and subaccounts are, notwithstanding Section 13340,  
31 continuously appropriated and shall be allocated pursuant to statute  
32 exclusively for Public Safety Services as defined in subdivision  
33 (h) and as further limited by statute. The moneys derived from  
34 taxes described in subdivision (a) and deposited in the Local  
35 Revenue Fund 2011 shall be available to reimburse the General  
36 Fund for moneys that are advanced to the Local Revenue Fund  
37 2011. Additionally, all funds deposited in the Local Revenue Fund  
38 2011 and its accounts shall be available to pay for state costs  
39 incurred resulting from phasing in the implementation of Chapter  
40 15 of the Statutes of 2011 and to reimburse the state for costs

1 incurred on behalf of a local governmental entity in providing  
2 Public Safety Services.

3 (f) (1) Each county treasurer, city and county treasurer, or other  
4 appropriate official shall create a County Local Revenue Fund  
5 2011 for the county or city and county and shall create the Local  
6 Community Corrections Account, the Trial Court Security Account,  
7 the District Attorney and Public Defender Account, the Juvenile  
8 Justice Account, the Health and Human Services Account, and the  
9 Supplemental Law Enforcement Account within the County Local  
10 Revenue Fund 2011 for the county or city and county.

11 (2) The moneys in the County Local Revenue Fund 2011 for  
12 each county or city and county and its accounts shall be exclusively  
13 used for Public Safety Services as defined in subdivision (h) and  
14 as further described in this section.

15 (3) The moneys in the Trial Court Security Account shall be  
16 used exclusively to fund trial court security provided by county  
17 sheriffs. No general county administrative costs may be charged  
18 to this account, including, but not limited to, the costs of  
19 administering the account.

20 (4) The moneys in the Local Community Corrections Account  
21 shall be used exclusively to fund the provisions of Chapter 15 of  
22 the Statutes of 2011. The moneys within this account shall not be  
23 used by local agencies to supplant other funding for Public Safety  
24 Services. This account shall be the source of funding for the  
25 Postrelease Community Supervision Act of 2011, as enacted by  
26 Section 479 of Chapter 15 of the Statutes of 2011, and to fund the  
27 housing of parolees in county jails.

28 (5) The moneys in the District Attorney and Public Defender  
29 Account shall be used exclusively to fund costs associated with  
30 revocation proceedings involving persons subject to state parole  
31 and the Postrelease Community Supervision Act of 2011 (Title  
32 2.05 (commencing with Section 3450) of Part 3 of the Penal Code).  
33 The moneys shall be allocated equally by the county or city and  
34 county to the district attorney's office and county public defender's  
35 office *or, where no public defender's office is established, to the*  
36 *county for distribution for the same purpose.*

37 (6) The moneys in the Juvenile Justice Account shall only be  
38 used to fund activities in connection with the grant programs  
39 described in this paragraph.

1 (A) The Youthful Offender Block Grant Subaccount shall be  
2 used to fund grants solely to enhance the capacity of county  
3 probation, mental health, drug and alcohol, and other county  
4 departments to provide appropriate rehabilitative, housing, and  
5 supervision services to youthful offenders, subject to Sections  
6 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions  
7 Code. Counties, in expending an allocation from this subaccount,  
8 shall provide all necessary services related to the custody and  
9 parole of the offenders.

10 (B) The Juvenile Reentry Grant Subaccount shall be used to  
11 fund grants exclusively to address local program needs for persons  
12 discharged from the custody of the Department of Corrections and  
13 Rehabilitation, Division of Juvenile Facilities. County probation  
14 departments, in expending the Juvenile Reentry Grant allocation,  
15 shall provide evidence-based supervision and detention practices  
16 and rehabilitative services to persons who are subject to the  
17 jurisdiction of the juvenile court, and who were committed to and  
18 discharged from the Department of Corrections and Rehabilitation,  
19 Division of Juvenile Facilities. “Evidence-based” refers to  
20 supervision and detention policies, procedures, programs, and  
21 practices demonstrated by scientific research to reduce recidivism  
22 among individuals on probation or under postrelease supervision.  
23 The funds allocated from this subaccount shall supplement existing  
24 services and shall not be used by local agencies to supplant any  
25 existing funding for existing services provided by those entities.  
26 The funding provided from this subaccount is intended to provide  
27 payment in full for all local government costs of the supervision,  
28 programming, education, incarceration, or any other cost resulting  
29 from persons discharged from custody or held in local facilities  
30 pursuant to the provisions of Chapter 729 of the Statutes of 2010.

31 (7) The Health and Human Services Account and its subaccounts  
32 described in subdivision (d) shall be used only to fund activities  
33 performed in connection with the programs described in this  
34 subdivision. The subaccounts shall be used exclusively as follows:

35 (A) The Adult Protective Services Subaccount shall be used to  
36 fund adult protective services described in statute and regulation.

37 (B) The Foster Care Subaccount shall be used to fund the  
38 administrative costs and cost of foster care grants and services as  
39 those services are described in statute and regulation, including

1 the costs for the Title IV-E Child Welfare Waiver Demonstration  
2 Capped Allocation Project.

3 (C) The Child Welfare Services Subaccount shall be used to  
4 fund the costs of child welfare services as those services are  
5 described in statute and regulation.

6 (D) The Adoptions Subaccount shall be used to fund the costs  
7 connected with providing adoptive services, including agency  
8 adoptions, as described in statute and regulation, including the  
9 costs incurred by the county or city and county if the county or  
10 city and county elects to contract with the state to provide those  
11 services.

12 (E) The Child Abuse Prevention Subaccount shall be used to  
13 fund the costs of child abuse prevention, intervention, and treatment  
14 services as those costs and services are described in statute and  
15 regulation.

16 (F) The Adoption Assistance Program Subaccount shall be used  
17 to fund the administrative costs and payments for families adopting  
18 children with special needs.

19 (G) The Women and Children's Residential Treatment Services  
20 Subaccount shall be used to fund the costs of residential perinatal  
21 drug services and treatment as those services and treatment are  
22 described in statute and regulation.

23 (H) The Drug Court Subaccount shall be used to fund the costs  
24 of drug court operations and services as those costs are currently  
25 permitted and described by statute and regulation.

26 (I) The Nondrug Medi-Cal Substance Abuse Treatment Services  
27 Subaccount shall be used to fund the costs of nondrug Medi-Cal  
28 substance abuse treatment programs, as described in statute and  
29 regulation.

30 (J) The Drug Medi-Cal Subaccount shall be used to fund the  
31 costs of the Drug Medi-Cal program as that program is described  
32 in statute, regulation, or the current State Plan Amendment.

33 (g) The moneys in the Reserve Account shall be used to fund  
34 entitlements paid from the Foster Care Subaccount, the Drug  
35 Medi-Cal Subaccount and the Adoption Assistance Program  
36 Subaccount of the Health and Human Services Account.

37 (h) For purposes of this section, "Public Safety Services" shall  
38 include all of the following:

39 (1) Employing public safety officials, prosecutors, public  
40 defenders, and court security staff.

(2) Managing local jails, housing and treating youthful offenders, and providing services for, and overseeing the supervised release of, offenders.

(3) Preventing child abuse, providing services to children who are abused, neglected, or exploited, providing services to vulnerable children and their families, and providing adult protective services.

(4) Providing mental health services to children and adults in order to reduce failure in school, harm to themselves and others, homelessness, and preventable incarceration.

(5) Preventing, treating, and providing recovery services for alcohol and drug abuse.

*SEC. 4. Section 11355 of the Health and Safety Code is amended to read:*

11355. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug to any person, or who offers, arranges, or negotiates to have any such controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and who then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of any such controlled substance shall be punished by imprisonment in the county jail for not more than one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

*SEC. 5. Section 11382 of the Health and Safety Code is amended to read:*

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is ~~(1) (a)~~ classified in Schedule III, IV, or V and which is not a narcotic drug, or ~~(2) (b)~~ specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d),

(e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

SEC. 6. Section 17 of the Penal Code, as amended by Section 228 of Chapter 15 of the Statutes of 2011, is amended to read:

17. (a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170.~~ Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170,~~ or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170.~~

(2) When the court, upon committing the defendant to the ~~Youth Authority~~ Division of Juvenile Justice, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended

1 to charge the felony and the case shall proceed on the felony  
2 complaint.

3 (5) When, at or before the preliminary examination or prior to  
4 filing an order pursuant to Section 872, the magistrate determines  
5 that the offense is a misdemeanor, in which event the case shall  
6 proceed as if the defendant had been arraigned on a misdemeanor  
7 complaint.

8 (c) When a defendant is committed to the ~~Youth Authority~~  
9 *Division of Juvenile Justice* for a crime punishable, in the discretion  
10 of the court, either by imprisonment in the state prison or  
11 imprisonment in a county jail ~~for more than one year under the~~  
12 *provisions of subdivision (h) of Section 1170*, or by fine or  
13 imprisonment in the county jail not exceeding one year, the offense  
14 shall, upon the discharge of the defendant from the ~~Youth Authority~~  
15 *Division of Juvenile Justice*, thereafter be deemed a misdemeanor  
16 for all purposes.

17 (d) A violation of any code section listed in Section 19.8 is an  
18 infraction subject to the procedures described in Sections 19.6 and  
19 19.7 when:

20 (1) The prosecutor files a complaint charging the offense as an  
21 infraction unless the defendant, at the time he or she is arraigned,  
22 after being informed of his or her rights, elects to have the case  
23 proceed as a misdemeanor, or;

24 (2) The court, with the consent of the defendant, determines  
25 that the offense is an infraction in which event the case shall  
26 proceed as if the defendant had been arraigned on an infraction  
27 complaint.

28 (e) Nothing in this section authorizes a judge to relieve a  
29 defendant of the duty to register as a sex offender pursuant to  
30 Section 290 if the defendant is charged with an offense for which  
31 registration as a sex offender is required pursuant to Section 290,  
32 and for which the trier of fact has found the defendant guilty.

33 *SEC. 7. Section 18 of the Penal Code, as amended by Section*  
34 *230 of Chapter 15 of the Statutes of 2011, is amended to read:*

35 18. (a) Except in cases where a different punishment is  
36 prescribed by any law of this state, every offense declared to be a  
37 felony is punishable by imprisonment for 16 months, or two or  
38 three years ~~as provided in the state prison unless the offense is~~  
39 *punishable pursuant to subdivision (h) of Section 1170.*

(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment or by a fine, but without an alternate sentence to the county jail for a period not exceeding one year, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

SEC. 8. Section 273d of the Penal Code, as amended by Section 312 of Chapter 15 of the Statutes of 2011, is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term *or term imposed under the provisions of subdivision (h) of Section 1170* served prior to a period of 10 years in which the defendant remained free of both the commission of an offense that results in a felony conviction and prison custody or custody ~~for more than one year~~ in a county jail *under the provisions of subdivision (h) of Section 1170*.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term

1 provided in subdivision (a) of Section 1203.1. If the court finds  
2 that the defendant does not have the ability to pay the fees based  
3 on the defendant's changed circumstances, the court may reduce  
4 or waive the fees.

5 (4) If the offense was committed while the defendant was under  
6 the influence of drugs or alcohol, the defendant shall abstain from  
7 the use of drugs or alcohol during the period of probation and shall  
8 be subject to random drug testing by his or her probation officer.

9 (5) The court may waive any of the above minimum conditions  
10 of probation upon a finding that the condition would not be in the  
11 best interests of justice. The court shall state on the record its  
12 reasons for any waiver.

13 *SEC. 9. Section 667.5 of the Penal Code, as amended by*  
14 *Section 22 of Chapter 39 of the Statutes of 2011, is amended to*  
15 *read:*

16 667.5. Enhancement of prison terms for new offenses because  
17 of prior prison terms shall be imposed as follows:

18 (a) Where one of the new offenses is one of the violent felonies  
19 specified in subdivision (c), in addition to and consecutive to any  
20 other prison terms therefor, the court shall impose a three-year  
21 term for each prior separate prison term served by the defendant  
22 where the prior offense was one of the violent felonies specified  
23 in subdivision (c). However, no additional term shall be imposed  
24 under this subdivision for any prison term served prior to a period  
25 of 10 years in which the defendant remained free of both prison  
26 custody and the commission of an offense which results in a felony  
27 conviction.

28 (b) Except where subdivision (a) applies, where the new offense  
29 is any felony for which a prison sentence or a sentence of  
30 imprisonment in a county jail ~~for more than one year under~~  
31 ~~subdivision (h) of Section 1170~~ is imposed or is not suspended, in  
32 addition and consecutive to any other ~~prison terms sentence~~  
33 therefor, the court shall impose a one-year term for each prior  
34 separate prison term or county jail term ~~of more than one year~~  
35 ~~imposed~~ *imposed under subdivision (h) of Section 1170* or when  
36 sentence is not suspended for any felony; provided that no  
37 additional term shall be imposed under this subdivision for any  
38 prison term or county jail term ~~of more than one year~~ imposed  
39 *under subdivision (h) of Section 1170* or when sentence is not  
40 suspended prior to a period of five years in which the defendant

1 remained free of both the commission of an offense which results  
2 in a felony conviction, and prison custody or the imposition of a  
3 term of jail custody ~~of more than one year imposed under~~  
4 *subdivision (h) of Section 1170* or any felony sentence that is not  
5 suspended. *A term imposed under the provisions of paragraph (5)*  
6 *of subdivision (h) of Section 1170, wherein a portion of the term*  
7 *is suspended by the court to allow postrelease supervision, shall*  
8 *qualify as a prior county jail term for the purposes of the one-year*  
9 *enhancement.*

10 (c) For the purpose of this section, “violent felony” shall mean  
11 any of the following:

12 (1) Murder or voluntary manslaughter.

13 (2) Mayhem.

14 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
15 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
16 262.

17 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

18 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
19 288a.

20 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
21 of Section 288.

22 (7) Any felony punishable by death or imprisonment in the state  
23 prison for life.

24 (8) Any felony in which the defendant inflicts great bodily injury  
25 on any person other than an accomplice which has been charged  
26 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
27 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
28 Sections 213, 264, and 461, or any felony in which the defendant  
29 uses a firearm which use has been charged and proved as provided  
30 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
31 12022.55.

32 (9) Any robbery.

33 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

34 (11) Sexual penetration as defined in subdivision (a) or (j) of  
35 Section 289.

36 (12) Attempted murder.

37 (13) A violation of Section 12308, 12309, or 12310.

38 (14) Kidnapping.

39 (15) Assault with the intent to commit a specified felony, in  
40 violation of Section 220.

1 (16) Continuous sexual abuse of a child, in violation of Section  
2 288.5.

3 (17) Carjacking, as defined in subdivision (a) of Section 215.

4 (18) Rape, spousal rape, or sexual penetration, in concert, in  
5 violation of Section 264.1.

6 (19) Extortion, as defined in Section 518, which would constitute  
7 a felony violation of Section 186.22 of the Penal Code.

8 (20) Threats to victims or witnesses, as defined in Section 136.1,  
9 which would constitute a felony violation of Section 186.22 of the  
10 Penal Code.

11 (21) Any burglary of the first degree, as defined in subdivision  
12 (a) of Section 460, wherein it is charged and proved that another  
13 person, other than an accomplice, was present in the residence  
14 during the commission of the burglary.

15 (22) Any violation of Section 12022.53.

16 (23) A violation of subdivision (b) or (c) of Section 11418. The  
17 Legislature finds and declares that these specified crimes merit  
18 special consideration when imposing a sentence to display society's  
19 condemnation for these extraordinary crimes of violence against  
20 the person.

21 (d) For the purposes of this section, the defendant shall be  
22 deemed to remain in prison custody for an offense until the official  
23 discharge from custody or until release on parole, whichever first  
24 occurs, including any time during which the defendant remains  
25 subject to reimprisonment for escape from custody or is  
26 reimprisoned on revocation of parole. The additional penalties  
27 provided for prior prison terms shall not be imposed unless they  
28 are charged and admitted or found true in the action for the new  
29 offense.

30 (e) The additional penalties provided for prior prison terms shall  
31 not be imposed for any felony for which the defendant did not  
32 serve a prior separate term in state prison *or in a county jail under*  
33 *subdivision (h) of Section 1170.*

34 (f) A prior conviction of a felony shall include a conviction in  
35 another jurisdiction for an offense which, if committed in  
36 California, is punishable by imprisonment in the state prison *or in*  
37 *county jail under subdivision (h) of Section 1170* if the defendant  
38 served one year or more in prison for the offense in the other  
39 jurisdiction. A prior conviction of a particular felony shall include  
40 a conviction in another jurisdiction for an offense which includes

all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

*SEC. 10. Section 667.5 of the Penal Code, as amended by Section 23 of Chapter 39 of the Statutes of 2011, is amended to read:*

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail ~~for more than one year under subdivision (h) of Section 1170~~ is imposed or is not suspended, in addition and consecutive to any other ~~prison terms sentence~~ therefor, the court shall impose a one-year term for each prior separate prison term or county jail term ~~of more than one year imposed under subdivision (h) of Section 1170~~ or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term ~~of more than one year imposed under subdivision (h) of Section 1170~~ or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody ~~of more than one year imposed under subdivision (h) of Section 1170~~ or any felony sentence that is not suspended. *A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.*

(c) For the purpose of this section, “violent felony” shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

1 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
2 288a.

3 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
4 of Section 288.

5 (7) Any felony punishable by death or imprisonment in the state  
6 prison for life.

7 (8) Any felony in which the defendant inflicts great bodily injury  
8 on any person other than an accomplice which has been charged  
9 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
10 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
11 Sections 213, 264, and 461, or any felony in which the defendant  
12 uses a firearm which use has been charged and proved as provided  
13 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
14 12022.55.

15 (9) Any robbery.

16 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

17 (11) Sexual penetration as defined in subdivision (a) or (j) of  
18 Section 289.

19 (12) Attempted murder.

20 (13) A violation of Section 18745, 18750, or 18755.

21 (14) Kidnapping.

22 (15) Assault with the intent to commit a specified felony, in  
23 violation of Section 220.

24 (16) Continuous sexual abuse of a child, in violation of Section  
25 288.5.

26 (17) Carjacking, as defined in subdivision (a) of Section 215.

27 (18) Rape, spousal rape, or sexual penetration, in concert, in  
28 violation of Section 264.1.

29 (19) Extortion, as defined in Section 518, which would constitute  
30 a felony violation of Section 186.22 of the Penal Code.

31 (20) Threats to victims or witnesses, as defined in Section 136.1,  
32 which would constitute a felony violation of Section 186.22 of the  
33 Penal Code.

34 (21) Any burglary of the first degree, as defined in subdivision  
35 (a) of Section 460, wherein it is charged and proved that another  
36 person, other than an accomplice, was present in the residence  
37 during the commission of the burglary.

38 (22) Any violation of Section 12022.53.

39 (23) A violation of subdivision (b) or (c) of Section 11418. The  
40 Legislature finds and declares that these specified crimes merit

1 special consideration when imposing a sentence to display society's  
2 condemnation for these extraordinary crimes of violence against  
3 the person.

4 (d) For the purposes of this section, the defendant shall be  
5 deemed to remain in prison custody for an offense until the official  
6 discharge from custody or until release on parole, whichever first  
7 occurs, including any time during which the defendant remains  
8 subject to reimprisonment for escape from custody or is  
9 reimprisoned on revocation of parole. The additional penalties  
10 provided for prior prison terms shall not be imposed unless they  
11 are charged and admitted or found true in the action for the new  
12 offense.

13 (e) The additional penalties provided for prior prison terms shall  
14 not be imposed for any felony for which the defendant did not  
15 serve a prior separate term in state prison *or in county jail under*  
16 *subdivision (h) of Section 1170.*

17 (f) A prior conviction of a felony shall include a conviction in  
18 another jurisdiction for an offense which, if committed in  
19 California, is punishable by imprisonment in the state prison *or in*  
20 *county jail under subdivision (h) of Section 1170* if the defendant  
21 served one year or more in prison for the offense in the other  
22 jurisdiction. A prior conviction of a particular felony shall include  
23 a conviction in another jurisdiction for an offense which includes  
24 all of the elements of the particular felony as defined under  
25 California law if the defendant served one year or more in prison  
26 for the offense in the other jurisdiction.

27 (g) A prior separate prison term for the purposes of this section  
28 shall mean a continuous completed period of prison incarceration  
29 imposed for the particular offense alone or in combination with  
30 concurrent or consecutive sentences for other crimes, including  
31 any reimprisonment on revocation of parole which is not  
32 accompanied by a new commitment to prison, and including any  
33 reimprisonment after an escape from incarceration.

34 (h) Serving a prison term includes any confinement time in any  
35 state prison or federal penal institution as punishment for  
36 commission of an offense, including confinement in a hospital or  
37 other institution or facility credited as service of prison time in the  
38 jurisdiction of the confinement.

39 (i) For the purposes of this section, a commitment to the State  
40 Department of Mental Health as a mentally disordered sex offender

1 following a conviction of a felony, which commitment exceeds  
2 one year in duration, shall be deemed a prior prison term.

3 (j) For the purposes of this section, when a person subject to  
4 the custody, control, and discipline of the Director of Corrections  
5 is incarcerated at a facility operated by the Department of the Youth  
6 Authority, that incarceration shall be deemed to be a term served  
7 in state prison.

8 (k) (1) Notwithstanding subdivisions (d) and (g) or any other  
9 provision of law, where one of the new offenses is committed  
10 while the defendant is temporarily removed from prison pursuant  
11 to Section 2690 or while the defendant is transferred to a  
12 community facility pursuant to Section 3416, 6253, or 6263, or  
13 while the defendant is on furlough pursuant to Section 6254, the  
14 defendant shall be subject to the full enhancements provided for  
15 in this section.

16 (2) This subdivision shall not apply when a full, separate, and  
17 consecutive term is imposed pursuant to any other provision of  
18 law.

19 *SEC. 11. Section 800 of the Penal Code, as amended by Section*  
20 *24 of Chapter 39 of the Statutes of 2011, is amended to read:*

21 800. Except as provided in Section 799, prosecution for an  
22 offense punishable by imprisonment *in the state prison for eight*  
23 *years or more or by imprisonment* pursuant to subdivision (h) of  
24 Section 1170 for eight years or more shall be commenced within  
25 six years after commission of the offense.

26 *SEC. 12. Section 1170 of the Penal Code, as amended by*  
27 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
28 *read:*

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

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

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

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

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

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

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

(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a), if the secretary or the Board of Parole Hearings or both determine that a prisoner satisfies the

1 criteria set forth in paragraph (2), the secretary or the board may  
2 recommend to the court that the prisoner's sentence be recalled.

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

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

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

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

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

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

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

39 (5) The warden or the warden's representative shall provide the  
40 prisoner and his or her family member, agent, or emergency

1 contact, as described in paragraph (4), updated information  
2 throughout the recall and resentencing process with regard to the  
3 prisoner's medical condition and the status of the prisoner's recall  
4 and resentencing proceedings.

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

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

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

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

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

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code,

1 (D) is required to register as a sex offender pursuant to Chapter  
2 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
3 convicted of a crime and as part of the sentence an enhancement  
4 pursuant to Section 186.11 is imposed, an executed sentence for  
5 a felony punishable pursuant to this subdivision shall be served in  
6 state prison.

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

11 ~~(5) A judge, when imposing a sentence pursuant to paragraph~~  
12 ~~(1), may order the defendant to serve a term in a county jail for a~~  
13 ~~period not to exceed the maximum possible term of confinement~~  
14 ~~or may impose a sentence that includes a period of county jail time~~  
15 ~~and a period of mandatory probation not to exceed the maximum~~  
16 ~~possible sentence.~~

17 (5) *The court, when imposing a sentence pursuant to paragraph*  
18 *(1) or (2) of this subdivision, may commit the defendant to county*  
19 *jail as follows:*

20 (A) *For a full term in custody as determined in accordance with*  
21 *the applicable sentencing law.*

22 (B) *For a term as determined in accordance with the applicable*  
23 *sentencing law, but suspend execution of a concluding portion of*  
24 *the term selected in the court's discretion, during which time the*  
25 *defendant shall be supervised by the county probation officer in*  
26 *accordance with the terms, conditions, and procedures generally*  
27 *applicable to persons placed on probation, for the remaining*  
28 *unserved portion of the sentence imposed by the court. The period*  
29 *of supervision shall be mandatory, and may not be earlier*  
30 *terminated except by court order. During the period when the*  
31 *defendant is under such supervision, unless in actual custody*  
32 *related to the sentence imposed by the court, the defendant shall*  
33 *be entitled to only actual time credit against the term of*  
34 *imprisonment imposed by the court.*

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

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

1     *SEC. 12.1. Section 1170 of the Penal Code, as amended by*  
2     *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
3     *read:*

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

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

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

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

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

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

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

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

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

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

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

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

(iv) *The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been*

1 available at his or her classification level and facility, using  
2 self-study for self-improvement, or showing evidence of remorse.

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

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

12 (E) If the court finds by a preponderance of the evidence that  
13 the statements in the petition are true, the court shall hold a  
14 hearing to consider whether to recall the sentence and commitment  
15 previously ordered and to resentence the defendant in the same  
16 manner as if the defendant had not previously been sentenced,  
17 provided that the new sentence, if any, is not greater than the initial  
18 sentence. Victims, or victim family members if the victim is  
19 deceased, shall retain the rights to participate in the hearing.

20 (F) The factors that the court may consider when determining  
21 whether to recall and resentence include, but are not limited to,  
22 the following:

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

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

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

31 (iv) Prior to the offense for which the sentence is being  
32 considered for recall, the defendant had insufficient adult support  
33 or supervision and had suffered from psychological or physical  
34 trauma, or significant stress.

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

39 (vi) The defendant has performed acts that tend to indicate  
40 rehabilitation or the potential for rehabilitation, including, but

1 not limited to, availing himself or herself of rehabilitative,  
2 educational, or vocational programs, if those programs have been  
3 available at his or her classification level and facility, using  
4 self-study for self-improvement, or showing evidence of remorse.

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

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

12 (G) The court shall have the discretion to recall the sentence  
13 and commitment previously ordered and to resentence the  
14 defendant in the same manner as if the defendant had not  
15 previously been sentenced, provided that the new sentence, if any,  
16 is not greater than the initial sentence. The discretion of the court  
17 shall be exercised in consideration of the criteria in subparagraph  
18 (B). Victims, or victim family members if the victim is deceased,  
19 shall be notified of the resentencing hearing and shall retain their  
20 rights to participate in the hearing.

21 (H) If the sentence is not recalled, the defendant may submit  
22 another petition for recall and resentencing to the sentencing court  
23 when the defendant has been committed to the custody of the  
24 department for at least 20 years. If recall and resentencing is not  
25 granted under that petition, the defendant may file another petition  
26 after having served 24 years. The final petition may be submitted,  
27 and the response to that petition shall be determined, during the  
28 25th year of the defendant's sentence.

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

34 (J) This subdivision shall have retroactive application.

35 (e) (1) Notwithstanding any other law and consistent with  
36 paragraph (1) of subdivision (a), if the secretary or the Board of  
37 Parole Hearings or both determine that a prisoner satisfies the  
38 criteria set forth in paragraph (2), the secretary or the board may  
39 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) Notwithstanding any other provision of this section, for  
6 purposes of paragraph (3) of subdivision (h), any allegation that  
7 a defendant is eligible for state prison due to a prior or current  
8 conviction, sentence enhancement, or because he or she is required  
9 to register as a sex offender shall not be subject to dismissal  
10 pursuant to Section 1385.

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

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

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

21 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
22 (A) has a prior or current felony conviction for a serious felony  
23 described in subdivision (c) of Section 1192.7 *or a prior or current*  
24 *conviction for a violent felony described in subdivision (c) of*  
25 *Section 667.5, (B) has a prior felony conviction in another*  
26 *jurisdiction for an offense that has all of the elements of a serious*  
27 *felony described in subdivision (c) of Section 1192.7 or a violent*  
28 *felony described in subdivision (c) of Section 667.5, (C) has a*  
29 *prior juvenile adjudication where the defendant was 16 years of*  
30 *age or older at the time he or she committed the prior offense of*  
31 *a serious felony described in subdivision (c) of Section 1192.7 or*  
32 *a violent felony described in subdivision (c) of Section 667.5, a*  
33 *prior juvenile adjudication in another jurisdiction for an offense*  
34 *that has all the elements of a serious felony described in*  
35 *subdivision (c) of Section 1192.7 or a violent felony described in*  
36 *subdivision (c) of Section 667.5, or a felony described in*  
37 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
38 (D) is required to register as a sex offender pursuant to Chapter  
39 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
40 convicted of a crime and as part of the sentence an enhancement

1 pursuant to Section 186.11 is imposed, an executed sentence for  
2 a felony punishable pursuant to this subdivision shall be served in  
3 state prison.

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

8 ~~(5) A judge, when imposing a sentence pursuant to paragraph~~  
9 ~~(1), may order the defendant to serve a term in a county jail for a~~  
10 ~~period not to exceed the maximum possible term of confinement~~  
11 ~~or may impose a sentence that includes a period of county jail time~~  
12 ~~and a period of mandatory probation not to exceed the maximum~~  
13 ~~possible sentence.~~

14 (5) *The court, when imposing a sentence pursuant to paragraphs*  
15 *(1) or (2) of this subdivision, may commit the defendant to county*  
16 *jail as follows:*

17 (A) *For a full term in custody as determined in accordance with*  
18 *the applicable sentencing law.*

19 (B) *For a term as determined in accordance with the applicable*  
20 *sentencing law, but suspend execution of a concluding portion of*  
21 *the term selected in the court's discretion, during which time the*  
22 *defendant shall be supervised by the county probation officer in*  
23 *accordance with the terms, conditions, and procedures generally*  
24 *applicable to persons placed on probation, for the remaining*  
25 *unserved portion of the sentence imposed by the court. The period*  
26 *of supervisions shall be mandatory, and may not be earlier*  
27 *terminated except by court order. During the period when the*  
28 *defendant is under such supervision, unless in actual custody*  
29 *related to the sentence imposed by the court, the defendant shall*  
30 *be entitled to only actual time credit against the term of*  
31 *imprisonment imposed by the court.*

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

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

38 SEC. 12.2. *Section 1170 of the Penal Code, as amended by*  
39 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
40 *read:*

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

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

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

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

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

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

37 (d) When a defendant subject to this section or subdivision (b)  
38 of Section 1168 has been sentenced to be imprisoned in the state  
39 prison and has been committed to the custody of the secretary, the  
40 court may, within 120 days of the date of commitment on its own

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
37 (A) has a prior or current felony conviction for a serious felony  
38 described in subdivision (c) of Section 1192.7 *or a prior or current*  
39 *conviction for a violent felony described in subdivision (c) of*  
40 *Section 667.5, (B) has a prior felony conviction in another*

jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

~~(5) A judge, when imposing a sentence pursuant to paragraph (1), may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.~~

(5) The court, when imposing a sentence pursuant to paragraphs (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period

of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.

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

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

SEC. 12.3. Section 1170 of the Penal Code, as amended by Section 3 of Chapter 136 of the Statutes of 2011, is amended to read:

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

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

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the

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

29 (b) When a judgment of imprisonment is to be imposed and the  
30 statute specifies three possible terms, the choice of the appropriate  
31 term shall rest within the sound discretion of the court. At least  
32 four days prior to the time set for imposition of judgment, either  
33 party or the victim, or the family of the victim if the victim is  
34 deceased, may submit a statement in aggravation or mitigation. In  
35 determining the appropriate term, the court may consider the record  
36 in the case, the probation officer's report, other reports, including  
37 reports received pursuant to Section 1203.03, and statements in  
38 aggravation or mitigation submitted by the prosecution, the  
39 defendant, or the victim, or the family of the victim if the victim  
40 is deceased, and any further evidence introduced at the sentencing

1 hearing. The court shall select the term which, in the court's  
2 discretion, best serves the interests of justice. The court shall set  
3 forth on the record the reasons for imposing the term selected and  
4 the court may not impose an upper term by using the fact of any  
5 enhancement upon which sentence is imposed under any provision  
6 of law. A term of imprisonment shall not be specified if imposition  
7 of sentence is suspended.

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

13 (d) (1) When a defendant subject to this section or subdivision  
14 (b) of Section 1168 has been sentenced to be imprisoned in the  
15 state prison and has been committed to the custody of the secretary,  
16 the court may, within 120 days of the date of commitment on its  
17 own motion, or at any time upon the recommendation of the  
18 secretary or the Board of Parole Hearings, recall the sentence and  
19 commitment previously ordered and resentence the defendant in  
20 the same manner as if he or she had not previously been sentenced,  
21 provided the new sentence, if any, is no greater than the initial  
22 sentence. ~~The resentence court resentencing~~ under this subdivision  
23 shall apply the sentencing rules of the Judicial Council so as to  
24 eliminate disparity of sentences and to promote uniformity of  
25 sentencing. Credit shall be given for time served.

26 (2) (A) *When a defendant who was under 18 years of age at*  
27 *the time of the commission of the offense for which the defendant*  
28 *was sentenced to imprisonment for life without the possibility of*  
29 *parole has served at least 15 years of that sentence, the defendant*  
30 *may submit to the sentencing court a petition for recall and*  
31 *resentencing.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33     (H) *If the sentence is not recalled, the defendant may submit*  
34 *another petition for recall and resentencing to the sentencing court*  
35 *when the defendant has been committed to the custody of the*  
36 *department for at least 20 years. If recall and resentencing is not*  
37 *granted under that petition, the defendant may file another petition*  
38 *after having served 24 years. The final petition may be submitted,*  
39 *and the response to that petition shall be determined, during the*  
40 *25th year of the defendant's sentence.*

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

6     (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (9) If the court grants the recall and resentencing application,  
40 the prisoner shall be released by the department within 48 hours

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

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

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

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

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

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

32 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
33 (A) has a prior or current felony conviction for a serious felony  
34 described in subdivision (c) of Section 1192.7 *or a prior or current*  
35 *conviction for a violent felony described in subdivision (c) of*  
36 *Section 667.5, (B) has a prior felony conviction in another*  
37 *jurisdiction for an offense that has all of the elements of a serious*  
38 *felony described in subdivision (c) of Section 1192.7 or a violent*  
39 *felony described in subdivision (c) of Section 667.5, (C) has a*  
40 *prior juvenile adjudication where the defendant was 16 years of*

age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

~~(5) A judge, when imposing a sentence pursuant to paragraph (1), may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.~~

(5) The court, when imposing a sentence pursuant to paragraphs (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall

1 *be entitled to only actual time credit against the term of*  
2 *imprisonment imposed by the court.*

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

6 (i) This section shall remain in effect only until January 1, ~~2012~~,  
7 2014, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before that date, deletes or extends that date.

9 *SEC. 12.4. Section 1170 of the Penal Code, as amended by*  
10 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
11 *read:*

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

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

34 (3) In any case in which the punishment prescribed by statute  
35 for a person convicted of a public offense is a term of imprisonment  
36 in the state prison of any specification of three time periods, the  
37 court shall sentence the defendant to one of the terms of  
38 imprisonment specified unless the convicted person is given any  
39 other disposition provided by law, including a fine, jail, probation,  
40 or the suspension of imposition or execution of sentence or is

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

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

1 may not impose an upper term by using the fact of any  
2 enhancement upon which sentence is imposed under any provision  
3 of law. A term of imprisonment shall not be specified if imposition  
4 of sentence is suspended.

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

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

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

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

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

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

37 (C) The prisoner is permanently medically incapacitated with  
38 a medical condition that renders him or her permanently unable  
39 to perform activities of basic daily living, and results in the prisoner  
40 requiring 24-hour total care, including, but not limited to, coma,

1 persistent vegetative state, brain death, ventilator-dependency, loss  
2 of control of muscular or neurological function, and that  
3 incapacitation did not exist at the time of the original sentencing.

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

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

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

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

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

determinate terms and, in the case of inmates sentenced to indeterminate terms, the secretary shall make a recommendation to the Board of Parole Hearings with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment pursuant to paragraph (2) and make findings related thereto before rejecting the request or making a recommendation to the court. This action shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 *or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5*, (B) *has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7* or a violent felony described in subdivision (c) of Section 667.5, (C) *has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code*, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

~~(5) A judge, when imposing a sentence pursuant to paragraph (1), may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence which includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.~~

1     (5) *The court, when imposing a sentence pursuant to paragraph*  
2 *(1) or (2) of this subdivision, may commit the defendant to county*  
3 *jail as follows:*

4     (A) *For a full term in custody as determined in accordance with*  
5 *the applicable sentencing law.*

6     (B) *For a term as determined in accordance with the applicable*  
7 *sentencing law, but suspend execution of a concluding portion of*  
8 *the term selected in the court's discretion, during which time the*  
9 *defendant shall be supervised by the county probation officer in*  
10 *accordance with the terms, conditions, and procedures generally*  
11 *applicable to persons placed on probation, for the remaining*  
12 *unserved portion of the sentence imposed by the court. The period*  
13 *of supervision shall be mandatory, and may not be earlier*  
14 *terminated except by court order. During the period when the*  
15 *defendant is under such supervision, unless in actual custody*  
16 *related to the sentence imposed by the court, the defendant shall*  
17 *be entitled to only actual time credit against the term of*  
18 *imprisonment imposed by the court.*

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

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

23     *SEC. 12.5. Section 1170 of the Penal Code, as amended by*  
24 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
25 *read:*

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

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

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

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

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order

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

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

25 (d) (1) When a defendant subject to this section or subdivision  
26 (b) of Section 1168 has been sentenced to be imprisoned in the  
27 state prison and has been committed to the custody of the secretary,  
28 the court may, within 120 days of the date of commitment on its  
29 own motion, or at any time upon the recommendation of the  
30 secretary or the Board of Parole Hearings, recall the sentence and  
31 commitment previously ordered and resentence the defendant in  
32 the same manner as if he or she had not previously been sentenced,  
33 provided the new sentence, if any, is no greater than the initial  
34 sentence. ~~The resentence court resentencing~~ under this subdivision  
35 shall apply the sentencing rules of the Judicial Council so as to  
36 eliminate disparity of sentences and to promote uniformity of  
37 sentencing. Credit shall be given for time served.

38 (2) (A) *When a defendant who was under 18 years of age at*  
39 *the time of the commission of the offense for which the defendant*  
40 *was sentenced to imprisonment for life without the possibility of*

1 *parole has served at least 15 years of that sentence, the defendant*  
2 *may submit to the sentencing court a petition for recall and*  
3 *resentencing.*

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

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

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

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

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

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

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

35 *(E) If the court finds by a preponderance of the evidence that*  
36 *the statements in the petition are true, the court shall hold a*  
37 *hearing to consider whether to recall the sentence and commitment*  
38 *previously ordered and to resentence the defendant in the same*  
39 *manner as if the defendant had not previously been sentenced,*  
40 *provided that the new sentence, if any, is not greater than the initial*

1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

35 (G) The court shall have the discretion to recall the sentence  
36 and commitment previously ordered and to resentence the  
37 defendant in the same manner as if the defendant had not  
38 previously been sentenced, provided that the new sentence, if any,  
39 is not greater than the initial sentence. The discretion of the court  
40 shall be exercised in consideration of the criteria in subparagraph

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

4 (H) 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 after having served 24 years. The final petition may be submitted,  
10 and the response to that petition shall be determined, during the  
11 25th year of the defendant's sentence.

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

39 The Board of Parole Hearings shall make findings pursuant to  
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner  
2 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

1 paragraph (2) and make findings related thereto before rejecting  
2 the request or making a recommendation to the court. This action  
3 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

~~(5) A judge, when imposing a sentence pursuant to paragraph (1), may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence which includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.~~

(5) The court, when imposing a sentence pursuant to paragraphs (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

1 (A) For a full term in custody as determined in accordance with  
2 the applicable sentencing law.

3 (B) For a term as determined in accordance with the applicable  
4 sentencing law, but suspend execution of a concluding portion of  
5 the term selected in the court's discretion, during which time the  
6 defendant shall be supervised by the county probation officer in  
7 accordance with the terms, conditions, and procedures generally  
8 applicable to persons placed on probation, for the remaining  
9 unserved portion of the sentence imposed by the court. The period  
10 of supervision shall be mandatory, and may not be earlier  
11 terminated except by court order. During the period when the  
12 defendant is under such supervision, unless in actual custody  
13 related to the sentence imposed by the court, the defendant shall  
14 be entitled to only actual time credit against the term of  
15 imprisonment imposed by the court.

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

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

20 SEC. 12.6. Section 1170 of the Penal Code, as amended by  
21 Section 4 of Chapter 136 of the Statutes of 2011, is amended to  
22 read:

23 1170. (a) (1) The Legislature finds and declares that the  
24 purpose of imprisonment for crime is punishment. This purpose  
25 is best served by terms proportionate to the seriousness of the  
26 offense with provision for uniformity in the sentences of offenders  
27 committing the same offense under similar circumstances. The  
28 Legislature further finds and declares that the elimination of  
29 disparity and the provision of uniformity of sentences can best be  
30 achieved by determinate sentences fixed by statute in proportion  
31 to the seriousness of the offense as determined by the Legislature  
32 to be imposed by the court with specified discretion.

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

1 encouraged to give priority enrollment in programs to promote  
2 successful return to the community to an inmate with a short  
3 remaining term of commitment and a release date that would allow  
4 him or her adequate time to complete the program.

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

35 (b) When a judgment of imprisonment is to be imposed and the  
36 statute specifies three possible terms, the court shall order  
37 imposition of the middle term, unless there are circumstances in  
38 aggravation or mitigation of the crime. At least four days prior to  
39 the time set for imposition of judgment, either party or the victim,  
40 or the family of the victim if the victim is deceased, may submit

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

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

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

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

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

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

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

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

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

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

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

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information 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) Notwithstanding any other provision of this section, for  
6 purposes of paragraph (3) of subdivision (h), any allegation that  
7 a defendant is eligible for state prison due to a prior or current  
8 conviction, sentence enhancement, or because he or she is required  
9 to register as a sex offender shall not be subject to dismissal  
10 pursuant to Section 1385.

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

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

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

21 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
22 (A) has a prior or current felony conviction for a serious felony  
23 described in subdivision (c) of Section 1192.7 *or a prior or current*  
24 *conviction for a violent felony described in subdivision (c) of*  
25 *Section 667.5, (B) has a prior felony conviction in another*  
26 *jurisdiction for an offense that has all of the elements of a serious*  
27 *felony described in subdivision (c) of Section 1192.7 or a violent*  
28 *felony described in subdivision (c) of Section 667.5, (C) has a*  
29 *prior juvenile adjudication where the defendant was 16 years of*  
30 *age or older at the time he or she committed the prior offense of*  
31 *a serious felony described in subdivision (c) of Section 1192.7 or*  
32 *a violent felony described in subdivision (c) of Section 667.5, a*  
33 *prior juvenile adjudication in another jurisdiction for an offense*  
34 *that has all the elements of a serious felony described in*  
35 *subdivision (c) of Section 1192.7 or a violent felony described in*  
36 *subdivision (c) of Section 667.5, or a felony described in*  
37 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
38 (D) is required to register as a sex offender pursuant to Chapter  
39 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
40 convicted of a crime and as part of the sentence an enhancement

pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

~~(5) A judge, when imposing a sentence pursuant to paragraph (1), may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence which includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.~~

(5) *The court, when imposing a sentence pursuant to paragraphs (1) or (2) of this subdivision, may commit the defendant to county jail as follows:*

*(A) For a full term in custody as determined in accordance with the applicable sentencing law.*

*(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court.*

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

(i) This section shall become operative on January 1, ~~2012~~ 2014.

SEC. 12.7. *Section 1170 of the Penal Code, as amended by Section 4 of Chapter 136 of the Statutes of 2011, is amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

(iv) *The defendant has performed acts that tend to indicate rehabilitation or the potential for rehabilitation, including, but not limited to, availing himself or herself of rehabilitative, educational, or vocational programs, if those programs have been*

1 available at his or her classification level and facility, using  
2 self-study for self-improvement, or showing evidence of remorse.

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

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

12 (E) If the court finds by a preponderance of the evidence that  
13 the statements in the petition are true, the court shall hold a  
14 hearing to consider whether to recall the sentence and commitment  
15 previously ordered and to resentence the defendant in the same  
16 manner as if the defendant had not previously been sentenced,  
17 provided that the new sentence, if any, is not greater than the initial  
18 sentence. Victims, or victim family members if the victim is  
19 deceased, shall retain the rights to participate in the hearing.

20 (F) The factors that the court may consider when determining  
21 whether to recall and resentence include, but are not limited to,  
22 the following:

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

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

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

31 (iv) Prior to the offense for which the sentence is being  
32 considered for recall, the defendant had insufficient adult support  
33 or supervision and had suffered from psychological or physical  
34 trauma, or significant stress.

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

39 (vi) The defendant has performed acts that tend to indicate  
40 rehabilitation or the potential for rehabilitation, including, but

1 not limited to, availing himself or herself of rehabilitative,  
2 educational, or vocational programs, if those programs have been  
3 available at his or her classification level and facility, using  
4 self-study for self-improvement, or showing evidence of remorse.

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

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

12 (G) The court shall have the discretion to recall the sentence  
13 and commitment previously ordered and to resentence the  
14 defendant in the same manner as if the defendant had not  
15 previously been sentenced, provided that the new sentence, if any,  
16 is not greater than the initial sentence. The discretion of the court  
17 shall be exercised in consideration of the criteria in subparagraph  
18 (B). Victims, or victim family members if the victim is deceased,  
19 shall be notified of the resentencing hearing and shall retain their  
20 rights to participate in the hearing.

21 (H) If the sentence is not recalled, the defendant may submit  
22 another petition for recall and resentencing to the sentencing court  
23 when the defendant has been committed to the custody of the  
24 department for at least 20 years. If recall and resentencing is not  
25 granted under that petition, the defendant may file another petition  
26 after having served 24 years. The final petition may be submitted,  
27 and the response to that petition shall be determined, during the  
28 25th year of the defendant's sentence.

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

34 (J) This subdivision shall have retroactive application.

35 (e) (1) Notwithstanding any other law and consistent with  
36 paragraph (1) of subdivision (a), if the secretary or the Board of  
37 Parole Hearings or both determine that a prisoner satisfies the  
38 criteria set forth in paragraph (2), the secretary or the board may  
39 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) Notwithstanding any other provision of this section, for  
6 purposes of paragraph (3) of subdivision (h), any allegation that  
7 a defendant is eligible for state prison due to a prior or current  
8 conviction, sentence enhancement, or because he or she is required  
9 to register as a sex offender shall not be subject to dismissal  
10 pursuant to Section 1385.

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

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

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

21 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
22 (A) has a prior or current felony conviction for a serious felony  
23 described in subdivision (c) of Section 1192.7 *or a prior or current*  
24 *conviction for a violent felony described in subdivision (c) of*  
25 *Section 667.5, (B) has a prior felony conviction in another*  
26 *jurisdiction for an offense that has all of the elements of a serious*  
27 *felony described in subdivision (c) of Section 1192.7 or a violent*  
28 *felony described in subdivision (c) of Section 667.5, (C) has a*  
29 *prior juvenile adjudication where the defendant was 16 years of*  
30 *age or older at the time he or she committed the prior offense of*  
31 *a serious felony described in subdivision (c) of Section 1192.7 or*  
32 *a violent felony described in subdivision (c) of Section 667.5, a*  
33 *prior juvenile adjudication in another jurisdiction for an offense*  
34 *that has all the elements of a serious felony described in*  
35 *subdivision (c) of Section 1192.7 or a violent felony described in*  
36 *subdivision (c) of Section 667.5, or a felony described in*  
37 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
38 (D) is required to register as a sex offender pursuant to Chapter  
39 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
40 convicted of a crime and as part of the sentence an enhancement

1 pursuant to Section 186.11 is imposed, an executed sentence for  
2 a felony punishable pursuant to this subdivision shall be served in  
3 state prison.

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

8 ~~(5) A judge, when imposing a sentence pursuant to paragraph~~  
9 ~~(1), may order the defendant to serve a term in a county jail for a~~  
10 ~~period not to exceed the maximum possible term of confinement~~  
11 ~~or may impose a sentence which includes a period of county jail~~  
12 ~~time and a period of mandatory probation not to exceed the~~  
13 ~~maximum possible sentence.~~

14 (5) *The court, when imposing a sentence pursuant to paragraphs*  
15 *(1) or (2) of this subdivision, may commit the defendant to county*  
16 *jail as follows:*

17 (A) *For a full term in custody as determined in accordance with*  
18 *the applicable sentencing law.*

19 (B) *For a term as determined in accordance with the applicable*  
20 *sentencing law, but suspend execution of a concluding portion of*  
21 *the term selected in the court's discretion, during which time the*  
22 *defendant shall be supervised by the county probation officer in*  
23 *accordance with the terms, conditions, and procedures generally*  
24 *applicable to persons placed on probation, for the remaining*  
25 *unserved portion of the sentence imposed by the court. The period*  
26 *of supervision shall be mandatory, and may not be earlier*  
27 *terminated except by court order. During the period when the*  
28 *defendant is under such supervision, unless in actual custody*  
29 *related to the sentence imposed by the court, the defendant shall*  
30 *be entitled to only actual time credit against the term of*  
31 *imprisonment imposed by the court.*

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

35 (i) This section shall become operative on January 1, ~~2012.~~  
36 ~~2014.~~

37 SEC. 13. *Section 1170.1 of the Penal Code, as amended by*  
38 *Section 29 of Chapter 39 of the Statutes of 2011, is amended to*  
39 *read:*

1170.1. (a) Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in the county jail pursuant to subdivision (h) of Section 1170.

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

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

1 in cases of convictions of more than one offense in the same or  
2 different proceedings.

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

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

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

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

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

(i) This section shall remain in effect only until January 1, ~~2012~~, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

*SEC. 13.1. Section 1170.1 of the Penal Code, as amended by Section 29 of Chapter 39 of the Statutes of 2011, is amended to read:*

1170.1. (a) Except as otherwise provided by law, and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses. Whenever a court imposes a term of imprisonment in the state prison, whether the term is a principal or subordinate term, the aggregate term shall be served in the state prison, regardless as to whether or not one of the terms specifies imprisonment in the county jail pursuant to subdivision (h) of Section 1170.

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

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law either requires the terms to be served consecutively or the court imposes consecutive terms, the term of imprisonment for all the

1 convictions that the person is required to serve consecutively shall  
2 commence from the time the person would otherwise have been  
3 released from prison. If the new offenses are consecutive with each  
4 other, the principal and subordinate terms shall be calculated as  
5 provided in subdivision (a). This subdivision shall be applicable  
6 in cases of convictions of more than one offense in the same or  
7 different proceedings.

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

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

25 (f) When two or more enhancements may be imposed for being  
26 armed with or using a dangerous or deadly weapon or a firearm  
27 in the 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 the infliction of great  
31 bodily injury.

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

39 (h) For any violation of an offense specified in Section 667.6,  
40 the number of enhancements that may be imposed shall not be

1 limited, regardless of whether the enhancements are pursuant to  
2 this section, Section 667.6, or some other provision of law. Each  
3 of the enhancements shall be a full and separately served term.

4 (i) This section shall remain in effect only until January 1, ~~2012~~  
5 2014, and as of that date is repealed, unless a later enacted statute,  
6 that is enacted before January 1, ~~2012~~, 2014, deletes or extends  
7 that date.

8 *SEC. 13.2. Section 1170.1 of the Penal Code, as amended by*  
9 *Section 30 of Chapter 39 of the Statutes of 2011, is amended to*  
10 *read:*

11 1170.1. (a) Except as otherwise provided by law, and subject  
12 to Section 654, when any person is convicted of two or more  
13 felonies, whether in the same proceeding or court or in different  
14 proceedings or courts, and whether by judgment rendered by the  
15 same or by a different court, and a consecutive term of  
16 imprisonment is imposed under Sections 669 and 1170, the  
17 aggregate term of imprisonment for all these convictions shall be  
18 the sum of the principal term, the subordinate term, and any  
19 additional term imposed for applicable enhancements for prior  
20 convictions, prior prison terms, and Section 12022.1. The principal  
21 term shall consist of the greatest term of imprisonment imposed  
22 by the court for any of the crimes, including any term imposed for  
23 applicable specific enhancements. The subordinate term for each  
24 consecutive offense shall consist of one-third of the middle term  
25 of imprisonment prescribed for each other felony conviction for  
26 which a consecutive term of imprisonment is imposed, and shall  
27 include one-third of the term imposed for any specific  
28 enhancements applicable to those subordinate offenses. Whenever  
29 a court imposes a term of imprisonment in the state prison, whether  
30 the term is a principal or subordinate term, the aggregate term shall  
31 be served in the state prison, regardless as to whether or not one  
32 of the terms specifies imprisonment in the county jail pursuant to  
33 subdivision (h) of Section 1170.

34 (b) If a person is convicted of two or more violations of  
35 kidnapping, as defined in Section 207, involving separate victims,  
36 the subordinate term for each consecutive offense of kidnapping  
37 shall consist of the full middle term and shall include the full term  
38 imposed for specific enhancements applicable to those subordinate  
39 offenses.

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

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

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

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

37 (g) When two or more enhancements may be imposed for the  
38 infliction of great bodily injury on the same victim in the  
39 commission of a single offense, only the greatest of those  
40 enhancements shall be imposed for that offense. This subdivision

1 shall not limit the imposition of any other enhancements applicable  
2 to that offense, including an enhancement for being armed with  
3 or using a dangerous or deadly weapon or a firearm.

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

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

10 *SEC. 13.3. Section 1170.1 of the Penal Code, as amended by*  
11 *Section 30 of Chapter 39 of the Statutes of 2011, is amended to*  
12 *read:*

13 1170.1. (a) Except as otherwise provided by law, and subject  
14 to Section 654, when any person is convicted of two or more  
15 felonies, whether in the same proceeding or court or in different  
16 proceedings or courts, and whether by judgment rendered by the  
17 same or by a different court, and a consecutive term of  
18 imprisonment is imposed under Sections 669 and 1170, the  
19 aggregate term of imprisonment for all these convictions shall be  
20 the sum of the principal term, the subordinate term, and any  
21 additional term imposed for applicable enhancements for prior  
22 convictions, prior prison terms, and Section 12022.1. The principal  
23 term shall consist of the greatest term of imprisonment imposed  
24 by the court for any of the crimes, including any term imposed for  
25 applicable specific enhancements. The subordinate term for each  
26 consecutive offense shall consist of one-third of the middle term  
27 of imprisonment prescribed for each other felony conviction for  
28 which a consecutive term of imprisonment is imposed, and shall  
29 include one-third of the term imposed for any specific  
30 enhancements applicable to those subordinate offenses. Whenever  
31 a court imposes a term of imprisonment in the state prison, whether  
32 the term is a principal or subordinate term, the aggregate term shall  
33 be served in the state prison, regardless as to whether or not one  
34 of the terms specifies imprisonment in the county jail pursuant to  
35 subdivision (h) of Section 1170.

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

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

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

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

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

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

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

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

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

(i) This section shall become operative on January 1, 2012.  
2014.

SEC. 14. Section 1233.15 is added to the Penal Code, to read:

1233.15. The Director of Finance, in consultation with the Administrative Office of the Courts, the Department of Corrections and Rehabilitation, and the Chief Probation Officers of California, shall develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 Public Safety realignment. The revised formula may include adjustments to the baseline failure rate for each county.

SEC. 15. Section 2932 of the Penal Code, as amended by Section 35 of Chapter 39 of the Statutes of 2011, is repealed.

2932. (a) (1) For any time credit accumulated pursuant to Section 2931, 2933, or 4019, not more than 360 days of credit may be denied or lost for a single act of murder, attempted murder, solicitation of murder, manslaughter, rape, sodomy, or oral copulation accomplished against the victim's will, attempted rape, attempted sodomy, or attempted oral copulation accomplished against the victim's will, assault or battery causing serious bodily injury, assault with a deadly weapon or caustic substance, taking of a hostage, escape with force or violence, or possession or manufacture of a deadly weapon or explosive device, whether or not prosecution is undertaken for purposes of this paragraph. Solicitation of murder shall be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

(2) Not more than 180 days of credit may be denied or lost for a single act of misconduct, except as specified in paragraph (1);

1 which could be prosecuted as a felony whether or not prosecution  
2 is undertaken.

3 ~~(3) Not more than 90 days of credit may be denied or lost for a~~  
4 ~~single act of misconduct which could be prosecuted as a~~  
5 ~~misdemeanor, whether or not prosecution is undertaken.~~

6 ~~(4) Not more than 30 days of credit may be denied or lost for a~~  
7 ~~single act of misconduct defined by regulation as a serious~~  
8 ~~disciplinary offense by the Department of Corrections and~~  
9 ~~Rehabilitation. Any person confined due to a change in custodial~~  
10 ~~classification following the commission of any serious disciplinary~~  
11 ~~infraction shall, in addition to any loss of time credits, be ineligible~~  
12 ~~to receive participation or worktime credit for a period not to~~  
13 ~~exceed the number of days of credit which have been lost for the~~  
14 ~~act of misconduct or 180 days, whichever is less. Any person~~  
15 ~~confined in a secure housing unit for having committed any~~  
16 ~~misconduct specified in paragraph (1) in which great bodily injury~~  
17 ~~is inflicted upon a nonprisoner shall, in addition to any loss of time~~  
18 ~~credits, be ineligible to receive participation or worktime credit~~  
19 ~~for a period not to exceed the number of days of credit which have~~  
20 ~~been lost for that act of misconduct. In unusual cases, an inmate~~  
21 ~~may be denied the opportunity to participate in a credit qualifying~~  
22 ~~assignment for up to six months beyond the period specified in~~  
23 ~~this subdivision if the Secretary of the Department of Corrections~~  
24 ~~and Rehabilitation, or for prisoners confined in local facilities as~~  
25 ~~specified in Section 4019, the sheriff or director of the county~~  
26 ~~correctional department, finds, after a hearing, that no credit~~  
27 ~~qualifying program may be assigned to the inmate without creating~~  
28 ~~a substantial risk of physical harm to staff or other inmates. At the~~  
29 ~~end of the six-month period and of successive six-month periods,~~  
30 ~~the denial of the opportunity to participate in a credit qualifying~~  
31 ~~assignment may be renewed upon a hearing and finding by the~~  
32 ~~secretary, or for prisoners confined in local facilities as specified~~  
33 ~~in Section 4019, the sheriff or director of the county correctional~~  
34 ~~department.~~

35 ~~(5) The prisoner may appeal the decision through the~~  
36 ~~department's review procedure, or in the case of prisoners confined~~  
37 ~~in local facilities as specified in Section 4019, through the sheriff's~~  
38 ~~or director of the county correctional department's review~~  
39 ~~procedure, which shall include a review by an individual~~

1 independent of the institution who has supervisory authority over  
2 the institution.

3 (b) ~~For any credit accumulated pursuant to Section 2931, not~~  
4 ~~more than 30 days of participation credit may be denied or lost for~~  
5 ~~a single failure or refusal to participate. Any act of misconduct~~  
6 ~~described by the Department of Corrections and Rehabilitation,~~  
7 ~~or for prisoners confined in local facilities as specified in Section~~  
8 ~~4019, the sheriff or director of the county correctional department,~~  
9 ~~as a serious disciplinary infraction if committed while participating~~  
10 ~~in work, educational, vocational, therapeutic, or other prison~~  
11 ~~activity shall be deemed a failure to participate.~~

12 (c) ~~Any procedure not provided for by this section, but necessary~~  
13 ~~to carry out the purposes of this section, shall be those procedures~~  
14 ~~provided for by the Department of Corrections and Rehabilitation~~  
15 ~~for serious disciplinary infractions if those procedures are not in~~  
16 ~~conflict with this section, or in the case of prisoners confined in~~  
17 ~~local facilities as specified in Section 4019, by the sheriff or~~  
18 ~~director of the county correctional department.~~

19 (1) (A) ~~The Department of Corrections and Rehabilitation, or~~  
20 ~~in the case of prisoners confined in local facilities as specified in~~  
21 ~~Section 4019, the sheriff or director of the county correctional~~  
22 ~~department, shall, using reasonable diligence to investigate, provide~~  
23 ~~written notice to the prisoner. The written notice shall be given~~  
24 ~~within 15 days after the discovery of information leading to charges~~  
25 ~~that may result in a possible denial of credit, except that if the~~  
26 ~~prisoner has escaped, the notice shall be given within 15 days of~~  
27 ~~the prisoner's return to the custody of the Secretary of the~~  
28 ~~Department of Corrections and Rehabilitation, or in the case of~~  
29 ~~prisoners confined in local facilities as specified in Section 4019,~~  
30 ~~the sheriff or director of the county correctional department. The~~  
31 ~~written notice shall include the specific charge, the date, the time,~~  
32 ~~the place that the alleged misbehavior took place, the evidence~~  
33 ~~relied upon, a written explanation of the procedures that will be~~  
34 ~~employed at the proceedings and the prisoner's rights at the~~  
35 ~~hearing. The hearing shall be conducted by an individual who shall~~  
36 ~~be independent of the case and shall take place within 30 days of~~  
37 ~~the written notice.~~

38 (B) ~~The Secretary of the Department of Corrections and~~  
39 ~~Rehabilitation, or in the case of prisoners confined in local facilities~~  
40 ~~as specified in Section 4019, the sheriff or director of the county~~

1 correctional department, may delay written notice beyond 15 days  
2 when all of the following factors are true:

3 (i) ~~An act of misconduct is involved which could be prosecuted~~  
4 ~~as murder, attempted murder, or assault on a prison employee,~~  
5 ~~whether or not prosecution is undertaken.~~

6 (ii) ~~Further investigation is being undertaken for the purpose of~~  
7 ~~identifying other prisoners involved in the misconduct.~~

8 (iii) ~~Within 15 days after the discovery of information leading~~  
9 ~~to charges that may result in a possible denial of credit, the~~  
10 ~~investigating officer makes a written request to delay notifying~~  
11 ~~that prisoner and states the reasons for the delay.~~

12 (iv) ~~The warden of the institution, or for prisoners confined in~~  
13 ~~local facilities as specified in Section 4019, the sheriff or director~~  
14 ~~of the county correctional department, approves of the delay in~~  
15 ~~writing.~~

16 (C) ~~The period of delay under this paragraph shall not exceed~~  
17 ~~30 days. The prisoner's hearing shall take place within 30 days of~~  
18 ~~the written notice.~~

19 (2) ~~The prisoner may elect to be assigned an employee to assist~~  
20 ~~in the investigation, preparation, or presentation of a defense at~~  
21 ~~the disciplinary hearing if it is determined by the department, or~~  
22 ~~for prisoners confined in local facilities as specified in Section~~  
23 ~~4019, the sheriff or director of the county correctional department,~~  
24 ~~that: (A) the prisoner is illiterate; or (B) the complexity of the~~  
25 ~~issues or the prisoner's confinement status makes it unlikely that~~  
26 ~~the prisoner can collect and present the evidence necessary for an~~  
27 ~~adequate comprehension of the case.~~

28 (3) ~~The prisoner may request witnesses to attend the hearing~~  
29 ~~and they shall be called unless the person conducting the hearing~~  
30 ~~has specific reasons to deny this request. The specific reasons shall~~  
31 ~~be set forth in writing and a copy of the document shall be~~  
32 ~~presented to the prisoner.~~

33 (4) ~~The prisoner has the right, under the direction of the person~~  
34 ~~conducting the hearing, to question all witnesses.~~

35 (5) ~~At the conclusion of the hearing the charge shall be~~  
36 ~~dismissed if the facts do not support the charge, or the prisoner~~  
37 ~~may be found guilty on the basis of a preponderance of the~~  
38 ~~evidence.~~

39 (d) ~~If found guilty the prisoner shall be advised in writing of~~  
40 ~~the guilty finding and the specific evidence relied upon to reach~~

1 this conclusion and the amount of time-credit loss. The prisoner  
2 may appeal the decision through the Department of Corrections  
3 and Rehabilitation's review procedure, or in the case of prisoners  
4 confined in local facilities as specified in Section 4019, the review  
5 procedure established by the sheriff or the director of the county  
6 correctional department, and may, upon final notification of appeal  
7 denial, within 15 days of the notification demand review of the  
8 denial of credit to the Board of Parole Hearings, or in the case of  
9 prisoners confined in local facilities as specified in Section 4019,  
10 through a procedure established by the sheriff or the director of  
11 the county correctional department and the board or the local entity  
12 acting for the county may affirm, reverse, or modify the decision  
13 or grant a hearing before the board or the local entity at which  
14 hearing the prisoner shall have the rights specified in Section  
15 3041.5.

16 (e) Each prisoner subject to Section 2931 shall be notified of  
17 the total amount of good behavior and participation credit which  
18 may be credited pursuant to Section 2931, and his or her anticipated  
19 time-credit release date. The prisoner shall be notified of any  
20 change in the anticipated release date due to denial or loss of  
21 credits, award of worktime credit, under Section 2933, or the  
22 restoration of any credits previously forfeited.

23 (f) (1) If the conduct the prisoner is charged with also  
24 constitutes a crime, the Department of Corrections and  
25 Rehabilitation, or in the case of prisoners confined in local facilities  
26 as specified in Section 4019, the sheriff or director of the county  
27 correctional department, may refer the case to criminal authorities  
28 for possible prosecution. The department, or in the case of prisoners  
29 confined in local facilities as specified in Section 4019, the sheriff  
30 or director of the county correctional department, shall notify the  
31 prisoner, who may request postponement of the disciplinary  
32 proceedings pending the referral.

33 (2) The prisoner may revoke his or her request for postponement  
34 of the disciplinary proceedings up until the filing of the accusatory  
35 pleading. In the event of the revocation of the request for  
36 postponement of the proceeding, the department or the local entity  
37 shall hold the hearing within 30 days of the revocation.

38 (3) Notwithstanding the notification requirements in this  
39 paragraph and subparagraphs (A) and (B) of paragraph (1) of  
40 subdivision (c), in the event the case is referred to criminal

~~1 authorities for prosecution and the authority requests that the  
2 prisoner not be notified so as to protect the confidentiality of its  
3 investigation, no notice to the prisoner shall be required until an  
4 accusatory pleading is filed with the court, or the authority notifies  
5 the warden, in writing, that it will not prosecute or it authorizes  
6 the notification of the prisoner. The notice exceptions provided  
7 for in this paragraph shall only apply if the criminal authority  
8 requests of the warden, in writing, and within the 15 days provided  
9 in subparagraph (A) of paragraph (1) of subdivision (c), that the  
10 prisoner not be notified. Any period of delay of notice to the  
11 prisoner shall not exceed 30 days beyond the 15 days referred to  
12 in subdivision (c). In the event that no prosecution is undertaken,  
13 the procedures in subdivision (c) shall apply, and the time periods  
14 set forth in that subdivision shall commence to run from the date  
15 the warden is notified in writing of the decision not to prosecute.  
16 In the event the authority either cancels its requests that the prisoner  
17 not be notified before it makes a decision on prosecution or files  
18 an accusatory pleading, the provisions of this paragraph shall apply  
19 as if no request had been received, beginning from the date of the  
20 cancellation or filing.~~

~~21 (4) In the case where the prisoner is prosecuted by the district  
22 attorney, the Department of Corrections and Rehabilitation, or in  
23 the case of prisoners confined in local facilities as specified in  
24 Section 4019, the sheriff or the director of the county department  
25 of corrections, shall not deny time credit where the prisoner is  
26 found not guilty and may deny credit if the prisoner is found guilty,  
27 in which case the procedures in subdivision (c) shall not apply.~~

~~28 (g) If time credit denial proceedings or criminal prosecution  
29 prohibit the release of a prisoner who would have otherwise been  
30 released, and the prisoner is found not guilty of the alleged  
31 misconduct, the amount of time spent incarcerated, in excess of  
32 what the period of incarceration would have been absent the alleged  
33 misbehavior, shall be deducted from the prisoner's parole period.~~

~~34 (h) Nothing in the amendments to this section made at the  
35 1981–82 Regular Session of the Legislature shall affect the granting  
36 or revocation of credits attributable to that portion of the prisoner's  
37 sentence served prior to January 1, 1983.~~

~~38 SEC. 15.5. Section 2932 is added to the Penal Code, to read:~~

~~39 2932. (a) (1) For any time credit accumulated pursuant to  
40 Section 2931 or to Section 2933, not more than 360 days of credit~~

1 *may be denied or lost for a single act of murder, attempted murder,*  
2 *solicitation of murder, manslaughter, rape, sodomy, or oral*  
3 *copulation accomplished against the victim's will, attempted rape,*  
4 *attempted sodomy, or attempted oral copulation accomplished*  
5 *against the victim's will, assault or battery causing serious bodily*  
6 *injury, assault with a deadly weapon or caustic substance, taking*  
7 *of a hostage, escape with force or violence, or possession or*  
8 *manufacture of a deadly weapon or explosive device, whether or*  
9 *not prosecution is undertaken for purposes of this paragraph.*  
10 *Solicitation of murder shall be proved by the testimony of two*  
11 *witnesses, or of one witness and corroborating circumstances.*

12 *(2) Not more than 180 days of credit may be denied or lost for*  
13 *a single act of misconduct, except as specified in paragraph (1),*  
14 *which could be prosecuted as a felony whether or not prosecution*  
15 *is undertaken.*

16 *(3) Not more than 90 days of credit may be denied or lost for*  
17 *a single act of misconduct which could be prosecuted as a*  
18 *misdemeanor, whether or not prosecution is undertaken.*

19 *(4) Not more than 30 days of credit may be denied or lost for*  
20 *a single act of misconduct defined by regulation as a serious*  
21 *disciplinary offense by the Department of Corrections and*  
22 *Rehabilitation. Any person confined due to a change in custodial*  
23 *classification following the commission of any serious disciplinary*  
24 *infraction shall, in addition to any loss of time credits, be ineligible*  
25 *to receive participation or worktime credit for a period not to*  
26 *exceed the number of days of credit which have been lost for the*  
27 *act of misconduct or 180 days, whichever is less. Any person*  
28 *confined in a secure housing unit for having committed any*  
29 *misconduct specified in paragraph (1) in which great bodily injury*  
30 *is inflicted upon a nonprisoner shall, in addition to any loss of*  
31 *time credits, be ineligible to receive participation or worktime*  
32 *credit for a period not to exceed the number of days of credit which*  
33 *have been lost for that act of misconduct. In unusual cases, an*  
34 *inmate may be denied the opportunity to participate in a credit*  
35 *qualifying assignment for up to six months beyond the period*  
36 *specified in this subdivision if the Secretary of the Department of*  
37 *Corrections and Rehabilitation finds, after a hearing, that no credit*  
38 *qualifying program may be assigned to the inmate without creating*  
39 *a substantial risk of physical harm to staff or other inmates. At the*  
40 *end of the six-month period and of successive six-month periods,*

1 the denial of the opportunity to participate in a credit qualifying  
2 assignment may be renewed upon a hearing and finding by the  
3 director.

4 (5) The prisoner may appeal the decision through the  
5 department's review procedure, which shall include a review by  
6 an individual independent of the institution who has supervisory  
7 authority over the institution.

8 (b) For any credit accumulated pursuant to Section 2931, not  
9 more than 30 days of participation credit may be denied or lost  
10 for a single failure or refusal to participate. Any act of misconduct  
11 described by the Department of Corrections and Rehabilitation  
12 as a serious disciplinary infraction if committed while participating  
13 in work, educational, vocational, therapeutic, or other prison  
14 activity shall be deemed a failure to participate.

15 (c) Any procedure not provided for by this section, but necessary  
16 to carry out the purposes of this section, shall be those procedures  
17 provided for by the Department of Corrections and Rehabilitation  
18 for serious disciplinary infractions if those procedures are not in  
19 conflict with this section.

20 (1) (A) The Department of Corrections and Rehabilitation shall,  
21 using reasonable diligence to investigate, provide written notice  
22 to the prisoner. The written notice shall be given within 15 days  
23 after the discovery of information leading to charges that may  
24 result in a possible denial of credit, except that if the prisoner has  
25 escaped, the notice shall be given within 15 days of the prisoner's  
26 return to the custody of the secretary. The written notice shall  
27 include the specific charge, the date, the time, the place that the  
28 alleged misbehavior took place, the evidence relied upon, a written  
29 explanation of the procedures that will be employed at the  
30 proceedings and the prisoner's rights at the hearing. The hearing  
31 shall be conducted by an individual who shall be independent of  
32 the case and shall take place within 30 days of the written notice.

33 (B) The Department of Corrections and Rehabilitation may  
34 delay written notice beyond 15 days when all of the following  
35 factors are true:

36 (i) An act of misconduct is involved which could be prosecuted  
37 as murder, attempted murder, or assault on a prison employee,  
38 whether or not prosecution is undertaken.

39 (ii) Further investigation is being undertaken for the purpose  
40 of identifying other prisoners involved in the misconduct.

1 (iii) Within 15 days after the discovery of information leading  
2 to charges that may result in a possible denial of credit, the  
3 investigating officer makes a written request to delay notifying  
4 that prisoner and states the reasons for the delay.

5 (iv) The warden of the institution approves of the delay in  
6 writing.

7 The period of delay under this paragraph shall not exceed 30  
8 days. The prisoner's hearing shall take place within 30 days of  
9 the written notice.

10 (2) The prisoner may elect to be assigned an employee to assist  
11 in the investigation, preparation, or presentation of a defense at  
12 the disciplinary hearing if it is determined by the department that:  
13 (i) the prisoner is illiterate; or (ii) the complexity of the issues or  
14 the prisoner's confinement status makes it unlikely that the prisoner  
15 can collect and present the evidence necessary for an adequate  
16 comprehension of the case.

17 (3) The prisoner may request witnesses to attend the hearing  
18 and they shall be called unless the person conducting the hearing  
19 has specific reasons to deny this request. The specific reasons shall  
20 be set forth in writing and a copy of the document shall be  
21 presented to the prisoner.

22 (4) The prisoner has the right, under the direction of the person  
23 conducting the hearing, to question all witnesses.

24 (5) At the conclusion of the hearing the charge shall be  
25 dismissed if the facts do not support the charge, or the prisoner  
26 may be found guilty on the basis of a preponderance of the  
27 evidence.

28 (d) If found guilty the prisoner shall be advised in writing of  
29 the guilty finding and the specific evidence relied upon to reach  
30 this conclusion and the amount of time-credit loss. The prisoner  
31 may appeal the decision through the department's review  
32 procedure, and may, upon final notification of appeal denial, within  
33 15 days of the notification demand review of the department's  
34 denial of credit to the Board of Prison Terms, and the board may  
35 affirm, reverse, or modify the department's decision or grant a  
36 hearing before the board at which hearing the prisoner shall have  
37 the rights specified in Section 3041.5.

38 (e) Each prisoner subject to Section 2931 shall be notified of  
39 the total amount of good behavior and participation credit which  
40 may be credited pursuant to Section 2931, and his or her

1 anticipated time-credit release date. The prisoner shall be notified  
2 of any change in the anticipated release date due to denial or loss  
3 of credits, award of worktime credit, under Section 2933, or the  
4 restoration of any credits previously forfeited.

5 (f) (1) If the conduct the prisoner is charged with also  
6 constitutes a crime, the department may refer the case to criminal  
7 authorities for possible prosecution. The department shall notify  
8 the prisoner, who may request postponement of the disciplinary  
9 proceedings pending the referral.

10 (2) The prisoner may revoke his or her request for postponement  
11 of the disciplinary proceedings up until the filing of the accusatory  
12 pleading. In the event of the revocation of the request for  
13 postponement of the proceeding, the department shall hold the  
14 hearing within 30 days of the revocation.

15 (3) Notwithstanding the notification requirements in this  
16 paragraph and subparagraphs (A) and (B) of paragraph (1) of  
17 subdivision (c), in the event the case is referred to criminal  
18 authorities for prosecution and the authority requests that the  
19 prisoner not be notified so as to protect the confidentiality of its  
20 investigation, no notice to the prisoner shall be required until an  
21 accusatory pleading is filed with the court, or the authority notifies  
22 the warden, in writing, that it will not prosecute or it authorizes  
23 the notification of the prisoner. The notice exceptions provided  
24 for in this paragraph shall only apply if the criminal authority  
25 requests of the warden, in writing, and within the 15 days provided  
26 in subparagraph (A) of paragraph (1) of subdivision (c), that the  
27 prisoner not be notified. Any period of delay of notice to the  
28 prisoner shall not exceed 30 days beyond the 15 days referred to  
29 in subdivision (c). In the event that no prosecution is undertaken,  
30 the procedures in subdivision (c) shall apply, and the time periods  
31 set forth in that subdivision shall commence to run from the date  
32 the warden is notified in writing of the decision not to prosecute.  
33 In the event the authority either cancels its requests that the  
34 prisoner not be notified before it makes a decision on prosecution  
35 or files an accusatory pleading, the provisions of this paragraph  
36 shall apply as if no request had been received, beginning from the  
37 date of the cancellation or filing.

38 (4) In the case where the prisoner is prosecuted by the district  
39 attorney, the Department of Corrections and Rehabilitation shall  
40 not deny time credit where the prisoner is found not guilty and

1 *may deny credit if the prisoner is found guilty, in which case the*  
2 *procedures in subdivision (c) shall not apply.*

3 *(g) If time credit denial proceedings or criminal prosecution*  
4 *prohibit the release of a prisoner who would have otherwise been*  
5 *released, and the prisoner is found not guilty of the alleged*  
6 *misconduct, the amount of time spent incarcerated, in excess of*  
7 *what the period of incarceration would have been absent the*  
8 *alleged misbehavior, shall be deducted from the prisoner's parole*  
9 *period.*

10 *(h) Nothing in the amendments to this section made at the*  
11 *1981–82 Regular Session of the Legislature shall affect the*  
12 *granting or revocation of credits attributable to that portion of*  
13 *the prisoner's sentence served prior to January 1, 1983.*

14 *SEC. 16. Section 2933 of the Penal Code is amended to read:*

15 2933. (a) It is the intent of the Legislature that persons  
16 convicted of a crime and sentenced to the state prison under Section  
17 1170 serve the entire sentence imposed by the court, except for a  
18 reduction in the time served in the custody of the Secretary of the  
19 Department of Corrections and Rehabilitation pursuant to this  
20 section and Section 2933.05.

21 (b) For every six months of continuous incarceration, a prisoner  
22 shall be awarded credit reductions from his or her term of  
23 confinement of six months. A lesser amount of credit based on  
24 this ratio shall be awarded for any lesser period of continuous  
25 incarceration. Credit should be awarded pursuant to regulations  
26 adopted by the secretary. Prisoners who are denied the opportunity  
27 to earn credits pursuant to subdivision (a) of Section 2932 shall  
28 be awarded no credit reduction pursuant to this section. Under no  
29 circumstances shall any prisoner receive more than six months'  
30 credit reduction for any six-month period under this section.

31 (c) Credit is a privilege, not a right. Credit must be earned and  
32 may be forfeited pursuant to the provisions of Section 2932. Except  
33 as provided in subdivision (a) of Section 2932, every eligible  
34 prisoner shall have a reasonable opportunity to participate.

35 (d) Under regulations adopted by the Department of Corrections  
36 and Rehabilitation, which shall require a period of not more than  
37 one year free of disciplinary infractions, credit which has been  
38 previously forfeited may be restored by the secretary. The  
39 regulations shall provide for separate classifications of serious  
40 disciplinary infractions as they relate to restoration of credits, the

1 time period required before forfeited credits or a portion thereof  
2 may be restored, and the percentage of forfeited credits that may  
3 be restored for these time periods. For credits forfeited as specified  
4 in paragraph (1) of subdivision (a) of Section 2932, the Department  
5 of Corrections and Rehabilitation may provide that up to 180 days  
6 of lost credit shall not be restored and up to 90 days of credit shall  
7 not be restored for a forfeiture resulting from conspiracy or  
8 attempts to commit one of those acts. No credits may be restored  
9 if they were forfeited for a serious disciplinary infraction in which  
10 the victim died or was permanently disabled. Upon application of  
11 the prisoner and following completion of the required time period  
12 free of disciplinary offenses, forfeited credits eligible for restoration  
13 under the regulations for disciplinary offenses other than serious  
14 disciplinary infractions punishable by a credit loss of more than  
15 90 days shall be restored unless, at a hearing, it is found that the  
16 prisoner refused to accept or failed to perform in a credit qualifying  
17 assignment, or extraordinary circumstances are present that require  
18 that credits not be restored. "Extraordinary circumstances" shall  
19 be defined in the regulations adopted by the secretary. However,  
20 in any case in which credit was forfeited for a serious disciplinary  
21 infraction punishable by a credit loss of more than 90 days,  
22 restoration of credit shall be at the discretion of the secretary.

23 The prisoner may appeal the finding through the Department of  
24 Corrections and Rehabilitation's review procedure, which shall  
25 include a review by an individual independent of the institution  
26 who has supervisory authority over the institution.

27 ~~(e) (1) Notwithstanding Section 4019 and subject to the~~  
28 ~~limitations of this subdivision, a prisoner sentenced to the state~~  
29 ~~prison under Section 1170 for whom the sentence is executed shall~~  
30 ~~have one day deducted from his or her period of confinement for~~  
31 ~~every day he or she served in a county jail, city jail, industrial farm,~~  
32 ~~or road camp from the date of arrest until state prison credits~~  
33 ~~pursuant to this article are applicable to the prisoner.~~

34 ~~(2) A prisoner may not receive the credit specified in paragraph~~  
35 ~~(1) if it appears by the record that the prisoner has refused to~~  
36 ~~satisfactorily perform labor as assigned by, or has not satisfactorily~~  
37 ~~complied with the reasonable rules and regulations established by,~~  
38 ~~the sheriff, chief of police, or superintendent of an industrial farm~~  
39 ~~or road camp.~~

~~(3) Section 4019, and not this subdivision, shall apply if the prisoner is required to register as a sex offender, pursuant to Chapter 5.5 (commencing with Section 290), was committed for a serious felony, as defined in Section 1192.7, or has a prior conviction for a serious felony, as defined in Section 1192.7, or a violent felony, as defined in Section 667.5.~~

~~(f)~~

(e) The provisions of subdivision (d) shall also apply in cases of credit forfeited under Section 2931 for offenses and serious disciplinary infractions occurring on or after January 1, 1983.

*SEC. 17. Section 3000.08 of the Penal Code, as amended by Section 37 of Chapter 39 of the Statutes of 2011, is amended to read:*

3000.08. (a) Persons released from state prison on or after October 1, 2011, after serving a prison term or, whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes shall be subject to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

(4) Any crime where the person eligible for release from prison is classified as a High Risk Sex Offender.

(5) Any crime where the person is required, as a condition of parole, to undergo treatment by the Department of Mental Health pursuant to Section 2962.

(b) Notwithstanding any other provision of law, all other offenders released from prison shall be placed on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

*(c) Notwithstanding subdivision (a), any of the following persons released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater:*

1     (1) *The person is required to register as a sex offender pursuant*  
2 *to Chapter 5.5 (commencing with Section 290) of Title 9 of Part*  
3 *1, and was subject to a period of parole exceeding three years at*  
4 *the time he or she committed a felony for which they were convicted*  
5 *and subsequently sentenced to state prison.*

6     (2) *The person was subject to parole for life pursuant to Section*  
7 *3000.1 at the time of the commission of the offense that resulted*  
8 *in a conviction and state prison sentence.*

9     (d) *Except as described in subdivision (c), any person who is*  
10 *convicted of a felony that requires community supervision and*  
11 *who still has a period of state parole to serve shall discharge from*  
12 *state parole at the time of release to community supervision.*

13     ~~(e)~~

14     (e) *This section shall operative only until July 1, 2013, and as*  
15 *of January 1, 2014 is repealed, unless a later enacted statute, that*  
16 *is enacted before January 1, 2014, deletes or extends that date.*

17     SEC. 18. *Section 3000.08 of the Penal Code, as amended by*  
18 *Section 5 of Chapter 136 of the Statutes of 2011, is amended to*  
19 *read:*

20     3000.08. (a) *Persons released from state prison prior to or on*  
21 *or after July 1, 2013, after serving a prison term or, whose sentence*  
22 *has been deemed served pursuant to Section 2900.5, for any of the*  
23 *following crimes shall be subject to parole supervision by the*  
24 *Department of Corrections and Rehabilitation and the jurisdiction*  
25 *of the court in the county where the parolee is released or resides*  
26 *for the purpose of hearing petitions to revoke parole and impose*  
27 *a term of custody:*

28     (1) *A serious felony as described in subdivision (c) of Section*  
29 *1192.7.*

30     (2) *A violent felony as described in subdivision (c) of Section*  
31 *667.5.*

32     (3) *A crime for which the person was sentenced pursuant to*  
33 *paragraph (2) of subdivision (e) of Section 667 or paragraph (2)*  
34 *of subdivision (c) of Section 1170.12.*

35     (4) *Any crime where the person eligible for release from prison*  
36 *is classified as a High Risk Sex Offender.*

37     (5) *Any crime where the person is required, as a condition of*  
38 *parole, to undergo treatment by the Department of Mental Health*  
39 *pursuant to Section 2962.*

1 (b) Notwithstanding any other provision of law, all other  
2 offenders released from prison shall be placed on postrelease  
3 supervision pursuant to Title 2.05 (commencing with Section  
4 3450).

5 (c) At any time during the period of parole of a person subject  
6 to this section, if any parole agent or peace officer has probable  
7 cause to believe that the parolee is violating any term or condition  
8 of his or her parole, the agent or officer may, without warrant or  
9 other process and at any time until the final disposition of the case,  
10 arrest the person and bring him or her before the parole authority,  
11 or the parole authority may, in its discretion, issue a warrant for  
12 that person's arrest.

13 (d) Upon review of the alleged violation and a finding of good  
14 cause that the parolee has committed a violation of law or violated  
15 his or her conditions of parole, the parole authority may impose  
16 additional and appropriate conditions of supervision, including  
17 rehabilitation and treatment services and appropriate incentives  
18 for compliance, and impose immediate, structured, and intermediate  
19 sanctions for parole violations, including flash incarceration in a  
20 county jail. Periods of "flash incarceration," as defined in  
21 subdivision (e) are encouraged as one method of punishment for  
22 violations of a parolee's conditions of parole. Nothing in this  
23 section is intended to preclude referrals to a reentry court pursuant  
24 to Section 3015.

25 (e) "Flash incarceration" is a period of detention in county jail  
26 due to a violation of a parolee's conditions of parole. The length  
27 of the detention period can range between one and 10 consecutive  
28 days. Shorter, but if necessary more frequent, periods of detention  
29 for violations of a parolee's conditions of parole shall appropriately  
30 punish a parolee while preventing the disruption in a work or home  
31 establishment that typically arises from longer periods of detention.

32 (f) If the supervising parole agency has determined, following  
33 application of its assessment processes, that intermediate sanctions  
34 up to and including flash incarceration are not appropriate, the  
35 supervising agency shall petition the revocation hearing officer  
36 appointed pursuant to Section 71622.5 of the Government Code  
37 in the county in which the parolee is being supervised to revoke  
38 parole. At any point during the process initiated pursuant to this  
39 section, a parolee may waive, in writing, his or her right to counsel,  
40 admit the parole violation, waive a court hearing, and accept the

1 proposed parole modification. The petition shall include a written  
2 report that contains additional information regarding the petition,  
3 including the relevant terms and conditions of parole, the  
4 circumstances of the alleged underlying violation, the history and  
5 background of the parolee, and any recommendations. The Judicial  
6 Council shall adopt forms and rules of court to establish uniform  
7 statewide procedures to implement this subdivision, including the  
8 minimum contents of supervision agency reports. Upon a finding  
9 that the person has violated the conditions of parole, the revocation  
10 hearing officer shall have authority to do any of the following:

11 (1) Return the person to parole supervision with modifications  
12 of conditions, if appropriate, including a period of incarceration  
13 in county jail.

14 (2) Revoke parole and order the person to confinement in the  
15 county jail.

16 (3) Refer the person to a reentry court pursuant to Section 3015  
17 or other evidence-based program in the court's discretion.

18 (g) Confinement pursuant to paragraphs (1) and (2) of  
19 subdivision (f) shall not exceed a period of 180 days in the county  
20 jail.

21 (h) Notwithstanding any other provision of law, in any case  
22 where Section 3000.1 applies to a person who is on parole and  
23 there is good cause to believe that the person has committed a  
24 violation of law or violated his or her conditions of parole, and  
25 there is imposed a period of imprisonment of longer than 30 days,  
26 that person shall be remanded to the custody of the Department of  
27 Corrections and Rehabilitation and the jurisdiction of the Board  
28 of Parole Hearings for the purpose of future parole consideration.

29 (i) *Notwithstanding subdivision (a), any of the following persons*  
30 *released from state prison shall be subject to the jurisdiction of,*  
31 *and parole supervision by, the Department of Corrections and*  
32 *Rehabilitation for a period of parole up to three years or the parole*  
33 *term the person was subject to at the time of the commission of*  
34 *the offense, whichever is greater:*

35 (1) *The person is required to register as a sex offender pursuant*  
36 *to Chapter 5.5 (commencing with Section 290) of Title 9 of Part*  
37 *1, and was subject to a period of parole exceeding three years at*  
38 *the time he or she committed a felony for which they were convicted*  
39 *and subsequently sentenced to state prison.*

1     (2) *The person was subject to parole for life pursuant to Section*  
2 *3000.1 at the time of the commission of the offense that resulted*  
3 *in a conviction and state prison sentence.*

4     ~~(i)~~

5     (j) Parolees subject to this section who are being held for a  
6 parole violation in a county jail on July 1, 2013, shall be subject  
7 to the jurisdiction of the Board of Parole Hearings.

8     ~~(j)~~

9     (k) *Except as described in subdivision (c), any person who is*  
10 *convicted of a felony that requires community supervision and*  
11 *who still has a period of state parole to serve shall discharge from*  
12 *state parole at the time of release to community supervision.*

13     (l) This section shall become operative on July 1, 2013.

14     SEC. 19. *Section 3000.09 of the Penal Code is amended to*  
15 *read:*

16     3000.09. (a) Notwithstanding any other law, any parolee who  
17 was paroled from state prison prior to October 1, 2011, shall be  
18 subject to this section.

19     (b) Parolees subject to this section shall remain under  
20 supervision by the Department of Corrections and Rehabilitation  
21 until one of the following occurs:

22     (1) Jurisdiction over the person is terminated by operation of  
23 law.

24     (2) The supervising agent recommends to the parole authority  
25 that the offender be discharged and the parole authority approves  
26 the discharge.

27     (3) ~~The offender, except an offender who if released from prison~~  
28 ~~after October 1, 2011, would be subject to parole based on the~~  
29 ~~criteria identified in subdivision (a) of Section 3000.08, is subject~~  
30 ~~to a period of parole of up to three years pursuant to paragraph~~  
31 ~~(1) of subdivision (b) of Section 3000 and was not imprisoned for~~  
32 ~~committing a violent felony, as defined in subdivision (c) of Section~~  
33 ~~667.5, a serious felony, as defined by subdivision (c) of Section~~  
34 ~~1192.7, or is required to register as a sex offender pursuant to~~  
35 ~~Section 290, and completes six consecutive months of parole~~  
36 ~~without violating their conditions, at which time the supervising~~  
37 ~~agent shall review and make a recommendation on whether to~~  
38 ~~discharge the offender to the parole authority and the parole~~  
39 ~~authority approves the discharge.~~

(c) Parolees subject to this section who are being held for a parole violation in ~~county jail~~ *state prison* on October 1, 2011, shall be subject to the jurisdiction of the Board of Parole Hearings and may, upon revocation, be remanded to the state prison. Upon *upon* completion of a revocation term *on or after November 1, 2011*, the parolee shall either remain under parole supervision of the department pursuant to Section 3000.08 or shall be placed on postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450). *Notwithstanding Section 3000.08, any parolee who is in a county jail serving a term of parole revocation or being held pursuant to Section 3056 on October 1, 2011, and is released directly from county jail without returning to a state facility on or after October 1, 2011, shall remain under the parole supervision of the department. Any parolee that is pending final adjudication of a parole revocation charge prior to October 1, whether located in county jail or state prison, may be returned to state prison and shall be confined pursuant to subdivisions (a) to (d), inclusive, of Section 3057. Any subsequent parole revocations of a parolee on postrelease community supervision shall be served in county jail pursuant to Section 3056.*

(d) Any parolee who was paroled prior to October 1, 2011, who commits a violation of parole shall, *until July 1, 2013*, be subject to parole revocation procedures in accordance with the *rules and regulations of the department consistent with Division 2 of Title 15 of the California Code of Regulations. On and after July 1, 2013, any parolee who was paroled prior to October 1, 2011, shall be subject to the* procedures established under Section 3000.08.

SEC. 20. Section 3001 of the Penal Code, as amended by Section 41 of Chapter 39 of the Statutes of 2011, is amended to read:

3001. (a) Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was not imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, *not imprisoned for a serious felony, as defined by subdivision (c) of Section 1192.7, or is not required to register as a sex offender pursuant to Section 290*, has been released on parole from the state prison, and has been on parole continuously for six months since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections and Rehabilitation

1 recommends to the Board of Parole Hearings that the person be  
2 retained on parole and the board, for good cause, determines that  
3 the person will be retained. Notwithstanding any other provision  
4 of law, when any person referred to in paragraph (1) of subdivision  
5 (b) of Section 3000 who was imprisoned for committing a violent  
6 felony, as defined in subdivision (c) of Section 667.5, has been  
7 released on parole from the state prison for a period not exceeding  
8 three years and has been on parole continuously for two years since  
9 release from confinement, or has been released on parole from the  
10 state prison for a period not exceeding five years and has been on  
11 parole continuously for three years since release from confinement,  
12 the department shall discharge, within 30 days, that person from  
13 parole, unless the department recommends to the board that the  
14 person be retained on parole and the board, for good cause,  
15 determines that the person will be retained. The board shall make  
16 a written record of its determination and the department shall  
17 transmit a copy thereof to the parolee.

18 (b) Notwithstanding any other provision of law, when any person  
19 referred to in paragraph (2) of subdivision (b) of Section 3000 has  
20 been released on parole from the state prison, and has been on  
21 parole continuously for three years since release from confinement,  
22 the board shall discharge, within 30 days, the person from parole,  
23 unless the board, for good cause, determines that the person will  
24 be retained on parole. The board shall make a written record of its  
25 determination and the department shall transmit a copy of that  
26 determination to the parolee.

27 (c) Notwithstanding any other provision of law, when any person  
28 referred to in paragraph (3) of subdivision (b) of Section 3000 has  
29 been released on parole from the state prison, and has been on  
30 parole continuously for six years and six months since release from  
31 confinement, the board shall discharge, within 30 days, the person  
32 from parole, unless the board, for good cause, determines that the  
33 person will be retained on parole. The board shall make a written  
34 record of its determination and the department shall transmit a  
35 copy thereof to the parolee.

36 (d) In the event of a retention on parole, the parolee shall be  
37 entitled to a review by the parole authority each year thereafter  
38 until the maximum statutory period of parole has expired.

39 (e) The amendments to this section made during the 1987–88  
40 Regular Session of the Legislature shall only be applied

1 prospectively and shall not extend the parole period for any person  
2 whose eligibility for discharge from parole was fixed as of the  
3 effective date of those amendments.

4 *(f) The amendments made to subdivision (a) during the 2011–12*  
5 *Regular Session and the First Extraordinary Session of the*  
6 *Legislature shall apply prospectively from October 1, 2011, and*  
7 *no person on parole prior to October 1, 2011, shall be discharged*  
8 *from parole pursuant to subdivision (a) unless one of the following*  
9 *circumstances exist:*

10 *(1) The person has been on parole continuously for six*  
11 *consecutive months after October 1, 2011, and the person is not*  
12 *retained by the Board of Parole Hearings for good cause.*

13 *(2) The person has, on or after October 1, 2011, been on parole*  
14 *for one year and the Board of Parole Hearings does not retain the*  
15 *person for good cause.*

16 *SEC. 21. Section 3003 of the Penal Code, as amended by*  
17 *Section 473 of Chapter 39 of the Statutes of 2011, is amended to*  
18 *read:*

19 3003. (a) Except as otherwise provided in this section, an  
20 inmate who is released on parole or postrelease supervision as  
21 provided by Title 2.05 (commencing with Section 3450) shall be  
22 returned to the county that was the last legal residence of the inmate  
23 prior to his or her incarceration. For purposes of this subdivision,  
24 “last legal residence” shall not be construed to mean the county  
25 wherein the inmate committed an offense while confined in a state  
26 prison or local jail facility or while confined for treatment in a  
27 state hospital.

28 (b) Notwithstanding subdivision (a), an inmate may be returned  
29 to another county if that would be in the best interests of the public.  
30 If the Board of Parole Hearings setting the conditions of parole  
31 for inmates sentenced pursuant to subdivision (b) of Section 1168,  
32 as determined by the parole consideration panel, or the Department  
33 of Corrections and Rehabilitation setting the conditions of parole  
34 for inmates sentenced pursuant to Section 1170, decides on a return  
35 to another county, it shall place its reasons in writing in the  
36 parolee’s permanent record and include these reasons in the notice  
37 to the sheriff or chief of police pursuant to Section 3058.6. In  
38 making its decision, the paroling authority shall consider, among  
39 others, the following factors, giving the greatest weight to the  
40 protection of the victim and the safety of the community:

1 (1) The need to protect the life or safety of a victim, the parolee,  
2 a witness, or any other person.

3 (2) Public concern that would reduce the chance that the  
4 inmate's parole would be successfully completed.

5 (3) The verified existence of a work offer, or an educational or  
6 vocational training program.

7 (4) The existence of family in another county with whom the  
8 inmate has maintained strong ties and whose support would  
9 increase the chance that the inmate's parole would be successfully  
10 completed.

11 (5) The lack of necessary outpatient treatment programs for  
12 parolees receiving treatment pursuant to Section 2960.

13 (c) The Department of Corrections and Rehabilitation, in  
14 determining an out-of-county commitment, shall give priority to  
15 the safety of the community and any witnesses and victims.

16 (d) In making its decision about an inmate who participated in  
17 a joint venture program pursuant to Article 1.5 (commencing with  
18 Section 2717.1) of Chapter 5, the paroling authority shall give  
19 serious consideration to releasing him or her to the county where  
20 the joint venture program employer is located if that employer  
21 states to the paroling authority that he or she intends to employ  
22 the inmate upon release.

23 (e) (1) The following information, if available, shall be released  
24 by the Department of Corrections and Rehabilitation to local law  
25 enforcement agencies regarding a paroled inmate or inmate placed  
26 on postrelease supervision pursuant to Title 2.05 (commencing  
27 with Section 3450) who is released in their jurisdictions:

28 (A) Last, first, and middle name.

29 (B) Birth date.

30 (C) Sex, race, height, weight, and hair and eye color.

31 (D) Date of parole and discharge.

32 (E) Registration status, if the inmate is required to register as a  
33 result of a controlled substance, sex, or arson offense.

34 (F) California Criminal Information Number, FBI number, social  
35 security number, and driver's license number.

36 (G) County of commitment.

37 (H) A description of scars, marks, and tattoos on the inmate.

38 (I) Offense or offenses for which the inmate was convicted that  
39 resulted in parole in this instance.

40 (J) Address, including all of the following information:

1 (i) Street name and number. Post office box numbers are not  
2 acceptable for purposes of this subparagraph.

3 (ii) City and ZIP Code.

4 (iii) Date that the address provided pursuant to this subparagraph  
5 was proposed to be effective.

6 (K) Contact officer and unit, including all of the following  
7 information:

8 (i) Name and telephone number of each contact officer.

9 (ii) Contact unit type of each contact officer such as units  
10 responsible for parole, registration, or county probation.

11 (L) A digitized image of the photograph and at least a single  
12 digit fingerprint of the parolee.

13 (M) A geographic coordinate for the parolee's residence location  
14 for use with a Geographical Information System (GIS) or  
15 comparable computer program.

16 (2) The information required by this subdivision shall come  
17 from the statewide parolee database. The information obtained  
18 from each source shall be based on the same timeframe.

19 (3) All of the information required by this subdivision shall be  
20 provided utilizing a computer-to-computer transfer in a format  
21 usable by a desktop computer system. The transfer of this  
22 information shall be continually available to local law enforcement  
23 agencies upon request.

24 (4) The unauthorized release or receipt of the information  
25 described in this subdivision is a violation of Section 11143.

26 (f) Notwithstanding any other provision of law, an inmate who  
27 is released on parole shall not be returned to a location within 35  
28 miles of the actual residence of a victim of, or a witness to, a  
29 violent felony as defined in paragraphs (1) to (7), inclusive, and  
30 paragraph (16) of subdivision (c) of Section 667.5 or a felony in  
31 which the defendant inflicts great bodily injury on any person other  
32 than an accomplice that has been charged and proved as provided  
33 for in Section 12022.53, 12022.7, or 12022.9, if the victim or  
34 witness has requested additional distance in the placement of the  
35 inmate on parole, and if the Board of Parole Hearings or the  
36 Department of Corrections and Rehabilitation finds that there is a  
37 need to protect the life, safety, or well-being of a victim or witness.

38 (g) Notwithstanding any other law, an inmate who is released  
39 on parole for a violation of Section 288 or 288.5 whom the  
40 Department of Corrections and Rehabilitation determines poses a

1 high risk to the public shall not be placed or reside, for the duration  
2 of his or her parole, within one-half mile of any public or private  
3 school including any or all of kindergarten and grades 1 to 12,  
4 inclusive.

5 (h) Notwithstanding any other law, an inmate who is released  
6 on parole for an offense involving stalking shall not be returned  
7 to a location within 35 miles of the victim's actual residence or  
8 place of employment if the victim or witness has requested  
9 additional distance in the placement of the inmate on parole, and  
10 if the Board of Parole Hearings or the Department of Corrections  
11 and Rehabilitation finds that there is a need to protect the life,  
12 safety, or well-being of the victim.

13 (i) The authority shall give consideration to the equitable  
14 distribution of parolees and the proportion of out-of-county  
15 commitments from a county compared to the number of  
16 commitments from that county when making parole decisions.

17 (j) An inmate may be paroled to another state pursuant to any  
18 other law. The Department of Corrections and Rehabilitation shall  
19 coordinate with local entities regarding the placement of inmates  
20 placed out of state on postrelease supervision pursuant to Title  
21 2.05 (commencing with Section 3450).

22 (k) (1) Except as provided in paragraph (2), the Department of  
23 Corrections and Rehabilitation shall be the agency primarily  
24 responsible for, and shall have control over, the program, resources,  
25 and staff implementing the Law Enforcement Automated Data  
26 System (LEADS) in conformance with subdivision (e). County  
27 agencies supervising inmates released to postrelease supervision  
28 pursuant to Title 2.05 (commencing with Section 3450) shall  
29 provide any information requested by the department to ensure  
30 the availability of accurate information regarding inmates released  
31 from state prison. This information may include the issuance of  
32 warrants, revocations, or the termination of postrelease supervision.  
33 On or before August 1, 2011, county agencies designated to  
34 supervise inmates released to postrelease supervision shall notify  
35 the department that the county agencies have been designated as  
36 the local entity responsible for providing that supervision.

37 (2) Notwithstanding paragraph (1), the Department of Justice  
38 shall be the agency primarily responsible for the proper release of  
39 information under LEADS that relates to fingerprint cards.

(l) In addition to the requirements under subdivision (k), the Department of Corrections and Rehabilitation shall submit to the Department of Justice data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer.

SEC. 22. Section 3056 of the Penal Code, as amended by Section 44 of Chapter 39 of the Statutes of 2011, is amended to read:

3056. (a) Prisoners on parole shall remain under the supervision of the department but shall not be returned to prison except as provided in subdivision (b) or as provided by subdivision (c) of Section 3000.09. Except as provided by subdivision (c) of Section 3000.09, upon revocation of parole, a parolee may be housed in a county jail for a maximum of 180 days. When housed in county facilities, parolees shall be under the legal custody and jurisdiction of local county facilities. When released from custody, parolees shall be returned to the parole supervision of the department for the duration of parole.

(b) Inmates paroled pursuant to Section 3000.1 may be returned to prison following the revocation of parole by the Board of Parole Hearings until July 1, 2013, and thereafter by a court pursuant to Section 3000.08.

SEC. 23. Section 3057 of the Penal Code, as amended by Section 45 of Chapter 39 of the Statutes of 2011, is amended to read:

3057. (a) Confinement pursuant to a revocation of parole in the absence of a new conviction and commitment to prison under other provisions of law, shall not exceed 12 months, except as provided in subdivision (c).

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation,

the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a serious disciplinary offense pursuant to subdivision (a) of Section 2932.

(d) (1) Except for parolees specified in paragraph (2), any revocation period imposed under subdivision (a) may be reduced in the same manner and to the same extent as a term of imprisonment may be reduced by worktime credits under Section 2933. Worktime credit must be earned and may be forfeited pursuant to the provisions of Section 2932.

Worktime credit forfeited shall not be restored.

(2) The following parolees shall not be eligible for credit under this subdivision:

(A) Parolees who are sentenced under Section 1168 with a maximum term of life imprisonment.

(B) Parolees who violated a condition of parole relating to association with specified persons, entering prohibited areas, attendance at parole outpatient clinics, or psychiatric attention.

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, Section 288, subdivision (c) or (d) of Section 288a, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12022, 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2

(commencing with Section 29800) of Division 9 of Title 4 of Part 6, any provision listed in Section 16590, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

(D) Parolees who were revoked for any reason if they had been granted parole after conviction of any of the offenses specified in subparagraph (C).

(E) Parolees who the parole authority finds at a revocation hearing to be unsuitable for reduction of the period of confinement because of the circumstances and gravity of the parole violation, or because of prior criminal history.

(e) Commencing October 1, 2011, this section shall only apply to inmates sentenced to a term of life imprisonment *or parolees that on or before September 30, 2011, are pending a final adjudication of a parole revocation charge and subject to subdivision (c) of Section 3000.09.*

SEC. 24. Section 3060.7 of the Penal Code is amended to read:

3060.7. (a) (1) Notwithstanding any other law, the parole authority shall notify any person released on parole *or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3* who has been classified by the Department of Corrections as included within the highest control or risk classification that he or she shall be required to report to his or her assigned parole officer *or designated local supervising agency* within two days of release from the state prison.

~~This~~

(2) *This* section shall not prohibit the parole authority *or local supervising agency* from requiring any person released on parole *or postrelease community supervision* to report to his or her assigned parole officer within a time period that is less than two days from the time of release.

(b) The parole authority, within 24 hours of a parolee's failure to report as required by this section, shall issue a written order suspending the parole of that parolee, pending a hearing before the parole authority, and shall issue a warrant for the parolee's arrest.

(c) Upon the issuance of an arrest warrant for a parolee who has been classified within the highest control or risk classification, the assigned parole officer shall continue to carry the parolee on

his or her regular caseload and shall continue to search for the parolee's whereabouts.

(d) With regard to any inmate subject to this section, the Department of Corrections *and Rehabilitation* shall release an inmate sentenced prior to the effective date of this section one or two days before his or her scheduled release date if the inmate's release date falls on the day before a holiday or weekend.

(e) With regard to any inmate subject to this section, the Department of Corrections *and Rehabilitation* shall release an inmate one or two days after his or her scheduled release date if the release date falls on the day before a holiday or weekend. ~~This subdivision shall not apply to an inmate sentenced prior to the effective date of this section.~~

SEC. 25. Section 3067 of the Penal Code is amended to read:

3067. (a) Any inmate who is eligible for release on parole pursuant to this chapter *or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3* shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.

(b) Any inmate who does not comply with the provision of subdivision (a) shall lose worktime credit earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 on a day-for-day basis and shall not be released until he or she either complies with the provision of subdivision (a) or has no remaining worktime credit, whichever occurs earlier.

(c) This section shall only apply to an inmate who is eligible for release on parole for an offense committed on or after January 1, 1997.

(d) It is not the intent of the Legislature to authorize law enforcement officers to conduct searches for the sole purpose of harassment.

(e) This section does not affect the power of the ~~Director~~ Secretary of the Department of Corrections *and Rehabilitation* to prescribe and amend rules and regulations pursuant to Section 5058.

SEC. 26. Section 3073.1 of the Penal Code is amended to read:

3073.1. Counties are hereby authorized to contract with the Department of Corrections and Rehabilitation in order to obtain ~~day treatment and crisis care~~ *correctional clinical* services for

1 inmates with mental health problems who are released on  
2 postrelease community supervision with mental health problems.

3 *SEC. 27. Section 3450 of the Penal Code is amended to read:*

4 3450. (a) This act shall be known and may be cited as the  
5 Postrelease Community Supervision Act of 2011.

6 (b) The Legislature finds and declares all of the following:

7 (1) The Legislature reaffirms its commitment to reducing  
8 recidivism among criminal offenders.

9 (2) Despite the dramatic increase in corrections spending over  
10 the past two decades, national reincarceration rates for people  
11 released from prison remain unchanged or have worsened. National  
12 data show that about 40 percent of released individuals are  
13 reincarcerated within three years. In California, the recidivism rate  
14 for persons who have served time in prison is even greater than  
15 the national average.

16 (3) Criminal justice policies that rely on the reincarceration of  
17 parolees for technical violations do not result in improved public  
18 safety.

19 (4) California must reinvest its criminal justice resources to  
20 support community corrections programs and evidence-based  
21 practices that will achieve improved public safety returns on this  
22 state's substantial investment in its criminal justice system.

23 (5) Realigning the postrelease supervision of certain felons  
24 reentering the community after serving a prison term to local  
25 community corrections programs, which are strengthened through  
26 community-based punishment, evidence-based practices, and  
27 improved supervision strategies, will improve public safety  
28 outcomes among adult felon parolees and will facilitate their  
29 successful reintegration back into society.

30 (6) Community corrections programs require a partnership  
31 between local public safety entities and the county to provide and  
32 expand the use of community-based punishment for offenders  
33 paroled from state prison. Each county's local Community  
34 Corrections Partnership, as established in paragraph (2) of  
35 subdivision (b) of Section 1230, should play a critical role in  
36 developing programs and ensuring appropriate outcomes for  
37 persons subject to postrelease community supervision.

38 (7) Fiscal policy and correctional practices should align to  
39 promote a justice reinvestment strategy that fits each county.  
40 "Justice reinvestment" is a data-driven approach to reduce

1 corrections and related criminal justice spending and reinvest  
2 savings in strategies designed to increase public safety. The purpose  
3 of justice reinvestment is to manage and allocate criminal justice  
4 populations more cost effectively, generating savings that can be  
5 reinvested in evidence-based strategies that increase public safety  
6 while holding offenders accountable.

7 (8) “Community-based punishment” means evidence-based  
8 correctional sanctions and programming encompassing a range of  
9 custodial and noncustodial responses to criminal or noncompliant  
10 offender activity. Intermediate sanctions may be provided by local  
11 public safety entities directly or through public or private  
12 correctional service providers and include, but are not limited to,  
13 the following:

14 (A) Short-term “flash” incarceration in jail for a period of not  
15 more than ~~seven~~ 10 days.

16 (B) Intensive community supervision.

17 (C) Home detention with electronic monitoring or GPS  
18 monitoring.

19 (D) Mandatory community service.

20 (E) Restorative justice programs, such as mandatory victim  
21 restitution and victim-offender reconciliation.

22 (F) Work, training, or education in a furlough program pursuant  
23 to Section 1208.

24 (G) Work, in lieu of confinement, in a work release program  
25 pursuant to Section 4024.2.

26 (H) Day reporting.

27 (I) Mandatory residential or nonresidential substance abuse  
28 treatment programs.

29 (J) Mandatory random drug testing.

30 (K) Mother-infant care programs.

31 (L) Community-based residential programs offering structure,  
32 supervision, drug treatment, alcohol treatment, literacy  
33 programming, employment counseling, psychological counseling,  
34 mental health treatment, or any combination of these and other  
35 interventions.

36 (9) “Evidence-based practices” refers to supervision policies,  
37 procedures, programs, and practices demonstrated by scientific  
38 research to reduce recidivism among individuals under probation,  
39 parole, or postrelease supervision.

40 *SEC. 28. Section 3453 of the Penal Code is amended to read:*

1 3453. A postrelease community supervision agreement shall  
2 include the following conditions:

3 (a) The person shall sign and agree to the conditions of release.

4 (b) The person shall obey all laws.

5 (c) The person shall report to the supervising county agency  
6 within two working days of release from custody.

7 (d) The person shall follow the directives and instructions of  
8 the supervising county agency.

9 (e) The person shall report to the supervising county agency as  
10 directed by that agency.

11 (f) The person, and his or her residence and possessions, shall  
12 be subject to search at any time of the day or night, with or without  
13 a warrant, by an agent of the supervising county agency or by a  
14 peace officer.

15 (g) The person shall waive extradition if found outside the state.

16 (h) The person shall inform the supervising county agency of  
17 the person's place of residence, employment, education, or training.

18 (i) (1) The person shall inform the supervising county agency  
19 of any pending or anticipated changes in residence, employment,  
20 education, or training.

21 (2) If the person enters into new employment, he or she shall  
22 inform the supervising county agency of the new employment  
23 within three business days of that entry.

24 (j) The person shall immediately inform the supervising county  
25 agency if he or she is arrested or receives a citation.

26 (k) The person shall obtain the permission of the supervising  
27 county agency to travel more than 50 miles from the person's place  
28 of residence.

29 (l) The person shall obtain a travel pass from the supervising  
30 county agency before he or she may leave the county or state for  
31 more than two days.

32 (m) The person shall not be in the presence of a firearm or  
33 ammunition, or any item that appears to be a firearm or  
34 ammunition.

35 (n) The person shall not possess, use, or have access to any  
36 weapon listed in Section 12020, 16140, subdivision (c) of Section  
37 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision  
38 (b) of Section 16460, Section 16470, subdivision (f) of Section  
39 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930,  
40 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270,

1 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720,  
2 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200,  
3 20310, 20410, 20510, 20611, 20710, 20910, 21110, 21310, 21810,  
4 22010, 22015, 22210, 22215, 22410, 32430, 24310, 24410, 24510,  
5 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405,  
6 32410, 32415, 32420, 32425, 32435, 32440, 32445, 32450, 32900,  
7 33215, 33220, 33225, or 33600.

8 (o) (1) Except as provided in paragraph (2) and subdivision  
9 (p), the person shall not possess a knife with a blade longer than  
10 two inches.

11 (2) The person may possess a kitchen knife with a blade longer  
12 than two inches if the knife is used and kept only in the kitchen of  
13 the person's residence.

14 (p) The person may use a knife with a blade longer than two  
15 inches, if the use is required for that person's employment, the use  
16 has been approved in a document issued by the supervising county  
17 agency, and the person possesses the document of approval at all  
18 times and makes it available for inspection.

19 (q) The person agrees to waive any right to a court hearing prior  
20 to the imposition of a period of "flash incarceration" in a county  
21 jail of not more than 10 consecutive days for any violation of his  
22 or her postrelease supervision conditions.

23 (r) The person agrees to participate in rehabilitation  
24 programming as recommended by the supervising county agency.

25 (s) *The person agrees that he or she may be subject to arrest*  
26 *with or without a warrant by a peace officer employed by the*  
27 *supervising county agency or, at the direction of the supervising*  
28 *county agency, by any peace officer when there is probable cause*  
29 *to believe the person has violated the terms and conditions of his*  
30 *or her release.*

31 SEC. 29. Section 3454 of the Penal Code is amended to read:

32 3454. (a) Each supervising county agency, as established by  
33 the county board of supervisors pursuant to subdivision (a) of  
34 Section 3451, shall establish a review process for assessing and  
35 refining a person's program of postrelease supervision. Any  
36 additional postrelease supervision conditions shall be reasonably  
37 related to the underlying offense for which the offender spent time  
38 in prison, or to the offender's risk of recidivism, and the offender's  
39 criminal history, and be otherwise consistent with law.

(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, *including the use of continuous electronic monitoring as defined in Section 1210.7*, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations, which can include, but shall not be limited to, immediate, structured, and ~~immediate intermediate~~ sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.

(c) "Flash incarceration" is a period of detention in county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision conditions shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

SEC. 30. Section 3455 of the Penal Code is amended to read:

3455. (a) If the supervising county agency has determined, following application of its assessment processes, that intermediate sanctions as authorized in subdivision (b) of Section 3454 are not appropriate, the supervising county agency shall petition the revocation hearing officer appointed pursuant to Section 71622.5 of the Government Code to revoke and terminate postrelease supervision. At any point during the process initiated pursuant to this section, a person may waive, in writing, his or her right to counsel, admit the ~~parole~~ violation of his or her postrelease supervision, waive a court hearing, and accept the proposed ~~parole~~ modification of his or her postrelease supervision. The petition shall include a written report that contains additional information regarding the petition, including the relevant terms and conditions of postrelease supervision, the circumstances of the alleged

underlying violation, the history and background of the violator, and any recommendations. The Judicial Council shall adopt forms and rules of court to establish uniform statewide procedures to implement this subdivision, including the minimum contents of supervision agency reports. Upon a finding that the person has violated the conditions of postrelease supervision, the revocation hearing officer shall have authority to do all of the following:

(1) Return the person to ~~parole~~ postrelease supervision with modifications of conditions, if appropriate, including a period of incarceration in county jail.

(2) Revoke ~~parole~~ postrelease supervision and order the person to confinement in the county jail.

(3) Refer the person to a reentry court pursuant to Section 3015 or other evidence-based program in the court's discretion.

(4) *At any time during the period of postrelease supervision, if any peace officer has probable cause to believe a person subject to postrelease community supervision is violating any term or condition of his or her release, the officer may, without a warrant or other process, arrest the person and bring him or her before the supervising county agency established by the county board of supervisors pursuant to subdivision (a) of Section 3451. Additionally, an officer employed by the supervising county agency may seek a warrant and a court or its designated hearing officer appointed pursuant to Section 71622.5 of the Government Code shall have the authority to issue a warrant for that person's arrest.*

(5) *The court or its designated hearing officer shall have the authority to issue a warrant for any person who is the subject of a petition filed under this section who has failed to appear for a hearing on the petition or for any reason in the interests of justice, or to remand to custody a person who does appear at a hearing on the petition for any reason in the interests of justice.*

(b) *The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending a revocation hearing, and upon that*

1 *determination, may order the person confined pending a revocation*  
2 *hearing.*

3 ~~(b)~~

4 (c) Confinement pursuant to paragraphs (1) and (2) of  
5 subdivision (a) shall not exceed a period of 180 days in the county  
6 jail.

7 ~~(e) In no case shall a person be under supervision or in custody~~  
8 ~~pursuant to this title on or after three years from the date of the~~  
9 ~~person's initial entry onto postrelease supervision.~~

10 (d) A person shall not remain under supervision or in custody  
11 pursuant to this title on or after three years from the date of the  
12 person's initial entry onto postrelease supervision, except when a  
13 bench or arrest warrant has been issued by a court or its  
14 designated hearing officer and the person has not appeared.  
15 During the time the warrant is outstanding the supervision period  
16 shall be tolled and when the person appears before the court or  
17 its designated hearing officer the supervision period may be  
18 extended for a period equivalent to the time tolled.

19 SEC. 31. Section 3456 of the Penal Code is amended to read:

20 3456. (a) The county agency responsible for postrelease  
21 supervision, as established by the county board of supervisors  
22 pursuant to subdivision (a) of Section 3451, shall maintain  
23 postrelease supervision over a person under postrelease supervision  
24 pursuant to this title until one of the following events occurs:

25 ~~(a)~~

26 (1) The person has been subject to postrelease supervision  
27 pursuant to this title for three years at which time the offender shall  
28 be immediately discharged from postrelease supervision.

29 ~~(b)~~

30 (2) Any person on postrelease supervision for six consecutive  
31 months with no violations of his or her conditions of postrelease  
32 supervision *that result in a custodial sanction* may be considered  
33 for immediate discharge by the supervising county.

34 ~~(c)~~

35 (3) The person who has been on postrelease supervision  
36 continuously for one year with no violations of his or her conditions  
37 of postrelease supervision *that result in a custodial sanction* shall  
38 be discharged from supervision within 30 days.

39 ~~(d)~~

(4) Jurisdiction over the person has been terminated by operation of law.

(e)

(5) Jurisdiction is transferred to another supervising county agency.

(f)

(6) Jurisdiction is terminated by the revocation hearing officer upon a petition to revoke and terminate supervision by the supervising county agency.

(b) *Time during which a person on postrelease supervision is suspended because the person has absconded shall not be credited toward any period of postrelease supervision.*

SEC. 32. Section 3460 is added to the Penal Code, to read:

3460. (a) *Whenever a supervising agency determines that a person subject to postrelease supervision pursuant to this chapter no longer permanently resides within its jurisdiction, and a change in residence was either approved by the supervising agency or did not violate the terms and conditions of postrelease supervision, the supervising agency shall transmit, within two weeks, any information the agency received from the Department of Corrections and Rehabilitation prior to the release of the person in that jurisdiction to the designated supervising agency in the county in which the person permanently resides.*

(b) *Upon verification of permanent residency, the receiving supervising agency shall accept jurisdiction and supervision of the person on postrelease supervision.*

(c) *For purposes of this section, residence means the place where the person customarily lives exclusive of employment, school, or other special or temporary purpose. A person may have only one residence.*

(d) *No supervising agency shall be required to transfer jurisdiction to another county unless the person demonstrates an ability to establish permanent residency within another county without violating the terms and conditions of postrelease supervision.*

SEC. 33. Section 3465 is added to the Penal Code, to read:

3465. *Every person placed on postrelease community supervision, and his or her residence and possessions, shall be subject to search or seizure at any time of the day or night, with*

1 or without a warrant, by an agent of the supervising county agency  
2 or by a peace officer.

3 SEC. 34. Section 4000 of the Penal Code is amended to read:

4 4000. The common jails in the several counties of this State  
5 are kept by the sheriffs of the counties in which they are  
6 respectively situated, and are used as follows:

7 1. For the detention of persons committed in order to secure  
8 their attendance as witnesses in criminal cases;

9 2. For the detention of persons charged with crime and  
10 committed for trial;

11 3. For the confinement of persons committed for contempt, or  
12 upon civil process, or by other authority of law;

13 4. For the confinement of persons sentenced to imprisonment  
14 therein upon a conviction for crime.

15 5. For the confinement of persons pursuant to subdivision (b)  
16 of Section 3454 for a violation of the terms and conditions of their  
17 postrelease community supervision.

18 SEC. 35. Section 4019 of the Penal Code, as amended by  
19 Section 53 of Chapter 39 of the Statutes of 2011, is amended to  
20 read:

21 4019. (a) The provisions of this section shall apply in all of  
22 the following cases:

23 (1) When a prisoner is confined in or committed to a county  
24 jail, industrial farm, or road camp, or any city jail, industrial farm,  
25 or road camp, including all days of custody from the date of arrest  
26 to the date on which the serving of the sentence commences, under  
27 a judgment of imprisonment, or a fine and imprisonment until the  
28 fine is paid in a criminal action or proceeding.

29 (2) When a prisoner is confined in or committed to the county  
30 jail, industrial farm, or road camp or any city jail, industrial farm,  
31 or road camp as a condition of probation after suspension of  
32 imposition of a sentence or suspension of execution of sentence,  
33 in a criminal action or proceeding.

34 (3) When a prisoner is confined in or committed to the county  
35 jail, industrial farm, or road camp or any city jail, industrial farm,  
36 or road camp for a definite period of time for contempt pursuant  
37 to a proceeding, other than a criminal action or proceeding.

38 (4) When a prisoner is confined in a county jail, industrial farm,  
39 or road camp, or a city jail, industrial farm, or road camp following

1 arrest and prior to the imposition of sentence for a felony  
2 conviction.

3 (5) When a prisoner is confined in a county jail, industrial farm,  
4 or road camp, or a city jail, industrial farm, or road camp as part  
5 of custodial sanction imposed following a violation of postrelease  
6 community supervision or parole.

7 (6) *When a prisoner is confined in a county jail, industrial farm,*  
8 *or road camp, or a city jail, industrial farm, or road camp as a*  
9 *result of a sentence imposed pursuant to subdivision (h) of Section*  
10 *1170.*

11 (b) Subject to the provisions of subdivision (d), for each four-day  
12 period in which a prisoner is confined in or committed to a facility  
13 as specified in this section, one day shall be deducted from his or  
14 her period of confinement unless it appears by the record that the  
15 prisoner has refused to satisfactorily perform labor as assigned by  
16 the sheriff, chief of police, or superintendent of an industrial farm  
17 or road camp.

18 (c) For each four-day period in which a prisoner is confined in  
19 or committed to a facility as specified in this section, one day shall  
20 be deducted from his or her period of confinement unless it appears  
21 by the record that the prisoner has not satisfactorily complied with  
22 the reasonable rules and regulations established by the sheriff,  
23 chief of police, or superintendent of an industrial farm or road  
24 camp.

25 (d) Nothing in this section shall be construed to require the  
26 sheriff, chief of police, or superintendent of an industrial farm or  
27 road camp to assign labor to a prisoner if it appears from the record  
28 that the prisoner has refused to satisfactorily perform labor as  
29 assigned or that the prisoner has not satisfactorily complied with  
30 the reasonable rules and regulations of the sheriff, chief of police,  
31 or superintendent of any industrial farm or road camp.

32 (e) No deduction may be made under this section unless the  
33 person is committed for a period of four days or longer.

34 (f) It is the intent of the Legislature that if all days are earned  
35 under this section, a term of four days will be deemed to have been  
36 served for every two days spent in actual custody.

37 (g) The changes in this section as enacted by the act that added  
38 this subdivision shall apply to prisoners who are confined to a  
39 county jail, city jail, industrial farm, or road camp for a crime  
40 committed on or after the effective date of that act.

(h) The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.

(i) *This section shall not apply, and no credits may be earned, for periods of flash incarceration imposed pursuant to Section 3000.08 or 3454.*

SEC. 36. *Section 4019.2 is added to the Penal Code, to read:*

4019.2. (a) *Notwithstanding any other law, any inmate sentenced to county jail assigned to a conservation camp by a sheriff and who is eligible to earn one day of credit for every one day of incarceration pursuant to Section 4019 shall instead earn two days of credit for every one day of service.*

(b) *Notwithstanding any other law, any inmate who has completed training for assignment to a conservation camp or to a state or county facility as an inmate firefighter or who is assigned to a county or state correctional institution as an inmate firefighter and who is eligible to earn one day of credit for every one day of incarceration pursuant to Section 4019 shall instead earn two days of credit for every one day served in that assignment or after completing that training.*

(c) *In addition to credits granted pursuant to subdivision (a) or (b), inmates who have successfully completed training for firefighter assignments shall receive a credit reduction from his or her term of confinement.*

(d) *The credits authorized in subdivisions (b) and (c) shall only apply to inmates who are eligible after October 1, 2011.*

SEC. 37. *Section 4115.56 is added to the Penal Code, to read:*

4115.56. (a) *Upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes.*

(b) *When housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.*

SEC. 38. *Section 4501.1 of the Penal Code, as amended by Section 484 of Chapter 15 of the Statutes of 2011, is amended to read:*

4501.1. (a) Every person confined in the state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment ~~pursuant to subdivision (h) of Section 1170 in the state prison~~ for two, three, or four years. Every state prison inmate convicted of a felony under this section shall serve his or her term of imprisonment as prescribed in Section 4501.5.

(b) For purposes of this section, “gassing” means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person’s skin or membranes.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation

1 of Title 8 (commencing with Section 7500). Any person performing  
2 tests, transmitting test results, or disclosing information pursuant  
3 to this section shall be immune from civil liability for any action  
4 taken in accordance with this section.

5 (d) The warden or other person in charge of the state prison  
6 shall refer all reports for which there is probable cause to believe  
7 that the inmate has violated subdivision (a) to the local district  
8 attorney for prosecution.

9 (e) The Department of Corrections and Rehabilitation shall  
10 report to the Legislature, by January 1, 2000, its findings and  
11 recommendations on gassing incidents at the state prison and the  
12 medical testing authorized by this section. The report shall include,  
13 but not be limited to, all of the following:

14 (1) The total number of gassing incidents at each state prison  
15 facility up to the date of the report.

16 (2) The disposition of each gassing incident, including the  
17 administrative penalties imposed, the number of incidents that are  
18 prosecuted, and the results of those prosecutions, including any  
19 penalties imposed.

20 (3) A profile of the inmates who commit the aggravated  
21 batteries, including the number of inmates who have one or more  
22 prior serious or violent felony convictions.

23 (4) Efforts that the department has taken to limit these incidents,  
24 including staff training and the use of protective clothing and  
25 goggles.

26 (5) The results and costs of the medical testing authorized by  
27 this section.

28 (f) Nothing in this section shall preclude prosecution under both  
29 this section and any other provision of law.

30 *SEC. 39. Section 4530 of the Penal Code, as amended by*  
31 *Section 486 of Chapter 15 of the Statutes of 2011, is amended to*  
32 *read:*

33 4530. (a) Every prisoner confined in a state prison who, by  
34 force or violence, escapes or attempts to escape therefrom and  
35 every prisoner committed to a state prison who, by force or  
36 violence, escapes or attempts to escape while being conveyed to  
37 or from that prison or any other state prison, or any prison road  
38 camp, prison forestry camp, or other prison camp or prison farm  
39 or any other place while under the custody of prison officials,  
40 officers or employees; or who, by force or violence, escapes or

attempts to escape from any prison road camp, prison forestry camp, or other prison camp or prison farm or other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape while at work outside or away from prison under custody of prison officials, officers, or employees, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 in the state prison for a term of two, four, or six years. The second term of imprisonment of a person convicted under this subdivision shall commence from the time he or she would otherwise have been discharged from prison. No additional probation report shall be required with respect to that offense.

(b) Every prisoner who commits an escape or attempts an escape as described in subdivision (a), without force or violence, is punishable by imprisonment pursuant to subdivision (h) of Section 1170 in the state prison for 16 months, or two or three years to be served consecutively. No additional probation report shall be required with respect to such offense.

(c) The willful failure of a prisoner who is employed or continuing his education, or who is authorized to secure employment or education, or who is temporarily released pursuant to Section 2690, 2910, or 6254, or Section 3306 of the Welfare and Institutions Code, to return to the place of confinement not later than the expiration of a period during which he or she is authorized to be away from the place of confinement, is an escape from the place of confinement punishable as provided in this section. A conviction of a violation of this subdivision, not involving force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

SEC. 40. Section 12021.5 of the Penal Code, as amended by Section 504 of Chapter 15 of the Statutes of 2011, is amended to read:

12021.5. (a) Every person who carries a loaded or unloaded firearm on his or her person, or in a vehicle, during the commission or attempted commission of any street gang crimes described in subdivision (a) or (b) of Section 186.22, shall, upon conviction of the felony or attempted felony, be punished by an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years in the court's discretion. The court shall impose the middle term unless there are circumstances in

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

3 (b) Every person who carries a loaded or unloaded firearm  
4 together with a detachable shotgun magazine, a detachable pistol  
5 magazine, a detachable magazine, or a belt-feeding device on his  
6 or her person, or in a vehicle, during the commission or attempted  
7 commission of any street gang crimes described in subdivision (a)  
8 or (b) of Section 186.22, shall, upon conviction of the felony or  
9 attempted felony, be punished by an additional term of  
10 imprisonment ~~pursuant to subdivision (h) of Section 1170 in the~~  
11 *state prison* for two, three, or four years in the court's discretion.  
12 The court shall impose the middle term unless there are  
13 circumstances in aggravation or mitigation. The court shall state  
14 the reasons for its enhancement choice on the record at the time  
15 of sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (5) “Rifle” shall have the same meaning as specified in  
11 ~~paragraph (20) of subdivision (c) of Section 12020~~ *Section 17090*.

12 (6) “Shotgun” shall have the same meaning as specified in  
13 ~~paragraph (21) of subdivision (c) of Section 12020~~ *Section 17190*.

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

15 *SEC. 41. Section 12025 of the Penal Code, as amended by*  
16 *Section 63 of Chapter 39 of the Statutes of 2011, is amended to*  
17 *read:*

18 12025. (a) A person is guilty of carrying a concealed firearm  
19 when he or she does any of the following:

20 (1) Carries concealed within any vehicle which is under his or  
21 her control or direction any pistol, revolver, or other firearm  
22 capable of being concealed upon the person.

23 (2) Carries concealed upon his or her person any pistol, revolver,  
24 or other firearm capable of being concealed upon the person.

25 (3) Causes to be carried concealed within any vehicle in which  
26 he or she is an occupant any pistol, revolver, or other firearm  
27 capable of being concealed upon the person.

28 (b) Carrying a concealed firearm in violation of this section is  
29 punishable, as follows:

30 (1) Where the person previously has been convicted of any  
31 felony, or of any crime made punishable by this chapter, as a felony  
32 punishable by imprisonment pursuant to subdivision (h) of Section  
33 1170.

34 (2) Where the firearm is stolen and the person knew or had  
35 reasonable cause to believe that it was stolen, as a felony  
36 punishable by imprisonment pursuant to subdivision (h) of Section  
37 1170.

38 (3) Where the person is an active participant in a criminal street  
39 gang, as defined in subdivision (a) of Section 186.22, under the

1 Street Terrorism Enforcement and Prevention Act (Chapter 11  
2 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

3 (4) Where the person is not in lawful possession of the firearm,  
4 as defined in this section, or the person is within a class of persons  
5 prohibited from possessing or acquiring a firearm pursuant to  
6 Section 12021 or 12021.1 of this code or Section 8100 or 8103 of  
7 the Welfare and Institutions Code, as a felony ~~punishable by~~  
8 ~~imprisonment pursuant to subdivision (h) of Section 1170 in the~~  
9 ~~state prison.~~

10 (5) Where the person has been convicted of a crime against a  
11 person or property, or of a narcotics or dangerous drug violation,  
12 by imprisonment pursuant to subdivision (h) of Section 1170, or  
13 by imprisonment in a county jail not to exceed one year, by a fine  
14 not to exceed one thousand dollars (\$1,000), or by both that  
15 imprisonment and fine.

16 (6) By imprisonment pursuant to subdivision (h) of Section  
17 1170, or by imprisonment in a county jail not to exceed one year,  
18 by a fine not to exceed one thousand dollars (\$1,000), or by both  
19 that fine and imprisonment if both of the following conditions are  
20 met:

21 (A) Both the pistol, revolver, or other firearm capable of being  
22 concealed upon the person and the unexpended ammunition capable  
23 of being discharged from that firearm are either in the immediate  
24 possession of the person or readily accessible to that person, or  
25 the pistol, revolver, or other firearm capable of being concealed  
26 upon the person is loaded as defined in subdivision (g) of Section  
27 12031.

28 (B) The person is not listed with the Department of Justice  
29 pursuant to paragraph (1) of subdivision (c) of Section 11106, as  
30 the registered owner of that pistol, revolver, or other firearm  
31 capable of being concealed upon the person.

32 (7) In all cases other than those specified in paragraphs (1) to  
33 (6), inclusive, by imprisonment in a county jail not to exceed one  
34 year, by a fine not to exceed one thousand dollars (\$1,000), or by  
35 both that imprisonment and fine.

36 (c) A peace officer may arrest a person for a violation of  
37 paragraph (6) of subdivision (b) if the peace officer has probable  
38 cause to believe that the person is not listed with the Department  
39 of Justice pursuant to paragraph (1) of subdivision (c) of Section  
40 11106 as the registered owner of the pistol, revolver, or other

1 firearm capable of being concealed upon the person, and one or  
2 more of the conditions in subparagraph (A) of paragraph (6) of  
3 subdivision (b) is met.

4 (d) (1) Every person convicted under this section who  
5 previously has been convicted of a misdemeanor offense  
6 enumerated in Section 12001.6 shall be punished by imprisonment  
7 in a county jail for at least three months and not exceeding six  
8 months, or, if granted probation, or if the execution or imposition  
9 of sentence is suspended, it shall be a condition thereof that he or  
10 she be imprisoned in a county jail for at least three months.

11 (2) Every person convicted under this section who has  
12 previously been convicted of any felony, or of any crime made  
13 punishable by this chapter, if probation is granted, or if the  
14 execution or imposition of sentence is suspended, it shall be a  
15 condition thereof that he or she be imprisoned in a county jail for  
16 not less than three months.

17 (e) The court shall apply the three-month minimum sentence  
18 as specified in subdivision (d), except in unusual cases where the  
19 interests of justice would best be served by granting probation or  
20 suspending the imposition or execution of sentence without the  
21 minimum imprisonment required in subdivision (d) or by granting  
22 probation or suspending the imposition or execution of sentence  
23 with conditions other than those set forth in subdivision (d), in  
24 which case, the court shall specify on the record and shall enter  
25 on the minutes the circumstances indicating that the interests of  
26 justice would best be served by that disposition.

27 (f) Firearms carried openly in belt holsters are not concealed  
28 within the meaning of this section.

29 (g) For purposes of this section, “lawful possession of the  
30 firearm” means that the person who has possession or custody of  
31 the firearm either lawfully owns the firearm or has the permission  
32 of the lawful owner or a person who otherwise has apparent  
33 authority to possess or have custody of the firearm. A person who  
34 takes a firearm without the permission of the lawful owner or  
35 without the permission of a person who has lawful custody of the  
36 firearm does not have lawful possession of the firearm.

37 (h) (1) The district attorney of each county shall submit annually  
38 a report on or before June 30, to the Attorney General consisting  
39 of profiles by race, age, gender, and ethnicity of any person charged

with a felony or a misdemeanor under this section and any other offense charged in the same complaint, indictment, or information.

(2) The Attorney General shall submit annually, a report on or before December 31, to the Legislature compiling all of the reports submitted pursuant to paragraph (1).

(3) This subdivision shall remain operative until January 1, 2005, and as of that date shall be repealed.

*SEC. 42. Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 is amended to read:*

|                                                                    |            |
|--------------------------------------------------------------------|------------|
| 5225-007-0001—For support of Department of Corrections and         |            |
| Rehabilitation.....                                                | 95,254,000 |
| Provisions:                                                        |            |
| 1. The Director of Finance shall reduce this item by               |            |
| <del>\$77,406,000</del> \$54,200,000 to reflect the portion of re- |            |
| alignment savings to be achieved through the reduction             |            |
| or elimination of contracts with private entities for in-          |            |
| state housing of state inmates. No other item of appro-            |            |
| priation may be used to pay for the costs of those                 |            |
| contracts.                                                         |            |

*SEC. 43. Section 9 of Chapter 136 of the Statutes of 2011 is amended to read:*

SEC. 9. (a) Section-6 7 of this act shall remain operative until July 1, 2012.

(b) Section-7 8 of this act shall become operative on July 1, 2012.

*SEC. 44. An amount of one thousand dollars (\$1,000) is provided to the Department of Corrections and Rehabilitation for the purpose of state operations in the 2011–12 fiscal year, payable from the General Fund.*

*SEC. 45. It is the intent of the Legislature to allow the Department of Corrections and Rehabilitation additional flexibility in managing its adult population following the enactment of 2011 Realignment Legislation. Enactment of this measure shall constitute the approval required by Section 2 of Chapter 706 of the statutes of 2007.*

*SEC. 46. This act shall not become operative until October 1, 2011, and only if Chapter 15 of the statutes of 2011 becomes operative.*

SEC. 47. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

SEC. 48. (a) Section 12.1 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and Senate Bill 9. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 1170 of the Penal Code, and (3) Senate Bill 576 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 9, in which case Sections 12, 12.2, and 12.3 of this bill shall not become operative.

(b) Section 12.2 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and Senate Bill 576. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 576 in which case Sections 12, 12.1, and 12.3 of this bill shall not become operative.

(c) Section 12.3 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by this bill, Senate Bill 9, and Senate Bill 576. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2012, (2) all three bills amend Section 1170 of the Penal Code, and (3) this bill is enacted after Senate Bill 9 and Senate Bill 576, in which case Sections 12, 12.1, and 12.2 of this bill shall not become operative.

SEC. 49. (a) Section 12.5 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and Senate Bill 9. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2012, (2) each bill amends Section 1170 of the Penal Code, and (3) Senate Bill 576 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Senate Bill 9, in which case Sections 12.4, 12.6, and 12.7 of this bill shall not become operative.

(b) Section 12.6 of this bill incorporates amendments to Section 1170 of the Penal Code proposed by both this bill and Senate Bill 576. It shall only become operative if (1) both bills are enacted

1 and become effective on or before January 1, 2012, (2) each bill  
2 amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not  
3 enacted or as enacted does not amend that section, and (4) this  
4 bill is enacted after Senate Bill 576 in which case Sections 12.4,  
5 12.5, and 12.7 of this bill shall not become operative.

6 (c) Section 12.7 of this bill incorporates amendments to Section  
7 1170 of the Penal Code proposed by this bill, Senate Bill 9, and  
8 Senate Bill 576. It shall only become operative if (1) all three bills  
9 are enacted and become effective on or before January 1, 2012,  
10 (2) all three bills amend Section 1170 of the Penal Code, and (3)  
11 this bill is enacted after Senate Bill 9 and Senate Bill 576, in which  
12 case Sections 12.4, 12.5 and 12.6 of this bill shall not become  
13 operative.

14 SEC. 50. Sections 13.1 and 13.3 of this bill incorporate  
15 amendments to Section 1170.1 of the Penal Code proposed by both  
16 this bill and Senate Bill 576. Those sections shall only become  
17 operative if (1) both bills are enacted and become effective on or  
18 before January 1, 2012, (2) each bill amends Section 1170.1 of  
19 the Penal Code, and (3) this bill is enacted after Senate Bill 576,  
20 in which case Sections 13 and 13.2 of this bill shall not become  
21 operative.

22 SEC. 51. If the Commission on State Mandates determines that  
23 this act contains costs mandated by the state, reimbursement to  
24 local agencies and school districts for those costs shall be made  
25 pursuant to Part 7 (commencing with Section 17500) of Division  
26 4 of Title 2 of the Government Code.

27 SEC. 52. This act addresses the fiscal emergency declared and  
28 reaffirmed by the Governor by proclamation on January 20, 2011,  
29 pursuant to subdivision (f) of Section 10 of Article IV of the  
30 California Constitution.

31 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
32 ~~changes relating to the Budget Act of 2011.~~

33 ~~SEC. 2. This act addresses the fiscal emergency declared and~~  
34 ~~reaffirmed by the Governor by proclamation on January 20, 2011,~~  
35 ~~pursuant to subdivision (f) of Section 10 of Article IV of the~~  
36 ~~California Constitution.~~