

Introduced by Senator CalderonFebruary 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 576, as introduced, Calderon. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing, operative until January 1, 2012, generally specify that the appropriate term rests within the sound discretion of the court. Existing law, operative on and after January 1, 2012, instead requires the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

This bill would extend to January 1, 2016, the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice. The bill would also make conforming changes.

This bill would amend Proposition 21, an initiative statute adopted by the voters at the March 7, 2000, statewide primary election that provides that its provisions may be amended by the Legislature by a $\frac{2}{3}$ vote of the membership of each house, and therefore requires a $\frac{2}{3}$ vote.

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

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended
2 by Section 1 of Chapter 256 of the Statutes of 2010, is amended
3 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (d) Any person who is convicted of a public offense punishable
38 as a felony or a misdemeanor, which is committed for the benefit
39 of, at the direction of, or in association with any criminal street
40 gang, with the specific intent to promote, further, or assist in any

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

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

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

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

24 (3) Unlawful homicide or manslaughter, as defined in Chapter
25 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

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

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

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

39 (9) Grand theft, as defined in subdivision (a) or (c) of Section
40 487.

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

1 activities the commission of one or more of the criminal acts
2 enumerated in paragraphs (1) to (25), inclusive, or (31) to (33),
3 inclusive, of subdivision (e), having a common name or common
4 identifying sign or symbol, and whose members individually or
5 collectively engage in or have engaged in a pattern of criminal
6 gang activity.

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

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

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

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

36 (k) This section shall remain in effect only until January 1, ~~2012~~
37 *2016*, and as of that date is repealed, unless a later enacted statute,
38 that is enacted before January 1, ~~2012~~ *2016*, deletes or extends
39 that date.

1 SEC. 2. Section 186.22 of the Penal Code, as amended by
2 Section 2 of Chapter 256 of the Statutes of 2010, is amended to
3 read:

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

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

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

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

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

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

36 (3) The court shall order the imposition of the middle term of
37 the sentence enhancement, unless there are circumstances in
38 aggravation or mitigation. The court shall state the reasons for its
39 choice of sentencing enhancements on the record at the time of
40 the sentencing.

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

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

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

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

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

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

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

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

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

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

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

19 (3) Unlawful homicide or manslaughter, as defined in Chapter
20 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

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

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

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

34 (9) Grand theft, as defined in subdivision (a) or (c) of Section
35 487.

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

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

38 (12) Rape, as defined in Section 261.

39 (13) Looting, as defined in Section 463.

40 (14) Money laundering, as defined in Section 186.10.

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

1 collectively engage in or have engaged in a pattern of criminal
2 gang activity.

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

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

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

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

32 (k) This section shall become operative on January 1, ~~2012~~
33 *2016*.

34 SEC. 3. Section 186.33 of the Penal Code, as amended by
35 Section 3 of Chapter 256 of the Statutes of 2010, is amended to
36 read:

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

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

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

15 (c) This section shall remain in effect only until January 1, ~~2012~~
16 2016, and as of that date is repealed, unless a later enacted statute,
17 that is enacted before January 1, ~~2012~~ 2016, deletes or extends
18 that date.

19 SEC. 4. Section 186.33 of the Penal Code, as amended by
20 Section 4 of Chapter 256 of the Statutes of 2010, is amended to
21 read:

22 186.33. (a) Any person required to register pursuant to Section
23 186.30 who knowingly violates any of its provisions is guilty of
24 a misdemeanor.

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

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

38 (c) This section shall become operative on January 1, ~~2012~~
39 2016.

1 SEC. 5. Section 1170 of the Penal Code, as amended by Section
2 5 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

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

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

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

39 (d) When a defendant subject to this section or subdivision (b)
40 of Section 1168 has been sentenced to be imprisoned in the state

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

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

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

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

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

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

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

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

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

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

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

39 (7) Any recommendation for recall submitted to the court by
40 the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant
2 to paragraph (2).

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

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

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

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

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

28 (h) This section shall remain in effect only until January 1, ~~2012~~
29 *2016*, and as of that date is repealed, unless a later enacted statute,
30 that is enacted before that date, deletes or extends that date.

31 SEC. 6. Section 1170 of the Penal Code, as amended by Section
32 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

1 to the seriousness of the offense as determined by the Legislature
2 to be imposed by the court with specified discretion.

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

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

1 the total sentence, including both confinement time and the period
2 of parole. The sentence shall be deemed a separate prior prison
3 term under Section 667.5, and a copy of the judgment and other
4 necessary documentation shall be forwarded to the secretary.

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

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

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

1 sentencing rules of the Judicial Council so as to eliminate disparity
2 of sentences and to promote uniformity of sentencing. Credit shall
3 be given for time served.

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

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

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

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

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

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

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

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

1 recall and resentencing procedures. If the inmate is deemed
2 mentally unfit, the warden or the warden's representative shall
3 contact the inmate's emergency contact and provide the information
4 described in paragraph (2).

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

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

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

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

36 (9) If the court grants the recall and resentencing application,
37 the prisoner shall be released by the department within 48 hours
38 of receipt of the court's order, unless a longer time period is agreed
39 to by the inmate. At the time of release, the warden or the warden's
40 representative shall ensure that the prisoner has each of the

1 following in his or her possession: a discharge medical summary,
2 full medical records, state identification, parole medications, and
3 all property belonging to the prisoner. After discharge, any
4 additional records shall be sent to the prisoner's forwarding
5 address.

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

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

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

19 (h) This section shall become operative on January 1, ~~2012~~
20 2016.

21 SEC. 7. Section 1170.1 of the Penal Code, as amended by
22 Section 7 of Chapter 256 of the Statutes of 2010, is amended to
23 read:

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

1 include one-third of the term imposed for any specific
2 enhancements applicable to those subordinate offenses.

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

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

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

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

38 (f) When two or more enhancements may be imposed for being
39 armed with or using a dangerous or deadly weapon or a firearm
40 in the commission of a single offense, only the greatest of those

1 enhancements shall be imposed for that offense. This subdivision
2 shall not limit the imposition of any other enhancements applicable
3 to that offense, including an enhancement for the infliction of great
4 bodily injury.

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

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

17 (i) This section shall remain in effect only until January 1, ~~2012~~
18 2016, and as of that date is repealed, unless a later enacted statute,
19 that is enacted before January 1, ~~2012~~ 2016, deletes or extends
20 that date.

21 SEC. 8. Section 1170.1 of the Penal Code, as amended by
22 Section 8 of Chapter 256 of the Statutes of 2010, is amended to
23 read:

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

1 include one-third of the term imposed for any specific
2 enhancements applicable to those subordinate offenses.

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

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

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

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

38 (f) When two or more enhancements may be imposed for being
39 armed with or using a dangerous or deadly weapon or a firearm
40 in the commission of a single offense, only the greatest of those

1 enhancements shall be imposed for that offense. This subdivision
2 shall not limit the imposition of any other enhancements applicable
3 to that offense, including an enhancement for the infliction of great
4 bodily injury.

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

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

17 (i) This section shall become operative on January 1, ~~2012~~ 2016.

18 SEC. 9. Section 1170.3 of the Penal Code, as amended by
19 Section 9 of Chapter 256 of the Statutes of 2010, is amended to
20 read:

21 1170.3. The Judicial Council shall seek to promote uniformity
22 in sentencing under Section 1170 by:

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

26 (1) Grant or deny probation.

27 (2) Impose the lower, middle, or upper prison term.

28 (3) Impose concurrent or consecutive sentences.

29 (4) Determine whether or not to impose an enhancement where
30 that determination is permitted by law.

31 (b) The adoption of rules standardizing the minimum content
32 and the sequential presentation of material in probation officer
33 reports submitted to the court.

34 (c) This section shall remain in effect only until January 1, ~~2012~~
35 2016, and as of that date is repealed, unless a later enacted statute,
36 that is enacted before January 1, ~~2012~~ 2016, deletes or extends
37 that date.

38 SEC. 10. Section 1170.3 of the Penal Code, as amended by
39 Section 10 of Chapter 256 of the Statutes of 2010, is amended to
40 read:

1 1170.3. The Judicial Council shall seek to promote uniformity
2 in sentencing under Section 1170 by:

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

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

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

14 (c) This section shall become operative on January 1, ~~2012~~
15 *2016*.

16 SEC. 11. Section 12021.5 of the Penal Code, as added by
17 Section 6.01 of Chapter 711 of the Statutes of 2010, is amended
18 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (5) “Rifle” shall have the same meaning as specified in Section
34 17090.

35 (6) “Shotgun” shall have the same meaning as specified in
36 Section 17190.

37 (d) This section shall become operative on January 1, ~~2012~~
38 *2016*.

39 SEC. 12. Section 12021.5 is added to the Penal Code, to read:

1 12021.5. (a) Every person who carries a loaded or unloaded
2 firearm on his or her person, or in a vehicle, during the commission
3 or attempted commission of any street gang crimes described in
4 subdivision (a) or (b) of Section 186.22, shall, upon conviction of
5 the felony or attempted felony, be punished by an additional term
6 of imprisonment in the state prison for one, two, or three years.
7 The court shall select the sentence enhancement which, in the
8 court's discretion, best serves the interests of justice and shall state
9 the reasons for its choice on the record at the time of sentence, in
10 accordance with the provisions of subdivision (d) of Section
11 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (d) This section shall remain in effect only until January 1, 2016,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2016, deletes or extends that date.

24 SEC. 13. Section 12022.2 of the Penal Code, as added by
25 Section 6.02 of Chapter 711 of the Statutes of 2010, is amended
26 to read:

27 12022.2. (a) Any person who, while armed with a firearm in
28 the commission or attempted commission of any felony, has in his
29 or her immediate possession ammunition for the firearm designed
30 primarily to penetrate metal or armor, shall upon conviction of
31 that felony or attempted felony, in addition and consecutive to the
32 punishment prescribed for the felony or attempted felony, be
33 punished by an additional term of 3, 4, or 10 years. The court shall
34 order the middle term unless there are circumstances in aggravation
35 or mitigation. The court shall state the reasons for its enhancement
36 choice on the record at the time of the sentence.

37 (b) Any person who wears a body vest in the commission or
38 attempted commission of a violent offense, as defined in Section
39 29905, shall, upon conviction of that felony or attempted felony,
40 in addition and consecutive to the punishment prescribed for the

1 felony or attempted felony of which he or she has been convicted,
2 be punished by an additional term of one, two, or five years. The
3 court shall order the middle term unless there are circumstances
4 in aggravation or mitigation. The court shall state the reasons for
5 its enhancement choice on the record at the time of the sentence.

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

9 (d) This section shall become operative on January 1, ~~2012~~
10 2016.

11 SEC. 14. Section 12022.2 is added to the Penal Code, to read:

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

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

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

37 (d) This section shall remain in effect only until January 1, 2016,
38 and as of that date is repealed, unless a later enacted statute, that
39 is enacted before January 1, 2016, deletes or extends that date.

1 SEC. 15. Section 12022.4 of the Penal Code, as amended by
2 Section 6.03 of Chapter 711 of the Statutes of 2010, is amended
3 to read:

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

18 (b) This section shall become operative on January 1, ~~2012~~
19 ~~2016~~.

20 SEC. 16. Section 12022.4 is added to the Penal Code, to read:

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

36 (b) This section shall remain in effect only until January 1, 2016,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before January 1, 2016, deletes or extends that date.

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