

**Introduced by Senator Calderon**

February 17, 2011

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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 amended, 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~~ 2014, 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:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended  
2 by Section 1 of Chapter 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (k) This section shall remain in effect only until January 1, ~~2016~~  
40 *2014*, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2016~~ 2014, deletes or extends  
2 that date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (k) This section shall become operative on January 1, ~~2016~~  
34 *2014*.

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

38 186.33. (a) Any person required to register pursuant to Section  
39 186.30 who knowingly violates any of its provisions is guilty of  
40 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, ~~2016~~  
16 *2014*, and as of that date is repealed, unless a later enacted statute,  
17 that is enacted before January 1, ~~2016~~ *2014*, 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, ~~2016~~  
39 *2014*.

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, ~~2016~~  
29 ~~2014~~, 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, ~~2016~~  
20 *2014*.

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, ~~2016~~  
18 2014, and as of that date is repealed, unless a later enacted statute,  
19 that is enacted before January 1, ~~2016~~ 2014, 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, ~~2016~~ 2014.

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, ~~2016~~  
35 2014, and as of that date is repealed, unless a later enacted statute,  
36 that is enacted before January 1, ~~2016~~ 2014, 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, ~~2016~~  
15 *2014*.

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, ~~2016~~
- 38 ~~2014~~.
- 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 *2014*, and as of that date is repealed, unless a later enacted statute,  
23 that is enacted before January 1, ~~2016~~ *2014*, deletes or extends  
24 that date.

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

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

38 (b) Any person who wears a body vest in the commission or  
39 attempted commission of a violent offense, as defined in Section  
40 29905, shall, upon conviction of that felony or attempted felony,

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

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

10 (d) This section shall become operative on January 1, ~~2016~~  
11 *2014*.

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

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

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

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

38 (d) This section shall remain in effect only until January 1, ~~2016~~  
39 *2014*, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2016~~ 2014, deletes or extends  
2 that date.

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

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

20 (b) This section shall become operative on January 1, ~~2016~~  
21 2014.

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

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

38 (b) This section shall remain in effect only until January 1, ~~2016~~  
39 2014, and as of that date is repealed, unless a later enacted statute,



1 that is enacted before January 1, ~~2016~~ 2014, deletes or extends  
2 that date.

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