

AMENDED IN ASSEMBLY AUGUST 30, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

SENATE BILL

No. 576

Introduced by Senator Calderon

February 17, 2011

An act to amend Sections 186.22, 186.33, 667.61, 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, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 576, as amended, Calderon. Sentencing.

(1) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, provides that a defendant shall be punished by imprisonment in the state prison for 25 years to life if convicted of rape, sodomy, or oral copulation and if, among other things, in the commission of that offense any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law further provides that a defendant shall be punished by imprisonment in the state prison for 15 years to life if convicted of rape, sodomy, or oral copulation and if, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope

of its application or increase the punishment or penalties by a statute passed by a majority vote of each house.

This bill would additionally include the infliction of great bodily injury on the victim or another person among that list of circumstances that if committed by any person in the commission by the defendant of rape, sodomy, or oral copulation would subject the defendant to imprisonment in the state prison for 15 years to life. The bill would include related findings and declarations. Because the bill would change the penalty for a crime, it would impose a state-mandated local program.

Existing

(2) *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, 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.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

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

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).

36 (3) The court shall select the sentence enhancement which, in
37 the court's discretion, best serves the interests of justice and shall
38 state the reasons for its choice on the record at the time of the

1 sentencing in accordance with the provisions of subdivision (d) of
2 Section 1170.1.

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 remain in effect only until January 1, 2014,
34 and as of that date is repealed, unless a later enacted statute, that
35 is enacted before January 1, 2014, deletes or extends that date.

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

39 186.22. (a) Any person who actively participates in any
40 criminal street gang with knowledge that its members engage in

1 or have engaged in a pattern of criminal gang activity, and who
2 willfully promotes, furthers, or assists in any felonious criminal
3 conduct by members of that gang, shall be punished by
4 imprisonment in a county jail for a period not to exceed one year,
5 or by imprisonment in the state prison for 16 months, or two or
6 three years.

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

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

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

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

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

31 (3) The court shall order the imposition of the middle term of
32 the sentence enhancement, unless there are circumstances in
33 aggravation or mitigation. The court shall state the reasons for its
34 choice of sentencing enhancements on the record at the time of
35 the sentencing.

36 (4) Any person who is convicted of a felony enumerated in this
37 paragraph committed for the benefit of, at the direction of, or in
38 association with any criminal street gang, with the specific intent
39 to promote, further, or assist in any criminal conduct by gang
40 members, shall, upon conviction of that felony, be sentenced to

1 an indeterminate term of life imprisonment with a minimum term
2 of the indeterminate sentence calculated as the greater of:

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

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

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

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

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

27 (d) Any person who is convicted of a public offense punishable
28 as a felony or a misdemeanor, which is committed for the benefit
29 of, at the direction of, or in association with any criminal street
30 gang, with the specific intent to promote, further, or assist in any
31 criminal conduct by gang members, shall be punished by
32 imprisonment in the county jail not to exceed one year, or by
33 imprisonment in the state prison for one, two, or three years,
34 provided that any person sentenced to imprisonment in the county
35 jail shall be imprisoned for a period not to exceed one year, but
36 not less than 180 days, and shall not be eligible for release upon
37 completion of sentence, parole, or any other basis, until he or she
38 has served 180 days. If the court grants probation or suspends the
39 execution of sentence imposed upon the defendant, it shall require

1 as a condition thereof that the defendant serve 180 days in a county
2 jail.

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

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

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

15 (3) Unlawful homicide or manslaughter, as defined in Chapter
16 1 (commencing with Section 187) of Title 8 of Part 1.

17 (4) The sale, possession for sale, transportation, manufacture,
18 offer for sale, or offer to manufacture controlled substances as
19 defined in Sections 11054, 11055, 11056, 11057, and 11058 of
20 the Health and Safety Code.

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

23 (6) Discharging or permitting the discharge of a firearm from
24 a motor vehicle, as defined in subdivisions (a) and (b) of Section
25 12034.

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

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

30 (9) Grand theft, as defined in subdivision (a) or (c) of Section
31 487.

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

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

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

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

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

37 (15) Kidnapping, as defined in Section 207.

38 (16) Mayhem, as defined in Section 203.

39 (17) Aggravated mayhem, as defined in Section 205.

40 (18) Torture, as defined in Section 206.

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

1 misdemeanors in an unusual case where the interests of justice
2 would best be served, if the court specifies on the record and enters
3 into the minutes the circumstances indicating that the interests of
4 justice would best be served by that disposition.

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

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

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

27 (k) This section shall become operative on January 1, 2014.

28 SEC. 3. Section 186.33 of the Penal Code, as amended by
29 Section 3 of Chapter 256 of the Statutes of 2010, is amended to
30 read:

31 186.33. (a) Any person required to register pursuant to Section
32 186.30 who knowingly violates any of its provisions is guilty of
33 a misdemeanor.

34 (b) (1) Any person who knowingly fails to register pursuant to
35 Section 186.30 and is subsequently convicted of, or any person
36 for whom a petition is subsequently sustained for a violation of,
37 any of the offenses specified in Section 186.30, shall be punished
38 by an additional term of imprisonment in the state prison for 16
39 months, or two or three years. The court shall select the sentence
40 enhancement which, in the court's discretion, best serves the

1 interests of justice and shall state the reasons for its choice on the
2 record at the time of sentencing in accordance with the provisions
3 of subdivision (d) of Section 1170.1.

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

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

11 SEC. 4. Section 186.33 of the Penal Code, as amended by
12 Section 4 of Chapter 256 of the Statutes of 2010, is amended to
13 read:

14 186.33. (a) Any person required to register pursuant to Section
15 186.30 who knowingly violates any of its provisions is guilty of
16 a misdemeanor.

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

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

30 (c) This section shall become operative on January 1, 2014.

31 SEC. 5. Section 667.61 of the Penal Code is amended to read:

32 667.61. (a) Except as provided in subdivision (j), (l), or (m),
33 any person who is convicted of an offense specified in subdivision
34 (c) under one or more of the circumstances specified in subdivision
35 (d) or under two or more of the circumstances specified in
36 subdivision (e) shall be punished by imprisonment in the state
37 prison for 25 years to life.

38 (b) Except as provided in subdivision (a), (j), (l), or (m), any
39 person who is convicted of an offense specified in subdivision (c)
40 under one of the circumstances specified in subdivision (e) shall

1 be punished by imprisonment in the state prison for 15 years to
2 life.

3 (c) This section shall apply to any of the following offenses:

4 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)
5 of Section 261.

6 (2) Spousal rape, in violation of paragraph (1) or (4) of
7 subdivision (a) of Section 262.

8 (3) Rape, spousal rape, or sexual penetration, in concert, in
9 violation of Section 264.1.

10 (4) Lewd or lascivious act, in violation of subdivision (b) of
11 Section 288.

12 (5) Sexual penetration, in violation of subdivision (a) of Section
13 289.

14 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision
15 (c), or subdivision (d), of Section 286.

16 (7) Oral copulation, in violation of paragraph (2) or (3) of
17 subdivision (c), or subdivision (d), of Section 288a.

18 (8) Lewd or lascivious act, in violation of subdivision (a) of
19 Section 288.

20 (9) Continuous sexual abuse of a child, in violation of Section
21 288.5.

22 (d) The following circumstances shall apply to the offenses
23 specified in subdivision (c):

24 (1) The defendant has been previously convicted of an offense
25 specified in subdivision (c), including an offense committed in
26 another jurisdiction that includes all of the elements of an offense
27 specified in subdivision (c).

28 (2) The defendant kidnapped the victim of the present offense
29 and the movement of the victim substantially increased the risk of
30 harm to the victim over and above that level of risk necessarily
31 inherent in the underlying offense in subdivision (c).

32 (3) The defendant inflicted aggravated mayhem or torture on
33 the victim or another person in the commission of the present
34 offense in violation of Section 205 or 206.

35 (4) The defendant committed the present offense during the
36 commission of a burglary of the first degree, as defined in
37 subdivision (a) of Section 460, with intent to commit an offense
38 specified in subdivision (c).

39 (5) The defendant committed the present offense in violation
40 of Section 264.1, subdivision (d) of Section 286, or subdivision

1 (d) of Section 288a, and, in the commission of that offense, any
2 person committed any act described in paragraph (2), (3), or (4)
3 of this subdivision.

4 (6) The defendant personally inflicted great bodily injury on
5 the victim or another person in the commission of the present
6 offense in violation of Section 12022.53, 12022.7, or 12022.8.

7 (7) The defendant personally inflicted bodily harm on the victim
8 who was under 14 years of age.

9 (e) The following circumstances shall apply to the offenses
10 specified in subdivision (c):

11 (1) Except as provided in paragraph (2) of subdivision (d), the
12 defendant kidnapped the victim of the present offense in violation
13 of Section 207, 209, or 209.5.

14 (2) Except as provided in paragraph (4) of subdivision (d), the
15 defendant committed the present offense during the commission
16 of a burglary in violation of Section 459.

17 (3) The defendant personally used a dangerous or deadly weapon
18 or a firearm in the commission of the present offense in violation
19 of Section 12022, 12022.3, 12022.5, or 12022.53.

20 (4) The defendant has been convicted in the present case or
21 cases of committing an offense specified in subdivision (c) against
22 more than one victim.

23 (5) The defendant engaged in the tying or binding of the victim
24 or another person in the commission of the present offense.

25 (6) The defendant administered a controlled substance to the
26 victim in the commission of the present offense in violation of
27 Section 12022.75.

28 (7) The defendant committed the present offense in violation
29 of Section 264.1, subdivision (d) of Section 286, or subdivision
30 (d) of Section 288a, and, in the commission of that offense, any
31 person committed any act described in paragraph (1), (2), (3), (5),
32 or (6) of this subdivision *or paragraph (6) of subdivision (d)*.

33 (f) If only the minimum number of circumstances specified in
34 subdivision (d) or (e) that are required for the punishment provided
35 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and
36 proved, that circumstance or those circumstances shall be used as
37 the basis for imposing the term provided in subdivision (a), (b),
38 (j), (l), or (m) whichever is greater, rather than being used to impose
39 the punishment authorized under any other provision of law, unless
40 another provision of law provides for a greater penalty or the

1 punishment under another provision of law can be imposed in
2 addition to the punishment provided by this section. However, if
3 any additional circumstance or circumstances specified in
4 subdivision (d) or (e) have been pled and proved, the minimum
5 number of circumstances shall be used as the basis for imposing
6 the term provided in subdivision (a), (j), or (l) and any other
7 additional circumstance or circumstances shall be used to impose
8 any punishment or enhancement authorized under any other
9 provision of law.

10 (g) Notwithstanding Section 1385 or any other provision of law,
11 the court shall not strike any allegation, admission, or finding of
12 any of the circumstances specified in subdivision (d) or (e) for any
13 person who is subject to punishment under this section.

14 (h) Notwithstanding any other provision of law, probation shall
15 not be granted to, nor shall the execution or imposition of sentence
16 be suspended for, any person who is subject to punishment under
17 this section.

18 (i) For any offense specified in paragraphs (1) to (7), inclusive,
19 of subdivision (c), or in paragraphs (1) to (6), inclusive, of
20 subdivision (n), the court shall impose a consecutive sentence for
21 each offense that results in a conviction under this section if the
22 crimes involve separate victims or involve the same victim on
23 separate occasions as defined in subdivision (d) of Section 667.6.

24 (j) (1) Any person who is convicted of an offense specified in
25 subdivision (c), with the exception of a violation of subdivision
26 (a) of Section 288, upon a victim who is a child under 14 years of
27 age under one or more of the circumstances specified in subdivision
28 (d) or under two or more of the circumstances specified in
29 subdivision (e), shall be punished by imprisonment in the state
30 prison for life without the possibility of parole. Where the person
31 was under 18 years of age at the time of the offense, the person
32 shall be punished by imprisonment in the state prison for 25 years
33 to life.

34 (2) Any person who is convicted of an offense specified in
35 subdivision (c) under one of the circumstances specified in
36 subdivision (e), upon a victim who is a child under 14 years of
37 age, shall be punished by imprisonment in the state prison for 25
38 years to life.

39 (k) As used in this section, “bodily harm” means any substantial
40 physical injury resulting from the use of force that is more than

1 the force necessary to commit an offense specified in subdivision
2 (c).

3 (l) Any person who is convicted of an offense specified in
4 subdivision (n) under one or more of the circumstances specified
5 in subdivision (d) or under two or more of the circumstances
6 specified in subdivision (e), upon a victim who is a minor 14 years
7 of age or older shall be punished by imprisonment in the state
8 prison for life without the possibility of parole. If the person who
9 was convicted was under 18 years of age at the time of the offense,
10 he or she shall be punished by imprisonment in the state prison
11 for 25 years to life.

12 (m) Any person who is convicted of an offense specified in
13 subdivision (n) under one of the circumstances specified in
14 subdivision (e) against a minor 14 years of age or older shall be
15 punished by imprisonment in the state prison for 25 years to life.

16 (n) Subdivisions (l) and (m) shall apply to any of the following
17 offenses:

18 (1) Rape, in violation of paragraph (2) of subdivision (a) of
19 Section 261.

20 (2) Spousal rape, in violation of paragraph (1) of subdivision
21 (a) of Section 262.

22 (3) Rape, spousal rape, or sexual penetration, in concert, in
23 violation of Section 264.1.

24 (4) Sexual penetration, in violation of paragraph (1) of
25 subdivision (a) of Section 289.

26 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of
27 Section 286, or in violation of subdivision (d) of Section 286.

28 (6) Oral copulation, in violation of paragraph (2) of subdivision
29 (c) of Section 288a, or in violation of subdivision (d) of Section
30 288a.

31 (o) The penalties provided in this section shall apply only if the
32 existence of any circumstance specified in subdivision (d) or (e)
33 is alleged in the accusatory pleading pursuant to this section, and
34 is either admitted by the defendant in open court or found to be
35 true by the trier of fact.

36 ~~SEC. 5.~~

37 *SEC. 6.* Section 1170 of the Penal Code, as amended by Section
38 5 of Chapter 256 of the Statutes of 2010, is amended to read:

39 1170. (a) (1) The Legislature finds and declares that the
40 purpose of imprisonment for crime is punishment. This purpose

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

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

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

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

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

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

35 (d) When a defendant subject to this section or subdivision (b)
36 of Section 1168 has been sentenced to be imprisoned in the state
37 prison and has been committed to the custody of the secretary, the
38 court may, within 120 days of the date of commitment on its own
39 motion, or at any time upon the recommendation of the secretary
40 or the Board of Parole Hearings, recall the sentence and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~SEC. 6.~~

28 *SEC. 7.* Section 1170 of the Penal Code, as amended by Section
29 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

1 term under Section 667.5, and a copy of the judgment and other
2 necessary documentation shall be forwarded to the secretary.

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

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

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

1 of sentences and to promote uniformity of sentencing. Credit shall
2 be given for time served.

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

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

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

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

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

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

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

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

1 mentally unfit, the warden or the warden's representative shall
2 contact the inmate's emergency contact and provide the information
3 described in paragraph (2).

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

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

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

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

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

1 full medical records, state identification, parole medications, and
2 all property belonging to the prisoner. After discharge, any
3 additional records shall be sent to the prisoner's forwarding
4 address.

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

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

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

18 (h) This section shall become operative on January 1, 2014.

19 ~~SEC. 7.~~

20 *SEC. 8.* Section 1170.1 of the Penal Code, as amended by
21 Section 7 of Chapter 256 of the Statutes of 2010, is amended to
22 read:

23 1170.1. (a) Except as otherwise provided by law, and subject
24 to Section 654, when any person is convicted of two or more
25 felonies, whether in the same proceeding or court or in different
26 proceedings or courts, and whether by judgment rendered by the
27 same or by a different court, and a consecutive term of
28 imprisonment is imposed under Sections 669 and 1170, the
29 aggregate term of imprisonment for all these convictions shall be
30 the sum of the principal term, the subordinate term, and any
31 additional term imposed for applicable enhancements for prior
32 convictions, prior prison terms, and Section 12022.1. The principal
33 term shall consist of the greatest term of imprisonment imposed
34 by the court for any of the crimes, including any term imposed for
35 applicable specific enhancements. The subordinate term for each
36 consecutive offense shall consist of one-third of the middle term
37 of imprisonment prescribed for each other felony conviction for
38 which a consecutive term of imprisonment is imposed, and shall
39 include one-third of the term imposed for any specific
40 enhancements applicable to those subordinate offenses.

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

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

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

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

36 (f) When two or more enhancements may be imposed for being
37 armed with or using a dangerous or deadly weapon or a firearm
38 in the commission of a single offense, only the greatest of those
39 enhancements shall be imposed for that offense. This subdivision
40 shall not limit the imposition of any other enhancements applicable

1 to that offense, including an enhancement for the infliction of great
2 bodily injury.

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

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

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

18 ~~SEC. 8.~~

19 *SEC. 9.* Section 1170.1 of the Penal Code, as amended by
20 Section 8 of Chapter 256 of the Statutes of 2010, is amended to
21 read:

22 1170.1. (a) Except as otherwise provided by law, and subject
23 to Section 654, when any person is convicted of two or more
24 felonies, whether in the same proceeding or court or in different
25 proceedings or courts, and whether by judgment rendered by the
26 same or by a different court, and a consecutive term of
27 imprisonment is imposed under Sections 669 and 1170, the
28 aggregate term of imprisonment for all these convictions shall be
29 the sum of the principal term, the subordinate term, and any
30 additional term imposed for applicable enhancements for prior
31 convictions, prior prison terms, and Section 12022.1. The principal
32 term shall consist of the greatest term of imprisonment imposed
33 by the court for any of the crimes, including any term imposed for
34 applicable specific enhancements. The subordinate term for each
35 consecutive offense shall consist of one-third of the middle term
36 of imprisonment prescribed for each other felony conviction for
37 which a consecutive term of imprisonment is imposed, and shall
38 include one-third of the term imposed for any specific
39 enhancements applicable to those subordinate offenses.

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

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

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

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

36 (f) When two or more enhancements may be imposed for being
37 armed with or using a dangerous or deadly weapon or a firearm
38 in the commission of a single offense, only the greatest of those
39 enhancements shall be imposed for that offense. This subdivision
40 shall not limit the imposition of any other enhancements applicable

1 to that offense, including an enhancement for the infliction of great
2 bodily injury.

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

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

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

16 ~~SEC. 9.~~

17 *SEC. 10.* Section 1170.3 of the Penal Code, as amended by
18 Section 9 of Chapter 256 of the Statutes of 2010, is amended to
19 read:

20 1170.3. The Judicial Council shall seek to promote uniformity
21 in sentencing under Section 1170 by:

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

25 (1) Grant or deny probation.

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

27 (3) Impose concurrent or consecutive sentences.

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

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

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

36 ~~SEC. 10.~~

37 *SEC. 11.* Section 1170.3 of the Penal Code, as amended by
38 Section 10 of Chapter 256 of the Statutes of 2010, is amended to
39 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, 2014.

15 ~~SEC. 11.~~

16 *SEC. 12.* 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, 2014.

38 ~~SEC. 12.~~

39 *SEC. 13.* 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, 2014,
22 and as of that date is repealed, unless a later enacted statute, that
23 is enacted before January 1, 2014, deletes or extends that date.

24 ~~SEC. 13.~~

25 *SEC. 14.* 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, 2014.

11 ~~SEC. 14.~~

12 *SEC. 15.* 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, 2014,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2014, deletes or extends that date.

1 ~~SEC. 15.~~

2 *SEC. 16.* Section 12022.4 of the Penal Code, as amended by
3 Section 6.03 of Chapter 711 of the Statutes of 2010, is amended
4 to read:

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

19 (b) This section shall become operative on January 1, 2014.

20 ~~SEC. 16.~~

21 *SEC. 17.* Section 12022.4 is added to the Penal Code, to read:

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

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

1 *SEC. 18. No reimbursement is required by this act pursuant*
2 *to Section 6 of Article XIII B of the California Constitution because*
3 *the only costs that may be incurred by a local agency or school*
4 *district will be incurred because this act creates a new crime or*
5 *infraction, eliminates a crime or infraction, or changes the penalty*
6 *for a crime or infraction, within the meaning of Section 17556 of*
7 *the Government Code, or changes the definition of a crime within*
8 *the meaning of Section 6 of Article XIII B of the California*
9 *Constitution.*

10 *SEC. 19. This act is an urgency statute necessary for the*
11 *immediate preservation of the public peace, health, or safety within*
12 *the meaning of Article IV of the Constitution and shall go into*
13 *immediate effect. The facts constituting the necessity are:*
14 *In order to ensure, at the earliest possible time, appropriate*
15 *sentencing of those convicted of committing crimes, it is necessary*
16 *for this act to take effect immediately.*