

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

AMENDED IN ASSEMBLY AUGUST 30, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

**SENATE BILL**

**No. 576**

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**Introduced by Senator Calderon**

February 17, 2011

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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.

(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) This bill would incorporate changes to Section 1170 of the Penal Code made by AB 116, which has been chaptered but is not operative, to become operative only if AB 116 becomes operative.*

*(4) This bill would incorporate changes to Section 1170.1 of the Penal Code made by AB 117, which has been chaptered but is not operative, to become operative only if AB 117 becomes operative.*

*(5) This bill would incorporate changes to Section 12021.5 of the Penal Code made by AB 109 and AB 117, which have been chaptered but are not operative, to become operative only if AB 109 and AB 117 become operative.*

(3)

(6) 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: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: 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.

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

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

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

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

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

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

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

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

1 (c) If the court grants probation or suspends the execution of  
2 sentence imposed upon the defendant for a violation of subdivision  
3 (a), or in cases involving a true finding of the enhancement  
4 enumerated in subdivision (b), the court shall require that the  
5 defendant serve a minimum of 180 days in a county jail as a  
6 condition thereof.

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

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

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

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

34 (3) Unlawful homicide or manslaughter, as defined in Chapter  
35 1 (commencing with Section 187) of Title 8 of Part 1.

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

- 1 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
2 as defined in Section 246.
- 3 (6) Discharging or permitting the discharge of a firearm from  
4 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
5 12034 *until January 1, 2012, and, on or after that date,*  
6 *subdivisions (a) and (b) of Section 26100.*
- 7 (7) Arson, as defined in Chapter 1 (commencing with Section  
8 450) of Title 13.
- 9 (8) The intimidation of witnesses and victims, as defined in  
10 Section 136.1.
- 11 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
12 487.
- 13 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 14 (11) Burglary, as defined in Section 459.
- 15 (12) Rape, as defined in Section 261.
- 16 (13) Looting, as defined in Section 463.
- 17 (14) Money laundering, as defined in Section 186.10.
- 18 (15) Kidnapping, as defined in Section 207.
- 19 (16) Mayhem, as defined in Section 203.
- 20 (17) Aggravated mayhem, as defined in Section 205.
- 21 (18) Torture, as defined in Section 206.
- 22 (19) Felony extortion, as defined in Sections 518 and 520.
- 23 (20) Felony vandalism, as defined in paragraph (1) of  
24 subdivision (b) of Section 594.
- 25 (21) Carjacking, as defined in Section 215.
- 26 (22) The sale, delivery, or transfer of a firearm, as defined in  
27 Section 12072 *until January 1, 2012, and, on or after that date,*  
28 *Article 1 (commencing with Section 27500) of Chapter 4 of*  
29 *Division 6 of Title 4 of Part 6.*
- 30 (23) Possession of a pistol, revolver, or other firearm capable  
31 of being concealed upon the person in violation of paragraph (1)  
32 of subdivision (a) of Section 12101 *until January 1, 2012, and, on*  
33 *or after that date, Section 29610.*
- 34 (24) Threats to commit crimes resulting in death or great bodily  
35 injury, as defined in Section 422.
- 36 (25) Theft and unlawful taking or driving of a vehicle, as defined  
37 in Section 10851 of the Vehicle Code.
- 38 (26) Felony theft of an access card or account information, as  
39 defined in Section 484e.

1 (27) Counterfeiting, designing, using, or attempting to use an  
2 access card, as defined in Section 484f.

3 (28) Felony fraudulent use of an access card or account  
4 information, as defined in Section 484g.

5 (29) Unlawful use of personal identifying information to obtain  
6 credit, goods, services, or medical information, as defined in  
7 Section 530.5.

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

10 (31) Prohibited possession of a firearm in violation of Section  
11 12021 *until January 1, 2012, and on or after that date, Chapter 2*  
12 *(commencing with Section 29800) of Division 9 of Title 4 of Part*  
13 *6.*

14 (32) Carrying a concealed firearm in violation of Section 12025  
15 *until January 1, 2012, and, on or after that date, Section 25400.*

16 (33) Carrying a loaded firearm in violation of Section 12031  
17 *until January 1, 2012, and, on or after that date, Section 25850.*

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

27 (g) Notwithstanding any other law, the court may strike the  
28 additional punishment for the enhancements provided in this  
29 section or refuse to impose the minimum jail sentence for  
30 misdemeanors in an unusual case where the interests of justice  
31 would best be served, if the court specifies on the record and enters  
32 into the minutes the circumstances indicating that the interests of  
33 justice would best be served by that disposition.

34 (h) Notwithstanding any other provision of law, for each person  
35 committed to the Division of Juvenile Facilities for a conviction  
36 pursuant to subdivision (a) or (b) of this section, the offense shall  
37 be deemed one for which the state shall pay the rate of 100 percent  
38 of the per capita institutional cost of the Division of Juvenile  
39 Facilities, pursuant to Section 912.5 of the Welfare and Institutions  
40 Code.

1 (i) In order to secure a conviction or sustain a juvenile petition,  
2 pursuant to subdivision (a) it is not necessary for the prosecution  
3 to prove that the person devotes all, or a substantial part, of his or  
4 her time or efforts to the criminal street gang, nor is it necessary  
5 to prove that the person is a member of the criminal street gang.  
6 Active participation in the criminal street gang is all that is  
7 required.

8 (j) A pattern of gang activity may be shown by the commission  
9 of one or more of the offenses enumerated in paragraphs (26) to  
10 (30), inclusive, of subdivision (e), and the commission of one or  
11 more of the offenses enumerated in paragraphs (1) to (25),  
12 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
13 of gang activity cannot be established solely by proof of  
14 commission of offenses enumerated in paragraphs (26) to (30),  
15 inclusive, of subdivision (e), alone.

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

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

22 186.22. (a) Any person who actively participates in any  
23 criminal street gang with knowledge that its members engage in  
24 or have engaged in a pattern of criminal gang activity, and who  
25 willfully promotes, furthers, or assists in any felonious criminal  
26 conduct by members of that gang, shall be punished by  
27 imprisonment in a county jail for a period not to exceed one year,  
28 or by imprisonment in the state prison for 16 months, or two or  
29 three years.

30 (b) (1) Except as provided in paragraphs (4) and (5), any person  
31 who is convicted of a felony committed for the benefit of, at the  
32 direction of, or in association with any criminal street gang, with  
33 the specific intent to promote, further, or assist in any criminal  
34 conduct by gang members, shall, upon conviction of that felony,  
35 in addition and consecutive to the punishment prescribed for the  
36 felony or attempted felony of which he or she has been convicted,  
37 be punished as follows:

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



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

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

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

14 (3) The court shall order the imposition of the middle term of  
15 the sentence enhancement, unless there are circumstances in  
16 aggravation or mitigation. The court shall state the reasons for its  
17 choice of sentencing enhancements on the record at the time of  
18 the sentencing.

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

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

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

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

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

5 (c) If the court grants probation or suspends the execution of  
6 sentence imposed upon the defendant for a violation of subdivision  
7 (a), or in cases involving a true finding of the enhancement  
8 enumerated in subdivision (b), the court shall require that the  
9 defendant serve a minimum of 180 days in a county jail as a  
10 condition thereof.

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

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

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

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

38 (3) Unlawful homicide or manslaughter, as defined in Chapter  
39 1 (commencing with Section 187) of Title 8 of Part 1.

- 1 (4) The sale, possession for sale, transportation, manufacture,  
2 offer for sale, or offer to manufacture controlled substances as  
3 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
4 the Health and Safety Code.
- 5 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
6 as defined in Section 246.
- 7 (6) Discharging or permitting the discharge of a firearm from  
8 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
9 12034 *until January 1, 2012, and, on or after that date,*  
10 *subdivisions (a) and (b) of Section 26100.*
- 11 (7) Arson, as defined in Chapter 1 (commencing with Section  
12 450) of Title 13.
- 13 (8) The intimidation of witnesses and victims, as defined in  
14 Section 136.1.
- 15 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
16 487.
- 17 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 18 (11) Burglary, as defined in Section 459.
- 19 (12) Rape, as defined in Section 261.
- 20 (13) Looting, as defined in Section 463.
- 21 (14) Money laundering, as defined in Section 186.10.
- 22 (15) Kidnapping, as defined in Section 207.
- 23 (16) Mayhem, as defined in Section 203.
- 24 (17) Aggravated mayhem, as defined in Section 205.
- 25 (18) Torture, as defined in Section 206.
- 26 (19) Felony extortion, as defined in Sections 518 and 520.
- 27 (20) Felony vandalism, as defined in paragraph (1) of  
28 subdivision (b) of Section 594.
- 29 (21) Carjacking, as defined in Section 215.
- 30 (22) The sale, delivery, or transfer of a firearm, as defined in  
31 Section 12072 *until January 1, 2012, and, on or after that date,*  
32 *Article 1 (commencing with Section 27500) of Chapter 4 of*  
33 *Division 6 of Title 4 of Part 6.*
- 34 (23) Possession of a pistol, revolver, or other firearm capable  
35 of being concealed upon the person in violation of paragraph (1)  
36 of subdivision (a) of Section 12101 *until January 1, 2012, and, on*  
37 *or after that date, Section 29610.*
- 38 (24) Threats to commit crimes resulting in death or great bodily  
39 injury, as defined in Section 422.

1 (25) Theft and unlawful taking or driving of a vehicle, as defined  
2 in Section 10851 of the Vehicle Code.

3 (26) Felony theft of an access card or account information, as  
4 defined in Section 484e.

5 (27) Counterfeiting, designing, using, or attempting to use an  
6 access card, as defined in Section 484f.

7 (28) Felony fraudulent use of an access card or account  
8 information, as defined in Section 484g.

9 (29) Unlawful use of personal identifying information to obtain  
10 credit, goods, services, or medical information, as defined in  
11 Section 530.5.

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

14 (31) Prohibited possession of a firearm in violation of Section  
15 12021 *until January 1, 2012, and, on or after that date, Chapter*  
16 *2 (commencing with Section 29800) of Division 9 of Title 4 of Part*  
17 *6.*

18 (32) Carrying a concealed firearm in violation of Section 12025  
19 *until January 1, 2012, and, on or after that date, Section 25400.*

20 (33) Carrying a loaded firearm in violation of Section 12031  
21 *until January 1, 2012, and, on or after that date, Section 25850.*

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

31 (g) Notwithstanding any other law, the court may strike the  
32 additional punishment for the enhancements provided in this  
33 section or refuse to impose the minimum jail sentence for  
34 misdemeanors in an unusual case where the interests of justice  
35 would best be served, if the court specifies on the record and enters  
36 into the minutes the circumstances indicating that the interests of  
37 justice would best be served by that disposition.

38 (h) Notwithstanding any other provision of law, for each person  
39 committed to the Division of Juvenile Facilities for a conviction  
40 pursuant to subdivision (a) or (b) of this section, the offense shall

1 be deemed one for which the state shall pay the rate of 100 percent  
2 of the per capita institutional cost of the Division of Juvenile  
3 Facilities, pursuant to Section 912.5 of the Welfare and Institutions  
4 Code.

5 (i) In order to secure a conviction or sustain a juvenile petition,  
6 pursuant to subdivision (a) it is not necessary for the prosecution  
7 to prove that the person devotes all, or a substantial part, of his or  
8 her time or efforts to the criminal street gang, nor is it necessary  
9 to prove that the person is a member of the criminal street gang.  
10 Active participation in the criminal street gang is all that is  
11 required.

12 (j) A pattern of gang activity may be shown by the commission  
13 of one or more of the offenses enumerated in paragraphs (26) to  
14 (30), inclusive, of subdivision (e), and the commission of one or  
15 more of the offenses enumerated in paragraphs (1) to (25),  
16 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
17 of gang activity cannot be established solely by proof of  
18 commission of offenses enumerated in paragraphs (26) to (30),  
19 inclusive, of subdivision (e), alone.

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

21 SEC. 3. Section 186.33 of the Penal Code, as amended by  
22 Section 3 of Chapter 256 of the Statutes of 2010, is amended to  
23 read:

24 186.33. (a) Any person required to register pursuant to Section  
25 186.30 who knowingly violates any of its provisions is guilty of  
26 a misdemeanor.

27 (b) (1) Any person who knowingly fails to register pursuant to  
28 Section 186.30 and is subsequently convicted of, or any person  
29 for whom a petition is subsequently sustained for a violation of,  
30 any of the offenses specified in Section 186.30, shall be punished  
31 by an additional term of imprisonment in the state prison for 16  
32 months, or two or three years. The court shall select the sentence  
33 enhancement which, in the court's discretion, best serves the  
34 interests of justice and shall state the reasons for its choice on the  
35 record at the time of sentencing in accordance with the provisions  
36 of subdivision (d) of Section 1170.1.

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

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

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

7 186.33. (a) Any person required to register pursuant to Section  
8 186.30 who knowingly violates any of its provisions is guilty of  
9 a misdemeanor.

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

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

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

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

25 667.61. (a) Except as provided in subdivision (j), (l), or (m),  
26 any person who is convicted of an offense specified in subdivision  
27 (c) 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 25 years to life.

31 (b) Except as provided in subdivision (a), (j), (l), or (m), any  
32 person who is convicted of an offense specified in subdivision (c)  
33 under one of the circumstances specified in subdivision (e) shall  
34 be punished by imprisonment in the state prison for 15 years to  
35 life.

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

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

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

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

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

5 (5) Sexual penetration, in violation of subdivision (a) of Section  
6 289.

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

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

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

13 (9) Continuous sexual abuse of a child, in violation of Section  
14 288.5.

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

17 (1) The defendant has been previously convicted of an offense  
18 specified in subdivision (c), including an offense committed in  
19 another jurisdiction that includes all of the elements of an offense  
20 specified in subdivision (c).

21 (2) The defendant kidnapped the victim of the present offense  
22 and the movement of the victim substantially increased the risk of  
23 harm to the victim over and above that level of risk necessarily  
24 inherent in the underlying offense in subdivision (c).

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

28 (4) The defendant committed the present offense during the  
29 commission of a burglary of the first degree, as defined in  
30 subdivision (a) of Section 460, with intent to commit an offense  
31 specified in subdivision (c).

32 (5) The defendant committed the present offense in violation  
33 of Section 264.1, subdivision (d) of Section 286, or subdivision  
34 (d) of Section 288a, and, in the commission of that offense, any  
35 person committed any act described in paragraph (2), (3), or (4)  
36 of this subdivision.

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

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

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

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

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

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

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

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

19 (6) The defendant administered a controlled substance to the  
20 victim in the commission of the present offense in violation of  
21 Section 12022.75.

22 (7) The defendant committed the present offense in violation  
23 of Section 264.1, subdivision (d) of Section 286, or subdivision  
24 (d) of Section 288a, and, in the commission of that offense, any  
25 person committed any act described in paragraph (1), (2), (3), (5),  
26 or (6) of this subdivision or paragraph (6) of subdivision (d).

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



1 additional circumstance or circumstances shall be used to impose  
2 any punishment or enhancement authorized under any other  
3 provision of law.

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

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

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

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

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

33 (k) As used in this section, “bodily harm” means any substantial  
34 physical injury resulting from the use of force that is more than  
35 the force necessary to commit an offense specified in subdivision  
36 (c).

37 (l) Any person who is convicted of an offense specified in  
38 subdivision (n) under one or more of the circumstances specified  
39 in subdivision (d) or under two or more of the circumstances  
40 specified in subdivision (e), upon a victim who is a minor 14 years

1 of age or older shall be punished by imprisonment in the state  
2 prison for life without the possibility of parole. If the person who  
3 was convicted was under 18 years of age at the time of the offense,  
4 he or she shall be punished by imprisonment in the state prison  
5 for 25 years to life.

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

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

12 (1) Rape, in violation of paragraph (2) of subdivision (a) of  
13 Section 261.

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

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

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

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

22 (6) Oral copulation, in violation of paragraph (2) of subdivision  
23 (c) of Section 288a, or in violation of subdivision (d) of Section  
24 288a.

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

30 SEC. 6. Section 1170 of the Penal Code, as amended by Section  
31 5 of Chapter 256 of the Statutes of 2010, is amended to read:

32 1170. (a) (1) The Legislature finds and declares that the  
33 purpose of imprisonment for crime is punishment. This purpose  
34 is best served by terms proportionate to the seriousness of the  
35 offense with provision for uniformity in the sentences of offenders  
36 committing the same offense under similar circumstances. The  
37 Legislature further finds and declares that the elimination of  
38 disparity and the provision of uniformity of sentences can best be  
39 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 choice of the appropriate  
7 term shall rest within the sound discretion of the court. At least  
8 four days prior to the time set for imposition of judgment, either  
9 party or the victim, or the family of the victim if the victim is  
10 deceased, may submit a statement in aggravation or mitigation. In  
11 determining the appropriate term, the court may consider the record  
12 in the case, the probation officer's report, other reports, including  
13 reports received pursuant to Section 1203.03, and statements in  
14 aggravation or mitigation submitted by the prosecution, the  
15 defendant, or the victim, or the family of the victim if the victim  
16 is deceased, and any further evidence introduced at the sentencing  
17 hearing. The court shall select the term which, in the court's  
18 discretion, best serves the interests of justice. The court shall set  
19 forth on the record the reasons for imposing the term selected and  
20 the court 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 remain in effect only until January 1, 2014,  
19 and as of that date is repealed, unless a later enacted statute, that  
20 is enacted before that date, deletes or extends that date.

21 *SEC. 6.5. Section 1170 of the Penal Code, as amended by*  
22 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
23 *read:*

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

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

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

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

36 (b) When a judgment of imprisonment is to be imposed and the  
37 statute specifies three possible terms, the choice of the appropriate  
38 term shall rest within the sound discretion of the court. At least  
39 four days prior to the time set for imposition of judgment, either  
40 parole or the victim, or the family of the victim if the victim is



1 deceased, may submit a statement in aggravation or mitigation. In  
2 determining the appropriate term, the court may consider the record  
3 in the case, the probation officer's report, other reports, including  
4 reports received pursuant to Section 1203.03, and statements in  
5 aggravation or mitigation submitted by the prosecution, the  
6 defendant, or the victim, or the family of the victim if the victim  
7 is deceased, and any further evidence introduced at the sentencing  
8 hearing. The court shall select the term which, in the court's  
9 discretion, best serves the interests of justice. The court shall set  
10 forth on the record the reasons for imposing the term selected and  
11 the court may not impose an upper term by using the fact of any  
12 enhancement upon which sentence is imposed under any provision  
13 of law. A term of imprisonment shall not be specified if imposition  
14 of sentence is suspended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 recall and resentencing consideration, and that recall and  
2 resentencing procedures shall be initiated upon that prognosis.

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

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

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

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

19 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
20 has a prior or current felony conviction for a serious felony  
21 described in subdivision (c) of Section 1192.7, a violent felony  
22 described in subdivision (c) of Section 667.5, is required to register  
23 as a sex offender pursuant to Chapter 5.5 (commencing with  
24 Section 290) of Title 9 of Part 1, or is convicted of a crime and as  
25 part of the sentence an enhancement pursuant to Section 186.11  
26 is imposed, an executed sentence for a felony punishable pursuant  
27 to this subdivision shall be served in state prison.

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

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

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

1 (i) This section shall remain in effect only until January 1, ~~2012~~,  
2 2014, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before that date, deletes or extends that date.

4 SEC. 7. Section 1170 of the Penal Code, as amended by Section  
5 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

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

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

39 (c) The court shall state the reasons for its sentence choice on  
40 the record at the time of sentencing. The court shall also inform

1 the defendant that as part of the sentence after expiration of the  
2 term he or she may be on parole for a period as provided in Section  
3 3000.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

34 *SEC. 7.5. Section 1170 of the Penal Code, as amended by*  
35 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
36 *read:*

37 1170. (a) (1) The Legislature finds and declares that the  
38 purpose of imprisonment for crime is punishment. This purpose  
39 is best served by terms proportionate to the seriousness of the  
40 offense with provision for uniformity in the sentences of offenders

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

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

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

1 actually delivered to the custody of the secretary. The court shall  
2 advise the defendant that he or she shall serve a period of parole  
3 and order the defendant to report to the parole office closest to the  
4 defendant's last legal residence, unless the in-custody credits equal  
5 the total sentence, including both confinement time and the period  
6 of parole. The sentence shall be deemed a separate prior prison  
7 term under Section 667.5, and a copy of the judgment and other  
8 necessary documentation shall be forwarded to the secretary.

9 (b) When a judgment of imprisonment is to be imposed and the  
10 statute specifies three possible terms, the court shall order  
11 imposition of the middle term, unless there are circumstances in  
12 aggravation or mitigation of the crime. At least four days prior to  
13 the time set for imposition of judgment, either party or the victim,  
14 or the family of the victim if the victim is deceased, may submit  
15 a statement in aggravation or mitigation to dispute facts in the  
16 record or the probation officer's report, or to present additional  
17 facts. In determining whether there are circumstances that justify  
18 imposition of the upper or lower term, the court may consider the  
19 record in the case, the probation officer's report, other reports,  
20 including reports received pursuant to Section 1203.03, and  
21 statements in aggravation or mitigation submitted by the  
22 prosecution, the defendant, or the victim, or the family of the victim  
23 if the victim is deceased, and any further evidence introduced at  
24 the sentencing hearing. The court shall set forth on the record the  
25 facts and reasons for imposing the upper or lower term. The court  
26 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) Notwithstanding any other provision of this section, for  
19 purposes of paragraph (3) of subdivision (h), any allegation that  
20 a defendant is eligible for state prison due to a prior or current  
21 conviction, sentence enhancement, or because he or she is required  
22 to register as a sex offender shall not be subject to dismissal  
23 pursuant to Section 1385.

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

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

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

34 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
35 has a prior or current felony conviction for a serious felony  
36 described in subdivision (c) of Section 1192.7, a violent felony  
37 described in subdivision (c) of Section 667.5, is required to register  
38 as a sex offender pursuant to Chapter 5.5 (commencing with  
39 Section 290) of Title 9 of Part 1, or is convicted of a crime and as  
40 part of the sentence an enhancement pursuant to Section 186.11

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

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

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

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

16 (i) This section shall become operative on January 1, ~~2012~~.  
17 ~~2014~~.

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

21 1170.1. (a) Except as otherwise provided by law, and subject  
22 to Section 654, when any person is convicted of two or more  
23 felonies, whether in the same proceeding or court or in different  
24 proceedings or courts, and whether by judgment rendered by the  
25 same or by a different court, and a consecutive term of  
26 imprisonment is imposed under Sections 669 and 1170, the  
27 aggregate term of imprisonment for all these convictions shall be  
28 the sum of the principal term, the subordinate term, and any  
29 additional term imposed for applicable enhancements for prior  
30 convictions, prior prison terms, and Section 12022.1. The principal  
31 term shall consist of the greatest term of imprisonment imposed  
32 by the court for any of the crimes, including any term imposed for  
33 applicable specific enhancements. The subordinate term for each  
34 consecutive offense shall consist of one-third of the middle term  
35 of imprisonment prescribed for each other felony conviction for  
36 which a consecutive term of imprisonment is imposed, and shall  
37 include one-third of the term imposed for any specific  
38 enhancements applicable to those subordinate offenses.

39 (b) If a person is convicted of two or more violations of  
40 kidnapping, as defined in Section 207, involving separate victims,

1 the subordinate term for each consecutive offense of kidnapping  
2 shall consist of the full middle term and shall include the full term  
3 imposed for specific enhancements applicable to those subordinate  
4 offenses.

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

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

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

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



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

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

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

16 *SEC. 8.5. Section 1170.1 of the Penal Code, as amended by*  
17 *Section 29 of Chapter 39 of the Statutes of 2011, is amended to*  
18 *read:*

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

1 of the terms specifies imprisonment in the county jail pursuant to  
2 subdivision (h) of Section 1170.

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

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

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

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

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

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

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

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

17 (i) This section shall remain in effect only until January 1, ~~2012~~  
18 2014, and as of that date is repealed, unless a later enacted statute,  
19 that is enacted before January 1, ~~2012~~ 2014, deletes or extends  
20 that date.

21 SEC. 9. 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, 2014.

18 *SEC. 9.5. Section 1170.1 of the Penal Code, as amended by*  
19 *Section 30 of Chapter 39 of the Statutes of 2011, is amended to*  
20 *read:*

21 1170.1. (a) Except as otherwise provided by law, and subject  
22 to Section 654, when any person is convicted of two or more  
23 felonies, whether in the same proceeding or court or in different  
24 proceedings or courts, and whether by judgment rendered by the  
25 same or by a different court, and a consecutive term of  
26 imprisonment is imposed under Sections 669 and 1170, the  
27 aggregate term of imprisonment for all these convictions shall be  
28 the sum of the principal term, the subordinate term, and any  
29 additional term imposed for applicable enhancements for prior  
30 convictions, prior prison terms, and Section 12022.1. The principal  
31 term shall consist of the greatest term of imprisonment imposed  
32 by the court for any of the crimes, including any term imposed for  
33 applicable specific enhancements. The subordinate term for each  
34 consecutive offense shall consist of one-third of the middle term  
35 of imprisonment prescribed for each other felony conviction for  
36 which a consecutive term of imprisonment is imposed, and shall  
37 include one-third of the term imposed for any specific  
38 enhancements applicable to those subordinate offenses. Whenever  
39 a court imposes a term of imprisonment in the state prison, whether  
40 the term is a principal or subordinate term, the aggregate term shall

1 be served in the state prison, regardless as to whether or not one  
2 of the terms specifies imprisonment in the county jail pursuant to  
3 subdivision (h) of Section 1170.

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

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

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

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

39 (f) When two or more enhancements may be imposed for being  
40 armed with or using a dangerous or deadly weapon or a firearm

1 in the commission of a single offense, only the greatest of those  
2 enhancements shall be imposed for that offense. This subdivision  
3 shall not limit the imposition of any other enhancements applicable  
4 to that offense, including an enhancement for the infliction of great  
5 bodily injury.

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

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

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

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

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

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

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

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

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

38 SEC. 11. 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, 2014.

15 SEC. 12. Section 12021.5 of the Penal Code, as added by  
16 Section 6.01 of Chapter 711 of the Statutes of 2010, is amended  
17 to read:

18 12021.5. (a) Every person who carries a loaded or unloaded  
19 firearm on his or her person, or in a vehicle, during the commission  
20 or attempted commission of any street gang crimes described in  
21 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
22 the felony or attempted felony, be punished by an additional term  
23 of imprisonment in the state prison for one, two, or three years in  
24 the court's discretion. The court shall impose the middle term  
25 unless there are circumstances in aggravation or mitigation. The  
26 court shall state the reasons for its enhancement choice on the  
27 record at the time of sentence.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (d) This section shall become operative on January 1, 2014.

37 *SEC. 12.3. Section 12021.5 of the Penal Code, as amended by*  
38 *Section 504 of Chapter 15 of the Statutes of 2011, is amended to*  
39 *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 pursuant to subdivision (h) of Section 1170 for  
7 one, two, or three years in the court's discretion. The court shall  
8 impose the middle term unless there are circumstances in  
9 aggravation or mitigation. The court shall state the reasons for its  
10 enhancement choice on the record at the time of sentence.

11 (b) Every person who carries a loaded or unloaded firearm  
12 together with a detachable shotgun magazine, a detachable pistol  
13 magazine, a detachable magazine, or a belt-feeding device on his  
14 or her person, or in a vehicle, during the commission or attempted  
15 commission of any street gang crimes described in subdivision (a)  
16 or (b) of Section 186.22, shall, upon conviction of the felony or  
17 attempted felony, be punished by an additional term of  
18 imprisonment ~~pursuant to subdivision (h) of Section 1170~~ *in the*  
19 *state prison* for two, three, or four years in the court's discretion.  
20 The court shall impose the middle term unless there are  
21 circumstances in aggravation or mitigation. The court shall state  
22 the reasons for its enhancement choice on the record at the time  
23 of sentence.

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

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

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

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

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

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

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

38 (B) To be attached to, and detached from, a firearm that is not  
39 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~~ *Section 17090*.

19 (6) “Shotgun” shall have the same meaning as specified in  
20 ~~paragraph (21) of subdivision (c) of Section 12020~~ *Section 17190*.

21 (d) This section shall become operative on January 1, ~~2012~~  
22 *2014*.

23 *SEC. 12.5. Section 12021.5 of the Penal Code, as amended by*  
24 *Section 56 of Chapter 39 of the Statutes of 2011, is amended to*  
25 *read:*

26 12021.5. (a) Every person who carries a loaded or unloaded  
27 firearm on his or her person, or in a vehicle, during the commission  
28 or attempted commission of any street gang crimes described in  
29 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
30 the felony or attempted felony, be punished by an additional term  
31 of imprisonment pursuant to subdivision (h) of Section 1170 for  
32 one, two, or three years. The court shall select the sentence  
33 enhancement which, in the court’s discretion, best serves the  
34 interests of justice and shall state the reasons for its choice on the  
35 record at the time of sentence, in accordance with the provisions  
36 of subdivision (d) of Section 1170.1.

37 (b) Every person who carries a loaded or unloaded firearm  
38 together with a detachable shotgun magazine, a detachable pistol  
39 magazine, a detachable magazine, or a belt-feeding device on his  
40 or her person, or in a vehicle, during the commission or attempted

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

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

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

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

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

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

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

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

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

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

29 (3) "Detachable shotgun magazine" means a device that is  
30 designed or redesigned to do all of the following:

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

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

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

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

4 (5) “Rifle” shall have the same meaning as specified in  
5 ~~paragraph (20) of subdivision (e) of Section 12020~~ 17090.

6 (6) “Shotgun” shall have the same meaning as specified in  
7 ~~paragraph (21) of subdivision (e) of Section 12020~~ 17190.

8 (d) This section shall remain in effect only until January 1, ~~2012,~~  
9 2014, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, ~~2012,~~ 2014, deletes or extends  
11 that date.

12 *SEC. 12.7. Section 12021.5 of the Penal Code, as amended by*  
13 *Section 57 of Chapter 39 of the Statutes of 2011, is repealed.*

14 SEC. 13. Section 12021.5 is added to the Penal Code, to read:

15 12021.5. (a) Every person who carries a loaded or unloaded  
16 firearm on his or her person, or in a vehicle, during the commission  
17 or attempted commission of any street gang crimes described in  
18 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
19 the felony or attempted felony, be punished by an additional term  
20 of imprisonment in the state prison for one, two, or three years.  
21 The court shall select the sentence enhancement which, in the  
22 court’s discretion, best serves the interests of justice and shall state  
23 the reasons for its choice on the record at the time of sentence, in  
24 accordance with the provisions of subdivision (d) of Section  
25 1170.1.

26 (b) Every person who carries a loaded or unloaded firearm  
27 together with a detachable shotgun magazine, a detachable pistol  
28 magazine, a detachable magazine, or a belt-feeding device on his  
29 or her person, or in a vehicle, during the commission or attempted  
30 commission of any street gang crimes described in subdivision (a)  
31 or (b) of Section 186.22, shall, upon conviction of the felony or  
32 attempted felony, be punished by an additional term of  
33 imprisonment in the state prison for two, three, or four years. The  
34 court shall select the sentence enhancement which, in the court’s  
35 discretion, best serves the interests of justice and shall state the  
36 reasons for its choice on the record at the time of sentence, in  
37 accordance with the provisions of subdivision (d) of Section  
38 1170.1.

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

- 1 (1) “Detachable magazine” means a device that is designed or  
2 redesigned to do all of the following:
- 3 (A) To be attached to a rifle that is designed or redesigned to  
4 fire ammunition.
- 5 (B) To be attached to, and detached from, a rifle that is designed  
6 or redesigned to fire ammunition.
- 7 (C) To feed ammunition continuously and directly into the  
8 loading mechanism of a rifle that is designed or redesigned to fire  
9 ammunition.
- 10 (2) “Detachable pistol magazine” means a device that is  
11 designed or redesigned to do all of the following:
- 12 (A) To be attached to a semiautomatic firearm that is not a rifle  
13 or shotgun that is designed or redesigned to fire ammunition.
- 14 (B) To be attached to, and detached from, a firearm that is not  
15 a rifle or shotgun that is designed or redesigned to fire ammunition.
- 16 (C) To feed ammunition continuously and directly into the  
17 loading mechanism of a firearm that is not a rifle or a shotgun that  
18 is designed or redesigned to fire ammunition.
- 19 (3) “Detachable shotgun magazine” means a device that is  
20 designed or redesigned to do all of the following:
- 21 (A) To be attached to a firearm that is designed or redesigned  
22 to fire a fixed shotgun shell through a smooth or rifled bore.
- 23 (B) To be attached to, and detached from, a firearm that is  
24 designed or redesigned to fire a fixed shotgun shell through a  
25 smooth bore.
- 26 (C) To feed fixed shotgun shells continuously and directly into  
27 the loading mechanism of a firearm that is designed or redesigned  
28 to fire a fixed shotgun shell.
- 29 (4) “Belt-feeding device” means a device that is designed or  
30 redesigned to continuously feed ammunition into the loading  
31 mechanism of a machinegun or a semiautomatic firearm.
- 32 (5) “Rifle” shall have the same meaning as specified in  
33 paragraph (20) of subdivision (c) of Section 12020 *until January*  
34 *1, 2012, and, on or after that date, Section 17090.*
- 35 (6) “Shotgun” shall have the same meaning as specified in  
36 paragraph (21) of subdivision (c) of Section 12020 *until January*  
37 *1, 2012, and, on or after that date, Section 17190.*
- 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. 14. Section 12022.2 of the Penal Code, as added by  
2 Section 6.02 of Chapter 711 of the Statutes of 2010, is amended  
3 to read:

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

14 (b) Any person who wears a body vest in the commission or  
15 attempted commission of a violent offense, as defined in Section  
16 29905, shall, upon conviction of that felony or attempted 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 by an additional term of one, two, or five years. The  
20 court shall order the middle term unless there are circumstances  
21 in aggravation or mitigation. The court shall state the reasons for  
22 its enhancement choice on the record at the time of the sentence.

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

26 (d) This section shall become operative on January 1, 2014.

27 SEC. 15. Section 12022.2 is added to the Penal Code, 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 select the sentence enhancement which, in the court’s discretion,  
36 best serves the interests of justice and shall state the reasons for  
37 its choice on the record at the time of the sentence in accordance  
38 with the provisions of subdivision (d) of Section 1170.1.

39 (b) Any person who wears a body vest in the commission or  
40 attempted commission of a violent offense, as defined in

1 subdivision (b) of Section 12021.1, *until January 1, 2012, and, on*  
2 *or after that date, Section 29905*, shall, upon conviction of that  
3 felony or attempted felony, in addition and consecutive to the  
4 punishment prescribed for the felony or attempted felony of which  
5 he or she has been convicted, be punished by an additional term  
6 of one, two, or five 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 the sentence in accordance with the provisions  
10 of subdivision (d) of Section 1170.1.

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

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

17 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
18 Section 6.03 of Chapter 711 of the Statutes of 2010, is amended  
19 to read:

20 12022.4. (a) Any person who, during the commission or  
21 attempted commission of a felony, furnishes or offers to furnish  
22 a firearm to another for the purpose of aiding, abetting, or enabling  
23 that person or any other person to commit a felony shall, in addition  
24 and consecutive to the punishment prescribed by the felony or  
25 attempted felony of which the person has been convicted, be  
26 punished by an additional term of one, two, or three years in the  
27 state prison. The court shall order the middle term unless there are  
28 circumstances in aggravation or mitigation. The court shall state  
29 the reasons for its enhancement choice on the record at the time  
30 of the sentence. The additional term provided in this section shall  
31 not be imposed unless the fact of the furnishing is charged in the  
32 accusatory pleading and admitted or found to be true by the trier  
33 of fact.

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

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

36 12022.4. (a) Any person who, during the commission or  
37 attempted commission of a felony, furnishes or offers to furnish  
38 a firearm to another for the purpose of aiding, abetting, or enabling  
39 that person or any other person to commit a felony shall, in addition  
40 and consecutive to the punishment prescribed by the felony or



1 attempted felony of which the person has been convicted, be  
2 punished by an additional term of one, two, or three years in the  
3 state prison. The court shall select the sentence enhancement which,  
4 in the court's discretion, best serves the interests of justice and  
5 shall state the reasons for its choice on the record at the time of  
6 the sentence, in accordance with the provisions of subdivision (d)  
7 of Section 1170.1. The additional term provided in this section  
8 shall not be imposed unless the fact of the furnishing is charged  
9 in the accusatory pleading and admitted or found to be true by the  
10 trier of fact.

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

14 *SEC. 18. Sections 6.5 and 7.5 of this bill incorporate*  
15 *amendments to Section 1170 of the Penal Code proposed by both*  
16 *this bill and Assembly Bill 116, which has been chaptered but is*  
17 *not operative. Sections 6.5 and 7.5 shall become operative only if*  
18 *(1) this bill is enacted and becomes effective on or before January*  
19 *1, 2012, (2) this bill amends Section 1170 of the Penal Code, and*  
20 *(3) Assembly Bill 116 becomes operative, in which case Section*  
21 *1170 of the Penal Code, as amended by Sections 6 and 7, shall*  
22 *remain operative only until the operative date of Assembly Bill*  
23 *116, at which time Sections 6.5 and 7.5 of this bill shall become*  
24 *operative.*

25 *SEC. 19. Sections 8.5 and 9.5 of this bill incorporate*  
26 *amendments to Section 1170.1 of the Penal Code proposed by both*  
27 *this bill and Assembly Bill 117, which has been chaptered but is*  
28 *not operative. Sections 8.5 and 9.5 shall become operative only if*  
29 *(1) this bill is enacted and becomes effective on or before January*  
30 *1, 2012, (2) this bill amends Section 1170.1 of the Penal Code,*  
31 *and (3) Assembly Bill 117 becomes operative, in which case Section*  
32 *1170.1 of the Penal Code, as amended by Sections 8 and 9 of this*  
33 *bill, shall remain operative only until the operative date of*  
34 *Assembly Bill 117, at which time Sections 8.5 and 9.5 of this bill*  
35 *shall become operative.*

36 *SEC. 20. Section 12.3 of this bill incorporates amendments to*  
37 *Section 12021.5 of the Penal Code proposed by both this bill and*  
38 *Assembly Bill 109, which has been chaptered but is not operative.*  
39 *Section 12.3 shall become operative only if (1) this bill is enacted*  
40 *and becomes effective on or before January 1, 2012, (2) this bill*

1 amends Section 12021.5 of the Penal Code, and (3) Assembly Bill  
2 109 becomes operative, in which case Section 12021.5, as amended  
3 by Section 12 of this bill, shall remain operative only until the  
4 operative date of Assembly Bill 109, at which time Section 12.3 of  
5 this bill shall become operative.

6 SEC. 21. Section 12.5 of this bill incorporates changes  
7 consistent with the changes proposed by this bill and amendments  
8 to Section 12021.5 of the Penal Code proposed Assembly Bill 117,  
9 which has been chaptered but is not operative. Section 12.5 shall  
10 become operative only if (1) this bill is enacted and becomes  
11 effective on or before January 1, 2012, (2) this bill makes changes  
12 to Section 12021.5 of the Penal Code, and (3) Assembly Bill 117  
13 becomes operative, in which case Section 12021.5, as amended  
14 by Section 12 of this bill, shall remain operative only until the  
15 operative date of Assembly Bill 117, at which time Section 12.5 of  
16 this bill shall become operative.

17 ~~SEC. 18.~~

18 SEC. 22. No reimbursement is required by this act pursuant  
19 to Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.

27 ~~SEC. 19.~~

28 SEC. 23. This act is an urgency statute necessary for the  
29 immediate preservation of the public peace, health, or safety within  
30 the meaning of Article IV of the Constitution and shall go into  
31 immediate effect. The facts constituting the necessity are:

32 In order to ensure, at the earliest possible time, appropriate  
33 sentencing of those convicted of committing crimes, it is necessary  
34 for this act to take effect immediately.