

AMENDED IN ASSEMBLY SEPTEMBER 8, 2011

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, *and changes made by either AB 17 of the First Extraordinary Session or SB 5 of the First Extraordinary Session.*

(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.

(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:  $\frac{2}{3}$ . 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.

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

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, subdivisions  
10 (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 2  
16 (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 remain in effect only until January 1, 2014,  
21 and as of that date is repealed, unless a later enacted statute, that  
22 is enacted before January 1, 2014, deletes or extends that date.

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

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

34 (b) (1) Except as provided in paragraphs (4) and (5), any person  
35 who is convicted of a felony committed for the benefit of, at the  
36 direction of, or in association with any criminal street gang, with  
37 the specific intent to promote, further, or assist in any criminal  
38 conduct by gang members, shall, upon conviction of that felony,  
39 in addition and consecutive to the punishment prescribed for the



1 felony or attempted felony of which he or she has been convicted,  
2 be punished as follows:

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

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

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

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

19 (3) The court shall order the imposition of the middle term of  
20 the sentence enhancement, unless there are circumstances in  
21 aggravation or mitigation. The court shall state the reasons for its  
22 choice of sentencing enhancements on the record at the time of  
23 the sentencing.

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

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

37 (B) Imprisonment in the state prison for 15 years, if the felony  
38 is a home invasion robbery, in violation of subparagraph (A) of  
39 paragraph (1) of subdivision (a) of Section 213; carjacking, as

1 defined in Section 215; a felony violation of Section 246; or a  
2 violation of Section 12022.55.

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

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

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

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

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

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

- 1 (2) Robbery, as defined in Chapter 4 (commencing with Section  
2 211) of Title 8 of Part 1.
- 3 (3) Unlawful homicide or manslaughter, as defined in Chapter  
4 1 (commencing with Section 187) of Title 8 of Part 1.
- 5 (4) The sale, possession for sale, transportation, manufacture,  
6 offer for sale, or offer to manufacture controlled substances as  
7 defined in Sections 11054, 11055, 11056, 11057, and 11058 of  
8 the Health and Safety Code.
- 9 (5) Shooting at an inhabited dwelling or occupied motor vehicle,  
10 as defined in Section 246.
- 11 (6) Discharging or permitting the discharge of a firearm from  
12 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
13 12034 until January 1, 2012, and, on or after that date, subdivisions  
14 (a) and (b) of Section 26100.
- 15 (7) Arson, as defined in Chapter 1 (commencing with Section  
16 450) of Title 13.
- 17 (8) The intimidation of witnesses and victims, as defined in  
18 Section 136.1.
- 19 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
20 487.
- 21 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 22 (11) Burglary, as defined in Section 459.
- 23 (12) Rape, as defined in Section 261.
- 24 (13) Looting, as defined in Section 463.
- 25 (14) Money laundering, as defined in Section 186.10.
- 26 (15) Kidnapping, as defined in Section 207.
- 27 (16) Mayhem, as defined in Section 203.
- 28 (17) Aggravated mayhem, as defined in Section 205.
- 29 (18) Torture, as defined in Section 206.
- 30 (19) Felony extortion, as defined in Sections 518 and 520.
- 31 (20) Felony vandalism, as defined in paragraph (1) of  
32 subdivision (b) of Section 594.
- 33 (21) Carjacking, as defined in Section 215.
- 34 (22) The sale, delivery, or transfer of a firearm, as defined in  
35 Section 12072 until January 1, 2012, and, on or after that date,  
36 Article 1 (commencing with Section 27500) of Chapter 4 of  
37 Division 6 of Title 4 of Part 6.
- 38 (23) Possession of a pistol, revolver, or other firearm capable  
39 of being concealed upon the person in violation of paragraph (1)

1 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
2 or after that date, Section 29610.

3 (24) Threats to commit crimes resulting in death or great bodily  
4 injury, as defined in Section 422.

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

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

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

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

13 (29) Unlawful use of personal identifying information to obtain  
14 credit, goods, services, or medical information, as defined in  
15 Section 530.5.

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

18 (31) Prohibited possession of a firearm in violation of Section  
19 12021 until January 1, 2012, and, on or after that date, Chapter 2  
20 (commencing with Section 29800) of Division 9 of Title 4 of Part  
21 6.

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

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

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

35 (g) Notwithstanding any other law, the court may strike the  
36 additional punishment for the enhancements provided in this  
37 section or refuse to impose the minimum jail sentence for  
38 misdemeanors in an unusual case where the interests of justice  
39 would best be served, if the court specifies on the record and enters

1 into the minutes the circumstances indicating that the interests of  
2 justice would best be served by that disposition.

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

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

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

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

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

29 186.33. (a) Any person required to register pursuant to Section  
30 186.30 who knowingly violates any of its provisions is guilty of  
31 a misdemeanor.

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

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

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

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

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

13 186.33. (a) Any person required to register pursuant to Section  
14 186.30 who knowingly violates any of its provisions is guilty of  
15 a misdemeanor.

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

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

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

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

31 667.61. (a) Except as provided in subdivision (j), (l), or (m),  
32 any person who is convicted of an offense specified in subdivision  
33 (c) under one or more of the circumstances specified in subdivision  
34 (d) or under two or more of the circumstances specified in  
35 subdivision (e) shall be punished by imprisonment in the state  
36 prison for 25 years to life.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 1170. (a) (1) The Legislature finds and declares that the  
39 purpose of imprisonment for crime is punishment. This purpose  
40 is best served by terms proportionate to the seriousness of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 *SEC. 6.3. Section 1170 of the Penal Code, as amended by*  
26 *Section 5 of Chapter 256 of the Statutes of 2010, is amended to*  
27 *read:*

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

38 (2) Notwithstanding paragraph (1), the Legislature further finds  
39 and declares that programs should be available for inmates,  
40 including, but not limited to, educational programs, that are

1 designed to prepare nonviolent felony offenders for successful  
2 reentry into the community. The Legislature encourages the  
3 development of policies and programs designed to educate and  
4 rehabilitate nonviolent felony offenders. In implementing this  
5 section, the Department of Corrections and Rehabilitation is  
6 encouraged to give priority enrollment in programs to promote  
7 successful return to the community to an inmate with a short  
8 remaining term of commitment and a release date that would allow  
9 him or her adequate time to complete the program.

10 (3) In any case in which the punishment prescribed by statute  
11 for a person convicted of a public offense is a term of imprisonment  
12 in the state prison of any specification of three time periods, the  
13 court shall sentence the defendant to one of the terms of  
14 imprisonment specified unless the convicted person is given any  
15 other disposition provided by law, including a fine, jail, probation,  
16 or the suspension of imposition or execution of sentence or is  
17 sentenced pursuant to subdivision (b) of Section 1168 because he  
18 or she had committed his or her crime prior to July 1, 1977. In  
19 sentencing the convicted person, the court shall apply the  
20 sentencing rules of the Judicial Council. The court, unless it  
21 determines that there are circumstances in mitigation of the  
22 punishment prescribed, shall also impose any other term that it is  
23 required by law to impose as an additional term. Nothing in this  
24 article shall affect any provision of law that imposes the death  
25 penalty, that authorizes or restricts the granting of probation or  
26 suspending the execution or imposition of sentence, or expressly  
27 provides for imprisonment in the state prison for life, *except as*  
28 *provided in paragraph (2) of subdivision (d)*. In any case in which  
29 the amount of preimprisonment credit under Section 2900.5 or any  
30 other provision of law is equal to or exceeds any sentence imposed  
31 pursuant to this chapter, the entire sentence shall be deemed to  
32 have been served and the defendant shall not be actually delivered  
33 to the custody of the secretary. The court shall advise the defendant  
34 that he or she shall serve a period of parole and order the defendant  
35 to report to the parole office closest to the defendant's last legal  
36 residence, unless the in-custody credits equal the total sentence,  
37 including both confinement time and the period of parole. The  
38 sentence shall be deemed a separate prior prison term under Section  
39 667.5, and a copy of the judgment and other necessary  
40 documentation shall be forwarded to the secretary.



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

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

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

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

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

4 *(ii) Notwithstanding clause (i), paragraph (2) shall not apply*  
5 *to defendants sentenced to life without parole for an offense where*  
6 *the defendant tortured, as described in Section 206, his or her*  
7 *victim or the victim was a public safety official, including any law*  
8 *enforcement personnel mentioned in Chapter 4.5 (commencing*  
9 *with Section 830) of Title 3, or any firefighter as described in*  
10 *Section 245.1, as well as any other officer in any segment of law*  
11 *enforcement who is employed by the federal government, the state,*  
12 *or any of its political subdivisions.*

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

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

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

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

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

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

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

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

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

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

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

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

24 (iv) Prior to the offense for which the sentence is being  
25 considered for recall, the defendant had insufficient adult support  
26 or supervision and had suffered from psychological or physical  
27 trauma, or significant stress.

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

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

38 (vii) The defendant has maintained family ties or connections  
39 with others through letter writing, calls, or visits, or has eliminated

1 *contact with individuals outside of prison who are currently*  
2 *involved with crime.*

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

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

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

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

28 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

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

36 (6) Notwithstanding any other provisions of this section, the  
37 prisoner or his or her family member or designee may  
38 independently request consideration for recall and resentencing  
39 by contacting the chief medical officer at the prison or the  
40 secretary. Upon receipt of the request, the chief medical officer

1 and the warden or the warden's representative shall follow the  
2 procedures described in paragraph (4). If the secretary determines  
3 that the prisoner satisfies the criteria set forth in paragraph (2), the  
4 secretary or board may recommend to the court that the prisoner's  
5 sentence be recalled. The secretary shall submit a recommendation  
6 for release within 30 days in the case of inmates sentenced to  
7 determinate terms and, in the case of inmates sentenced to  
8 indeterminate terms, the secretary shall make a recommendation  
9 to the Board of Parole Hearings with respect to the inmates who  
10 have applied under this section. The board shall consider this  
11 information and make an independent judgment pursuant to  
12 paragraph (2) and make findings related thereto before rejecting  
13 the request or making a recommendation to the court. This action  
14 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

7 SEC. 6.5. Section 1170 of the Penal Code, as amended by  
8 Section 3 of Chapter 136 of the Statutes of 2011, is amended to  
9 read:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

1 have applied under this section. The board shall consider this  
2 information and make an independent judgment pursuant to  
3 paragraph (2) and make findings related thereto before rejecting  
4 the request or making a recommendation to the court. This action  
5 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

38 (h) (1) Except as provided in paragraph (3), a felony punishable  
39 pursuant to this subdivision where the term is not specified in the

1 underlying offense shall be punishable by a term of imprisonment  
2 in a county jail for 16 months, or two or three years.

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

6 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
7 has a prior or current felony conviction for a serious felony  
8 described in subdivision (c) of Section 1192.7, a violent felony  
9 described in subdivision (c) of Section 667.5, is required to register  
10 as a sex offender pursuant to Chapter 5.5 (commencing with  
11 Section 290) of Title 9 of Part 1, or is convicted of a crime and as  
12 part of the sentence an enhancement pursuant to Section 186.11  
13 is imposed, an executed sentence for a felony punishable pursuant  
14 to this subdivision shall be served in state prison.

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

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

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

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

31 *SEC. 6.6. Section 1170 of the Penal Code, as amended by*  
32 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
33 *read:*

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

1 achieved by determinate sentences fixed by statute in proportion  
2 to the seriousness of the offense as determined by the Legislature  
3 to be imposed by the court with specified discretion.

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

16 (3) In any case in which the punishment prescribed by statute  
17 for a person convicted of a public offense is a term of imprisonment  
18 in the state prison of any specification of three time periods, the  
19 court shall sentence the defendant to one of the terms of  
20 imprisonment specified unless the convicted person is given any  
21 other disposition provided by law, including a fine, jail, probation,  
22 or the suspension of imposition or execution of sentence or is  
23 sentenced pursuant to subdivision (b) of Section 1168 because he  
24 or she had committed his or her crime prior to July 1, 1977. In  
25 sentencing the convicted person, the court shall apply the  
26 sentencing rules of the Judicial Council. The court, unless it  
27 determines that there are circumstances in mitigation of the  
28 punishment prescribed, shall also impose any other term that it is  
29 required by law to impose as an additional term. Nothing in this  
30 article shall affect any provision of law that imposes the death  
31 penalty, that authorizes or restricts the granting of probation or  
32 suspending the execution or imposition of sentence, or expressly  
33 provides for imprisonment in the state prison for life, *except as*  
34 *provided in paragraph (2) of subdivision (d)*. In any case in which  
35 the amount of preimprisonment credit under Section 2900.5 or any  
36 other provision of law is equal to or exceeds any sentence imposed  
37 pursuant to this chapter, the entire sentence shall be deemed to  
38 have been served and the defendant shall not be actually delivered  
39 to the custody of the secretary. The court shall advise the defendant  
40 that he or she shall serve a period of parole and order the defendant

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

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

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

31 (d) (1) When a defendant subject to this section or subdivision  
32 (b) of Section 1168 has been sentenced to be imprisoned in the  
33 state prison and has been committed to the custody of the secretary,  
34 the court may, within 120 days of the date of commitment on its  
35 own motion, or at any time upon the recommendation of the  
36 secretary or the Board of Parole Hearings, recall the sentence and  
37 commitment previously ordered and resentence the defendant in  
38 the same manner as if he or she had not previously been sentenced,  
39 provided the new sentence, if any, is no greater than the initial  
40 sentence. The ~~resentence~~ *court resentencing* under this subdivision

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

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

10 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*  
11 *to defendants sentenced to life without parole for an offense where*  
12 *the defendant tortured, as described in Section 206, his or her*  
13 *victim or the victim was a public safety official, including any law*  
14 *enforcement personnel mentioned in Chapter 4.5 (commencing*  
15 *with Section 830) of Title 3, or any firefighter as described in*  
16 *Section 245.1, as well as any other officer in any segment of law*  
17 *enforcement who is employed by the federal government, the state,*  
18 *or any of its political subdivisions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

32 (J) This subdivision shall have retroactive application.

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 resentencing  
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. 6.7. Section 1170 of the Penal Code, as amended by*  
5 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
6 *read:*

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

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

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

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

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

38 (c) The court shall state the reasons for its sentence choice on  
39 the record at the time of sentencing. The court shall also inform  
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section  
2 3000.

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

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

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

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

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

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

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

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

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

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

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



1 the request or making a recommendation to the court. This action  
2 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

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

4 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
5 (A) has a prior or current felony conviction for a serious felony  
6 described in subdivision (c) of Section ~~1192.7~~, 1192.7 or a prior  
7 or current conviction for a violent felony described in subdivision  
8 (c) of Section 667.5, (B) has a prior felony conviction in another  
9 jurisdiction for an offense that has all the elements of a serious  
10 felony described in subdivision (c) of Section 1192.7 or a violent  
11 felony described in subdivision (c) of Section 667.5, (C) is required  
12 to register as a sex offender pursuant to Chapter 5.5 (commencing  
13 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
14 and as part of the sentence an enhancement pursuant to Section  
15 186.11 is imposed, an executed sentence for a felony punishable  
16 pursuant to this subdivision shall be served in state prison.

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

21 (5) ~~A judge, The court~~, when imposing a sentence pursuant to  
22 paragraph ~~(1)~~, may order (1) or (2) of this subdivision, may commit  
23 the defendant to serve a term in a county jail for a period not to  
24 exceed the maximum possible term of confinement or may impose  
25 a sentence that includes a period of county jail time and a period  
26 of mandatory probation not to exceed the maximum possible  
27 sentence: county jail as follows:

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

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

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

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

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

9 *SEC. 6.8. Section 1170 of the Penal Code, as amended by*  
10 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
11 *read:*

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

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

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

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

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

1 enhancement upon which sentence is imposed under any provision  
2 of law. A term of imprisonment shall not be specified if imposition  
3 of sentence is suspended.

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

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

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

28 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*  
29 *to defendants sentenced to life without parole for an offense where*  
30 *the defendant tortured, as described in Section 206, his or her*  
31 *victim or the victim was a public safety official, including any law*  
32 *enforcement personnel mentioned in Chapter 4.5 (commencing*  
33 *with Section 830) of Title 3, or any firefighter as described in*  
34 *Section 245.1, as well as any other officer in any segment of law*  
35 *enforcement who is employed by the federal government, the state,*  
36 *or any of its political subdivisions.*

37 (B) *The defendant shall file the original petition with the*  
38 *sentencing court. A copy of the petition shall be served on the*  
39 *agency that prosecuted the case. The petition shall include the*  
40 *defendant's statement that he or she was under 18 years of age at*

1 *the time of the crime and was sentenced to life in prison without*  
2 *the possibility of parole, the defendant's statement describing his*  
3 *or her remorse and work towards rehabilitation, and the*  
4 *defendant's statement that one of the following is true:*

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

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

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

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

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

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

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

36 (F) *The factors that the court may consider when determining*  
37 *whether to recall and resentence include, but are not limited to,*  
38 *the following:*

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

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

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

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

11     (v) *The defendant suffers from cognitive limitations due to*  
12 *mental illness, developmental disabilities, or other factors that did*  
13 *not constitute a defense, but influenced the defendant’s involvement*  
14 *in the offense.*

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

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

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

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

37     (H) *If the sentence is not recalled, the defendant may submit*  
38 *another petition for recall and resentencing to the sentencing court*  
39 *when the defendant has been committed to the custody of the*  
40 *department for at least 20 years. If recall and resentencing is not*

1 *granted under that petition, the defendant may file another petition*  
2 *after having served 24 years. The final petition may be submitted,*  
3 *and the response to that petition shall be determined, during the*  
4 *25th year of the defendant's sentence.*

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

10 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

39 (4) Any physician employed by the department who determines  
40 that a prisoner has six months or less to live shall notify the chief



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

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

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

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

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

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

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

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

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

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

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

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

1 *jurisdiction for an offense that has all the elements of a serious*  
2 *felony described in subdivision (c) of Section 1192.7 or a violent*  
3 *felony described in subdivision (c) of Section 667.5, (C) is required*  
4 *to register as a sex offender pursuant to Chapter 5.5 (commencing*  
5 *with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime*  
6 *and as part of the sentence an enhancement pursuant to Section*  
7 *186.11 is imposed, an executed sentence for a felony punishable*  
8 *pursuant to this subdivision shall be served in state prison.*

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

13 (5) ~~A judge,~~ *The court*, when imposing a sentence pursuant to  
14 ~~paragraph (1), may order (1) or (2) of this subdivision, may commit~~  
15 ~~the defendant to serve a term in a county jail for a period not to~~  
16 ~~exceed the maximum possible term of confinement or may impose~~  
17 ~~a sentence that includes a period of county jail time and a period~~  
18 ~~of mandatory probation not to exceed the maximum possible~~  
19 ~~sentence.~~ *county jail as follows:*

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

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

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

38 (i) This section shall remain in effect only until January 1, ~~2012~~  
39 ~~2014~~, and as of that date is repealed, unless a later enacted statute,  
40 that is enacted before that date, deletes or extends that date.

1 SEC. 7. Section 1170 of the Penal Code, as amended by Section  
2 6 of Chapter 256 of the Statutes of 2010, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the request or making a recommendation to the court. This action  
2 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

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

33 *SEC. 7.3. Section 1170 of the Penal Code, as amended by*  
34 *Section 6 of Chapter 256 of the Statutes of 2010, is amended to*  
35 *read:*

36 1170. (a) (1) The Legislature finds and declares that the  
37 purpose of imprisonment for crime is punishment. This purpose  
38 is best served by terms proportionate to the seriousness of the  
39 offense with provision for uniformity in the sentences of offenders  
40 committing the same offense under similar circumstances. The



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

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

18 (3) In any case in which the punishment prescribed by statute  
19 for a person convicted of a public offense is a term of imprisonment  
20 in the state prison of any specification of three time periods, the  
21 court shall sentence the defendant to one of the terms of  
22 imprisonment specified unless the convicted person is given any  
23 other disposition provided by law, including a fine, jail, probation,  
24 or the suspension of imposition or execution of sentence or is  
25 sentenced pursuant to subdivision (b) of Section 1168 because he  
26 or she had committed his or her crime prior to July 1, 1977. In  
27 sentencing the convicted person, the court shall apply the  
28 sentencing rules of the Judicial Council. The court, unless it  
29 determines that there are circumstances in mitigation of the  
30 punishment prescribed, shall also impose any other term that it is  
31 required by law to impose as an additional term. Nothing in this  
32 article shall affect any provision of law that imposes the death  
33 penalty, that authorizes or restricts the granting of probation or  
34 suspending the execution or imposition of sentence, or expressly  
35 provides for imprisonment in the state prison for life, *except as*  
36 *provided in paragraph (2) of subdivision (d)*. In any case in which  
37 the amount of preimprisonment credit under Section 2900.5 or any  
38 other provision of law is equal to or exceeds any sentence imposed  
39 pursuant to this chapter, the entire sentence shall be deemed to  
40 have been served and the defendant shall not be actually delivered

1 to the custody of the secretary. The court shall advise the defendant  
2 that he or she shall serve a period of parole and order the defendant  
3 to report to the parole office closest to the defendant's last legal  
4 residence, unless the in-custody credits equal the total sentence,  
5 including both confinement time and the period of parole. The  
6 sentence shall be deemed a separate prior prison term under Section  
7 667.5, and a copy of the judgment and other necessary  
8 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) (1) When a defendant subject to this section or subdivision  
36 (b) of Section 1168 has been sentenced to be imprisoned in the  
37 state prison and has been committed to the custody of the secretary,  
38 the court may, within 120 days of the date of commitment on its  
39 own motion, or at any time upon the recommendation of the  
40 secretary 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 ~~resentencee~~ *court resentencing* under this subdivision  
5 shall apply the sentencing rules of the Judicial Council so as to  
6 eliminate disparity of sentences and to promote uniformity of  
7 sentencing. Credit shall be given for time served.

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

14 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*  
15 *to defendants sentenced to life without parole for an offense where*  
16 *the defendant tortured, as described in Section 206, his or her*  
17 *victim or the victim was a public safety official, including any law*  
18 *enforcement personnel mentioned in Chapter 4.5 (commencing*  
19 *with Section 830) of Title 3, or any firefighter as described in*  
20 *Section 245.1, as well as any other officer in any segment of law*  
21 *enforcement who is employed by the federal government, the state,*  
22 *or any of its political subdivisions.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (H) *If the sentence is not recalled, the defendant may submit*  
24 *another petition for recall and resentencing to the sentencing court*  
25 *when the defendant has been committed to the custody of the*  
26 *department for at least 20 years. If recall and resentencing is not*  
27 *granted under that petition, the defendant may file another petition*  
28 *after having served 24 years. The final petition may be submitted,*  
29 *and the response to that petition shall be determined, during the*  
30 *25th year of the defendant's sentence.*

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

36 (J) *This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (h) This section shall become operative on January 1, ~~2012~~  
15 *2014*.

16 SEC. 7.5. Section 1170 of the Penal Code, as amended by  
17 Section 4 of Chapter 136 of the Statutes of 2011, is amended to  
18 read:

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

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



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

31 (b) When a judgment of imprisonment is to be imposed and the  
32 statute specifies three possible terms, the court shall order  
33 imposition of the middle term, unless there are circumstances in  
34 aggravation or mitigation of the crime. At least four days prior to  
35 the time set for imposition of judgment, either party or the victim,  
36 or the family of the victim if the victim is deceased, may submit  
37 a statement in aggravation or mitigation to dispute facts in the  
38 record or the probation officer's report, or to present additional  
39 facts. In determining whether there are circumstances that justify  
40 imposition of the upper or lower term, the court may consider the

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

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

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

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

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

38 (A) The prisoner is terminally ill with an incurable condition  
39 caused by an illness or disease that would produce death within

1 six months, as determined by a physician employed by the  
2 department.

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

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

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

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

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

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

38 (6) Notwithstanding any other provisions of this section, the  
39 prisoner or his or her family member or designee may  
40 independently request consideration for recall and resentencing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1     *SEC. 7.6. Section 1170 of the Penal Code, as amended by*  
2     *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
3     *read:*

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

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

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

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

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

38 (c) The court shall state the reasons for its sentence choice on  
39 the record at the time of sentencing. The court shall also inform  
40 the defendant that as part of the sentence after expiration of the

1 term he or she may be on parole for a period as provided in Section  
2 3000.

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

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

22 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*  
23 *to defendants sentenced to life without parole for an offense where*  
24 *the defendant tortured, as described in Section 206, his or her*  
25 *victim or the victim was a public safety official, including any law*  
26 *enforcement personnel mentioned in Chapter 4.5 (commencing*  
27 *with Section 830) of Title 3, or any firefighter as described in*  
28 *Section 245.1, as well as any other officer in any segment of law*  
29 *enforcement who is employed by the federal government, the state,*  
30 *or any of its political subdivisions.*

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (I) In addition to the criteria in subparagraph (F), the court  
40 may consider any other criteria that the court deems relevant to

1 *its decision, so long as the court identifies them on the record,*  
2 *provides a statement of reasons for adopting them, and states why*  
3 *the defendant does or does not satisfy the criteria.*

4 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
31 has a prior or current felony conviction for a serious felony  
32 described in subdivision (c) of Section 1192.7, a violent felony  
33 described in subdivision (c) of Section 667.5, is required to register  
34 as a sex offender pursuant to Chapter 5.5 (commencing with  
35 Section 290) of Title 9 of Part 1, or is convicted of a crime and as  
36 part of the sentence an enhancement pursuant to Section 186.11  
37 is imposed, an executed sentence for a felony punishable pursuant  
38 to this subdivision shall be served in state prison.

39 (4) Nothing in this subdivision shall be construed to prevent  
40 other dispositions authorized by law, including pretrial diversion,

1 deferred entry of judgment, or an order granting probation pursuant  
2 to Section 1203.1.

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

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

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

13 *SEC. 7.7. Section 1170 of the Penal Code, as amended by*  
14 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
15 *read:*

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

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

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

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

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

1 prosecution, the defendant, or the victim, or the family of the victim  
2 if the victim is deceased, and any further evidence introduced at  
3 the sentencing hearing. The court shall set forth on the record the  
4 facts and reasons for imposing the upper or lower term. The court  
5 may not impose an upper term by using the fact of any  
6 enhancement upon which sentence is imposed under any provision  
7 of law. A term of imprisonment shall not be specified if imposition  
8 of sentence is suspended.

9 (c) The court shall state the reasons for its sentence choice on  
10 the record at the time of sentencing. The court shall also inform  
11 the defendant that as part of the sentence after expiration of the  
12 term he or she may be on parole for a period as provided in Section  
13 3000.

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

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

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

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

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



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

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

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

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

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

34 (6) Notwithstanding any other provisions of this section, the  
35 prisoner or his or her family member or designee may  
36 independently request consideration for recall and resentencing  
37 by contacting the chief medical officer at the prison or the  
38 secretary. Upon receipt of the request, the chief medical officer  
39 and the warden or the warden's representative shall follow the  
40 procedures described in paragraph (4). If the secretary determines

1 that the prisoner satisfies the criteria set forth in paragraph (2), the  
2 secretary or board may recommend to the court that the prisoner's  
3 sentence be recalled. The secretary shall submit a recommendation  
4 for release within 30 days in the case of inmates sentenced to  
5 determinate terms and, in the case of inmates sentenced to  
6 indeterminate terms, the secretary shall make a recommendation  
7 to the Board of Parole Hearings with respect to the inmates who  
8 have applied under this section. The board shall consider this  
9 information and make an independent judgment pursuant to  
10 paragraph (2) and make findings related thereto before rejecting  
11 the request or making a recommendation to the court. This action  
12 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

36 (f) Notwithstanding any other provision of this section, for  
37 purposes of paragraph (3) of subdivision (h), any allegation that  
38 a defendant is eligible for state prison due to a prior or current  
39 conviction, sentence enhancement, or because he or she is required

1 to register as a sex offender shall not be subject to dismissal  
2 pursuant to Section 1385.

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

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

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

13 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
14 (A) has a prior or current felony conviction for a serious felony  
15 described in subdivision (c) of Section ~~1192.7~~, 1192.7 or a prior  
16 or current conviction for a violent felony described in subdivision  
17 (c) of Section 667.5, (B) has a prior felony conviction in another  
18 jurisdiction for an offense that has all of the elements of a serious  
19 felony described in subdivision (c) of Section 1192.7 or a violent  
20 felony described in subdivision (c) of Section 667.5, (C) is required  
21 to register as a sex offender pursuant to Chapter 5.5 (commencing  
22 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
23 and as part of the sentence an enhancement pursuant to Section  
24 186.11 is imposed, an executed sentence for a felony punishable  
25 pursuant to this subdivision shall be served in state prison.

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

30 (5) ~~A judge, The court~~, when imposing a sentence pursuant to  
31 paragraph ~~(1)~~, may order (1) or (2) of this subdivision, may commit  
32 the defendant to serve a term in a county jail for a period not to  
33 exceed the maximum possible term of confinement or may impose  
34 a sentence which includes a period of county jail time and a period  
35 of mandatory probation not to exceed the maximum possible  
36 sentence: county jail as follows:

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

39 (B) For a term as determined in accordance with the applicable  
40 sentencing law, but suspend execution of a concluding portion of

1 *the term selected in the court's discretion, during which time the*  
2 *defendant shall be supervised by the county probation officer in*  
3 *accordance with the terms, conditions, and procedures generally*  
4 *applicable to persons placed on probation, for the remaining*  
5 *unserved portion of the sentence imposed by the court. The period*  
6 *of supervision shall be mandatory, and may not be earlier*  
7 *terminated except by court order. During the period when the*  
8 *defendant is under such supervision, unless in actual custody*  
9 *related to the sentence imposed by the court, the defendant shall*  
10 *be entitled to only actual time credit against the term of*  
11 *imprisonment imposed by the court.*

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

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

16 *SEC. 7.8. Section 1170 of the Penal Code, as amended by*  
17 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
18 *read:*

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

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

1 (3) In any case in which the punishment prescribed by statute  
2 for a person convicted of a public offense is a term of imprisonment  
3 in the state prison of any specification of three time periods, the  
4 court shall sentence the defendant to one of the terms of  
5 imprisonment specified unless the convicted person is given any  
6 other disposition provided by law, including a fine, jail, probation,  
7 or the suspension of imposition or execution of sentence or is  
8 sentenced pursuant to subdivision (b) of Section 1168 because he  
9 or she had committed his or her crime prior to July 1, 1977. In  
10 sentencing the convicted person, the court shall apply the  
11 sentencing rules of the Judicial Council. The court, unless it  
12 determines that there are circumstances in mitigation of the  
13 punishment prescribed, shall also impose any other term that it is  
14 required by law to impose as an additional term. Nothing in this  
15 article shall affect any provision of law that imposes the death  
16 penalty, that authorizes or restricts the granting of probation or  
17 suspending the execution or imposition of sentence, or expressly  
18 provides for imprisonment in the state prison for life, *except as*  
19 *provided in paragraph (2) of subdivision (d)*. In any case in which  
20 the amount of preimprisonment credit under Section 2900.5 or any  
21 other provision of law is equal to or exceeds any sentence imposed  
22 pursuant to this chapter, the entire sentence shall be deemed to  
23 have been served and the defendant shall not be actually delivered  
24 to the custody of the secretary. The court shall advise the defendant  
25 that he or she shall serve a period of parole and order the defendant  
26 to report to the parole office closest to the defendant's last legal  
27 residence, unless the in-custody credits equal the total sentence,  
28 including both confinement time and the period of parole. The  
29 sentence shall be deemed a separate prior prison term under Section  
30 667.5, and a copy of the judgment and other necessary  
31 documentation shall be forwarded to the secretary.

32 (b) When a judgment of imprisonment is to be imposed and the  
33 statute specifies three possible terms, the court shall order  
34 imposition of the middle term, unless there are circumstances in  
35 aggravation or mitigation of the crime. At least four days prior to  
36 the time set for imposition of judgment, either party or the victim,  
37 or the family of the victim if the victim is deceased, may submit  
38 a statement in aggravation or mitigation to dispute facts in the  
39 record or the probation officer's report, or to present additional  
40 facts. In determining whether there are circumstances that justify

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

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

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

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

37 (ii) *Notwithstanding clause (i), paragraph (2) shall not apply*  
38 *to defendants sentenced to life without parole for an offense where*  
39 *the defendant tortured, as described in Section 206, his or her*  
40 *victim or the victim was a public safety official, including any law*

1 enforcement personnel mentioned in Chapter 4.5 (commencing  
2 with Section 830) of Title 3, or any firefighter as described in  
3 Section 245.1, as well as any other officer in any segment of law  
4 enforcement who is employed by the federal government, the state,  
5 or any of its political subdivisions.

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

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

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

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

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

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

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

37 (E) If the court finds by a preponderance of the evidence that  
38 the statements in the petition are true, the court shall hold a  
39 hearing to consider whether to recall the sentence and commitment  
40 previously ordered and to resentence the defendant in the same

1 manner as if the defendant had not previously been sentenced,  
2 provided that the new sentence, if any, is not greater than the initial  
3 sentence. Victims, or victim family members if the victim is  
4 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

37 (G) The court shall have the discretion to recall the sentence  
38 and commitment previously ordered and to resentence the  
39 defendant in the same manner as if the defendant had not  
40 previously been sentenced, provided that the new sentence, if any,



1 *is not greater than the initial sentence. The discretion of the court*  
2 *shall be exercised in consideration of the criteria in subparagraph*  
3 *(B). Victims, or victim family members if the victim is deceased,*  
4 *shall be notified of the resentencing hearing and shall retain their*  
5 *rights to participate in the hearing.*

6 *(H) If the sentence is not recalled, the defendant may submit*  
7 *another petition for recall and resentencing to the sentencing court*  
8 *when the defendant has been committed to the custody of the*  
9 *department for at least 20 years. If recall and resentencing is not*  
10 *granted under that petition, the defendant may file another petition*  
11 *after having served 24 years. The final petition may be submitted,*  
12 *and the response to that petition shall be determined, during the*  
13 *25th year of the defendant's sentence.*

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

19 *(J) This subdivision shall have retroactive application.*

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

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

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

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

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

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

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

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

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

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

1 have applied under this section. The board shall consider this  
2 information and make an independent judgment pursuant to  
3 paragraph (2) and make findings related thereto before rejecting  
4 the request or making a recommendation to the court. This action  
5 shall be taken at the next lawfully noticed board meeting.

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

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

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

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

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

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

38 (h) (1) Except as provided in paragraph (3), a felony punishable  
39 pursuant to this subdivision where the term is not specified in the

1 underlying offense shall be punishable by a term of imprisonment  
2 in a county jail for 16 months, or two or three years.

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

6 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
7 (A) has a prior or current felony conviction for a serious felony  
8 described in subdivision (c) of Section ~~1192.7~~, *1192.7* or a prior  
9 or current conviction for a violent felony described in subdivision  
10 (c) of Section 667.5, (B) has a prior felony conviction in another  
11 jurisdiction for an offense that has all of the elements of a serious  
12 felony described in subdivision (c) of Section 1192.7 or a violent  
13 felony described in subdivision (c) of Section 667.5, (C) is required  
14 to register as a sex offender pursuant to Chapter 5.5 (commencing  
15 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
16 and as part of the sentence an enhancement pursuant to Section  
17 186.11 is imposed, an executed sentence for a felony punishable  
18 pursuant to this subdivision shall be served in state prison.

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

23 (5) ~~A judge, The court~~, when imposing a sentence pursuant to  
24 paragraph ~~(1)~~, ~~may order (1) or (2) of this subdivision~~, *may commit*  
25 the defendant to serve a term in a county jail for a period not to  
26 exceed the maximum possible term of confinement or may impose  
27 a sentence which includes a period of county jail time and a period  
28 of mandatory probation not to exceed the maximum possible  
29 sentence: *county jail as follows:*

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

32 (B) *For a term as determined in accordance with the applicable*  
33 *sentencing law, but suspend execution of a concluding portion of*  
34 *the term selected in the court's discretion, during which time the*  
35 *defendant shall be supervised by the county probation officer in*  
36 *accordance with the terms, conditions, and procedures generally*  
37 *applicable to persons placed on probation, for the remaining*  
38 *unserved portion of the sentence imposed by the court. The period*  
39 *of supervision shall be mandatory, and may not be earlier*  
40 *terminated except by court order. During the period when the*

1 *defendant is under such supervision, unless in actual custody*  
2 *related to the sentence imposed by the court, the defendant shall*  
3 *be entitled to only actual time credit against the term of*  
4 *imprisonment imposed by the court.*

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

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

9 SEC. 8. Section 1170.1 of the Penal Code, as amended by  
10 Section 7 of Chapter 256 of the Statutes of 2010, is amended to  
11 read:

12 1170.1. (a) Except as otherwise provided by law, and subject  
13 to Section 654, when any person is convicted of two or more  
14 felonies, whether in the same proceeding or court or in different  
15 proceedings or courts, and whether by judgment rendered by the  
16 same or by a different court, and a consecutive term of  
17 imprisonment is imposed under Sections 669 and 1170, the  
18 aggregate term of imprisonment for all these convictions shall be  
19 the sum of the principal term, the subordinate term, and any  
20 additional term imposed for applicable enhancements for prior  
21 convictions, prior prison terms, and Section 12022.1. The principal  
22 term shall consist of the greatest term of imprisonment imposed  
23 by the court for any of the crimes, including any term imposed for  
24 applicable specific enhancements. The subordinate term for each  
25 consecutive offense shall consist of one-third of the middle term  
26 of imprisonment prescribed for each other felony conviction for  
27 which a consecutive term of imprisonment is imposed, and shall  
28 include one-third of the term imposed for any specific  
29 enhancements applicable to those subordinate offenses.

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

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

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

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

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

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

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

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

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

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

7 SEC. 8.5. Section 1170.1 of the Penal Code, as amended by  
8 Section 29 of Chapter 39 of the Statutes of 2011, is amended to  
9 read:

10 1170.1. (a) Except as otherwise provided by law, and subject  
11 to Section 654, when any person is convicted of two or more  
12 felonies, whether in the same proceeding or court or in different  
13 proceedings or courts, and whether by judgment rendered by the  
14 same or by a different court, and a consecutive term of  
15 imprisonment is imposed under Sections 669 and 1170, the  
16 aggregate term of imprisonment for all these convictions shall be  
17 the sum of the principal term, the subordinate term, and any  
18 additional term imposed for applicable enhancements for prior  
19 convictions, prior prison terms, and Section 12022.1. The principal  
20 term shall consist of the greatest term of imprisonment imposed  
21 by the court for any of the crimes, including any term imposed for  
22 applicable specific enhancements. The subordinate term for each  
23 consecutive offense shall consist of one-third of the middle term  
24 of imprisonment prescribed for each other felony conviction for  
25 which a consecutive term of imprisonment is imposed, and shall  
26 include one-third of the term imposed for any specific  
27 enhancements applicable to those subordinate offenses. Whenever  
28 a court imposes a term of imprisonment in the state prison, whether  
29 the term is a principal or subordinate term, the aggregate term shall  
30 be served in the state prison, regardless as to whether or not one  
31 of the terms specifies imprisonment in the county jail pursuant to  
32 subdivision (h) of Section 1170.

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

39 (c) In the case of any person convicted of one or more felonies  
40 committed while the person is confined in a state prison or is

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

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

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

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

35 (g) When two or more enhancements may be imposed for the  
36 infliction of great bodily injury on the same victim in the  
37 commission of a single offense, only the greatest of those  
38 enhancements shall be imposed for that offense. This subdivision  
39 shall not limit the imposition of any other enhancements applicable



1 to that offense, including an enhancement for being armed with  
2 or using a dangerous or deadly weapon or a firearm.

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

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

11 *SEC. 8.7. Section 1170.1 of the Penal Code, as amended by*  
12 *Section 29 of Chapter 39 of the Statutes of 2011, is amended to*  
13 *read:*

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

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

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

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

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

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

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

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

1 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 being armed with  
5 or using a dangerous or deadly weapon or a firearm.

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

11 (i) This section shall remain in effect only until January 1, ~~2012~~  
12 ~~2014~~, and as of that date is repealed, unless a later enacted statute,  
13 that is enacted before January 1, ~~2012~~ ~~2014~~, deletes or extends  
14 that date.

15 SEC. 9. Section 1170.1 of the Penal Code, as amended by  
16 Section 8 of Chapter 256 of the Statutes of 2010, is amended to  
17 read:

18 1170.1. (a) Except as otherwise provided by law, and subject  
19 to Section 654, when any person is convicted of two or more  
20 felonies, whether in the same proceeding or court or in different  
21 proceedings or courts, and whether by judgment rendered by the  
22 same or by a different court, and a consecutive term of  
23 imprisonment is imposed under Sections 669 and 1170, the  
24 aggregate term of imprisonment for all these convictions shall be  
25 the sum of the principal term, the subordinate term, and any  
26 additional term imposed for applicable enhancements for prior  
27 convictions, prior prison terms, and Section 12022.1. The principal  
28 term shall consist of the greatest term of imprisonment imposed  
29 by the court for any of the crimes, including any term imposed for  
30 applicable specific enhancements. The subordinate term for each  
31 consecutive offense shall consist of one-third of the middle term  
32 of imprisonment prescribed for each other felony conviction for  
33 which a consecutive term of imprisonment is imposed, and shall  
34 include one-third of the term imposed for any specific  
35 enhancements applicable to those subordinate offenses.

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

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

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

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

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

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

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

1 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 being armed with  
5 or using a dangerous or deadly weapon or a firearm.

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

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

12 SEC. 9.5. Section 1170.1 of the Penal Code, as amended by  
13 Section 30 of Chapter 39 of the Statutes of 2011, is amended to  
14 read:

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

38 (b) If a person is convicted of two or more violations of  
39 kidnapping, as defined in Section 207, involving separate victims,  
40 the subordinate term for each consecutive offense of kidnapping

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

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

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

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

33 (f) When two or more enhancements may be imposed for being  
34 armed with or using a dangerous or deadly weapon or a firearm  
35 in the commission of a single offense, only the greatest of those  
36 enhancements shall be imposed for that offense. This subdivision  
37 shall not limit the imposition of any other enhancements applicable  
38 to that offense, including an enhancement for the infliction of great  
39 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 become operative on January 1, 2014.

14 *SEC. 9.7. Section 1170.1 of the Penal Code, as amended by*  
15 *Section 30 of Chapter 39 of the Statutes of 2011, is amended to*  
16 *read:*

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

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

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

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

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

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



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

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

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

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

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

19 1170.3. The Judicial Council shall seek to promote uniformity  
20 in sentencing under Section 1170 by:

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

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

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

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

35 SEC. 11. Section 1170.3 of the Penal Code, as amended by  
36 Section 10 of Chapter 256 of the Statutes of 2010, is amended to  
37 read:

38 1170.3. The Judicial Council shall seek to promote uniformity  
39 in sentencing under Section 1170 by:

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

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

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

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

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

16 12021.5. (a) Every person who carries a loaded or unloaded  
17 firearm on his or her person, or in a vehicle, during the commission  
18 or attempted commission of any street gang crimes described in  
19 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
20 the felony or attempted felony, be punished by an additional term  
21 of imprisonment in the state prison for one, two, or three years in  
22 the court’s discretion. The court shall impose the middle term  
23 unless there are circumstances in aggravation or mitigation. The  
24 court shall state the reasons for its enhancement choice on the  
25 record at the time of sentence.

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 in  
34 the court’s discretion. The court shall impose the middle term  
35 unless there are circumstances in aggravation or mitigation. The  
36 court shall state the reasons for its enhancement choice on the  
37 record at the time of sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) “Rifle” shall have the same meaning as specified in Section  
31 17090.

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

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

35 SEC. 12.3. Section 12021.5 of the Penal Code, as amended by  
36 Section 504 of Chapter 15 of the Statutes of 2011, is amended to  
37 read:

38 12021.5. (a) Every person who carries a loaded or unloaded  
39 firearm on his or her person, or in a vehicle, during the commission  
40 or attempted commission of any street gang crimes described in

1 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
2 the felony or attempted felony, be punished by an additional term  
3 of imprisonment pursuant to subdivision (h) of Section 1170 for  
4 one, two, or three years in the court's discretion. The court shall  
5 impose the middle term unless there are circumstances in  
6 aggravation or mitigation. The court shall state the reasons for its  
7 enhancement choice on the record at the time of sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (5) “Rifle” shall have the same meaning as specified in Section  
13 17090.

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

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

17 SEC. 12.5. Section 12021.5 of the Penal Code, as amended by  
18 Section 56 of Chapter 39 of the Statutes of 2011, is amended to  
19 read:

20 12021.5. (a) Every person who carries a loaded or unloaded  
21 firearm on his or her person, or in a vehicle, during the commission  
22 or attempted commission of any street gang crimes described in  
23 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
24 the felony or attempted felony, be punished by an additional term  
25 of imprisonment pursuant to subdivision (h) of Section 1170 for  
26 one, two, or three years. The court shall select the sentence  
27 enhancement which, in the court’s discretion, best serves the  
28 interests of justice and shall state the reasons for its choice on the  
29 record at the time of sentence, in accordance with the provisions  
30 of subdivision (d) of Section 1170.1.

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

1 reasons for its choice on the record at the time of sentence, in  
2 accordance with the provisions of subdivision (d) of Section  
3 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (5) “Rifle” shall have the same meaning as specified in Section  
37 17090.

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

1 (d) 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. 12.7. Section 12021.5 of the Penal Code, as amended by  
5 Section 57 of Chapter 39 of the Statutes of 2011, is repealed.

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

7 12021.5. (a) Every person who carries a loaded or unloaded  
8 firearm on his or her person, or in a vehicle, during the commission  
9 or attempted commission of any street gang crimes described in  
10 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
11 the felony or attempted felony, be punished by an additional term  
12 of imprisonment in the state prison for one, two, or three years.  
13 The court shall select the sentence enhancement which, in the  
14 court's discretion, best serves the interests of justice and shall state  
15 the reasons for its choice on the record at the time of sentence, in  
16 accordance with the provisions of subdivision (d) of Section  
17 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (5) “Rifle” shall have the same meaning as specified in  
24 paragraph (20) of subdivision (c) of Section 12020 until January  
25 1, 2012, and, on or after that date, Section 17090.

26 (6) “Shotgun” shall have the same meaning as specified in  
27 paragraph (21) of subdivision (c) of Section 12020 until January  
28 1, 2012, and, on or after that date, Section 17190.

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

32 SEC. 14. Section 12022.2 of the Penal Code, as added by  
33 Section 6.02 of Chapter 711 of the Statutes of 2010, is amended  
34 to read:

35 12022.2. (a) Any person who, while armed with a firearm in  
36 the commission or attempted commission of any felony, has in his  
37 or her immediate possession ammunition for the firearm designed  
38 primarily to penetrate metal or armor, shall upon conviction of  
39 that felony or attempted felony, in addition and consecutive to the  
40 punishment prescribed for the felony or attempted felony, be



1 punished by an additional term of 3, 4, or 10 years. The court shall  
2 order the middle term unless there are circumstances in aggravation  
3 or mitigation. The court shall state the reasons for its enhancement  
4 choice on the record at the time of the sentence.

5 (b) Any person who wears a body vest in the commission or  
6 attempted commission of a violent offense, as defined in Section  
7 29905, shall, upon conviction of that felony or attempted felony,  
8 in addition and consecutive to the punishment prescribed for the  
9 felony or attempted felony of which he or she has been convicted,  
10 be punished by an additional term of one, two, or five years. The  
11 court shall order the middle term unless there are circumstances  
12 in aggravation or mitigation. The court shall state the reasons for  
13 its enhancement choice on the record at the time of the sentence.

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

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

18 SEC. 15. Section 12022.2 is added to the Penal Code, to read:

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

30 (b) Any person who wears a body vest in the commission or  
31 attempted commission of a violent offense, as defined in  
32 subdivision (b) of Section 12021.1, until January 1, 2012, and, on  
33 or after that date, Section 29905, shall, upon conviction of that  
34 felony or attempted felony, in addition and consecutive to the  
35 punishment prescribed for the felony or attempted felony of which  
36 he or she has been convicted, be punished by an additional term  
37 of one, two, or five years. The court shall select the sentence  
38 enhancement which, in the court’s discretion, best serves the  
39 interests of justice and shall state the reasons for its choice on the

1 record at the time of the sentence in accordance with the provisions  
2 of subdivision (d) of Section 1170.1.

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

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

9 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
10 Section 6.03 of Chapter 711 of the Statutes of 2010, is amended  
11 to read:

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

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

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

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

1 in the accusatory pleading and admitted or found to be true by the  
2 trier of fact.

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

6 ~~SEC. 18. Sections 6.5 and 7.5 of this bill incorporate~~

7 *SEC. 18. (a) Sections 6.3 and 7.3 of this bill incorporate*  
8 *amendments to Section 1170 of the Penal Code proposed by both*  
9 *this bill and Senate Bill 9. Sections 6.3 and 7.3 shall become*  
10 *operative only if (1) both bills are enacted and become effective*  
11 *on or before January 1, 2012, (2) each bill amends Section 1170*  
12 *of the Penal Code, (3) neither Assembly Bill 17 of the First*  
13 *Extraordinary Session or Senate Bill 5 of the First Extraordinary*  
14 *Session is enacted, or as enacted, neither amends that section, (4)*  
15 *Assembly Bill 116 does not become operative, and (5) this bill is*  
16 *enacted after Senate Bill 9, in which case Sections 6.5, 6.6, 6.7,*  
17 *6.8., 7.5, 7.6, 7.7, and 7.8 shall not become operative and Section*  
18 *1170 of the Penal Code, as amended by Sections 6 and 7, shall*  
19 *remain operative only until January 1, 2012, at which point*  
20 *Sections 6.3 and 7.3 of this bill shall become operative.*

21 (b) Sections 6.5 and 7.5 of this bill incorporate amendments to  
22 Section 1170 of the Penal Code proposed by both this bill and  
23 Assembly Bill 116, which has been chaptered but is not operative.  
24 Sections 6.5 and 7.5 shall become operative only if (1) this bill is  
25 enacted and becomes effective on or before January 1, 2012, (2)  
26 this bill amends Section 1170 of the Penal Code, (3) *Senate Bill 9*  
27 *is not enacted, or as enacted does not amend that section and*  
28 *neither Assembly Bill 17 of the First Extraordinary Session or*  
29 *Senate Bill 5 of the First Extraordinary Session is enacted, or as*  
30 *enacted, neither amends that section, and*~~(3)~~ (4) Assembly Bill  
31 116 becomes operative, in which case Sections 6.3, 6.6, 6.7, 6.8,  
32 7.3, 7.6, 7.7, and 7.8 of this bill shall not become operative, and  
33 Section 1170 of the Penal Code, as amended by Sections 6 and 7,  
34 shall remain operative only until the operative date of Assembly  
35 Bill 116, at which time Sections 6.5 and 7.5 of this bill shall  
36 become operative.

37 (c) Sections 6.6 and 7.6 of this bill incorporate amendments to  
38 Section 1170 of the Penal Code proposed by this bill, Senate Bill  
39 9, and Assembly Bill 116, which is chaptered but not operative.  
40 Sections 6.6 and 7.6 shall become operative only if (1) this bill

1 and Senate Bill 9 are enacted and become effective on or before  
2 January 1, 2012, (2) Assembly Bill 116 becomes operative, (3)  
3 neither Assembly Bill 17 of the First Extraordinary Session or  
4 Senate Bill 5 of the First Extraordinary Session is enacted, or as  
5 enacted, neither amends that section, (4) the bills, as enacted,  
6 amend Section 1170 of the Penal Code, and (5) this bill is enacted  
7 after Senate Bill 9, in which case Sections 6.7, 6.8, 7.7, and 7.8 of  
8 this bill shall not become operative. Section 1170 of the Penal  
9 Code, as amended by Sections 6 and 7, shall remain operative  
10 only until the operative date of Assembly Bill 116, at which time  
11 Sections 6.5 and 7.5 shall become operative until January 1, 2012,  
12 at which time Sections 6.5 and 7.5 shall become inoperative and  
13 Sections 6.6 and 7.6 of this bill shall become operative.

14 (d) Sections 6.7 and 7.7 of this bill incorporate amendments to  
15 Section 1170 of the Penal Code proposed by both this bill, either  
16 Assembly Bill 17 of the First Extraordinary Session or Senate Bill  
17 5 of the First Extraordinary Session, and Assembly Bill 116, which  
18 is chaptered but not operative. Sections 6.7 and 7.7 shall become  
19 operative only if (1) this bill and either Assembly Bill 17 of the  
20 First Extraordinary Session or Senate Bill 5 of the First  
21 Extraordinary Session are enacted and become effective on or  
22 before January 1, 2012, (2) Assembly Bill 116 becomes operative,  
23 (3) Senate Bill 9 is not enacted, or as enacted does not amend that  
24 section, (4) the bills, as enacted, amend Section 1170 of the Penal  
25 Code, and (5) this bill is enacted after either Assembly Bill 17 of  
26 the First Extraordinary Session or Senate Bill 5 of the First  
27 Extraordinary Session, in which case Sections 6.3, 6.5, 6.6, 6.8,  
28 7.3, 7.5, 7.6, and 7.8 shall not become operative and Section 1170  
29 of the Penal Code, as amended by Sections 6 and 7, shall remain  
30 operative only until the operative date of Assembly Bill 116, at  
31 which time Sections 6.7 and 7.7 of this bill shall become operative.

32 (e) Sections 6.8 and 7.8 of this bill incorporate amendments to  
33 Section 1170 of the Penal Code proposed by this bill, Senate Bill  
34 9, either Assembly Bill 17 of the First Extraordinary Session or  
35 Senate Bill 5 of the First Extraordinary Session, and Assembly  
36 Bill 116, which is chaptered but not operative. Sections 6.8 and  
37 7.8 shall only become operative if (1) this bill, Senate Bill 9, and  
38 either Assembly Bill 17 of the First Extraordinary Session or Senate  
39 Bill 5 of the First Extraordinary Session are enacted and become  
40 effective on or before January 1, 2012, (2) Assembly Bill 116

1 *becomes operative, (3) the bills, as enacted, amend Section 1170*  
2 *of the Penal Code, and (4) this bill is enacted after Senate Bill 9,*  
3 *and enacted after either Assembly Bill 17 of the First Extraordinary*  
4 *Session or Senate Bill 5 of the First Extraordinary Session, in*  
5 *which case Sections 6.3, 6.5, 6.6, 7.3, 7.5, and 7.6 shall not become*  
6 *operative. Section 1170 of the Penal Code, as amended by Sections*  
7 *6 and 7, shall remain operative only until the operative date of*  
8 *Assembly Bill 116, at which time Sections 6.7 and 7.7 shall become*  
9 *operative only until January 1, 2012, at which time Sections 6.7*  
10 *and 7.7 shall become inoperative and Sections 6.8 and 7.8 shall*  
11 *become operative.*

12 SEC. 19. (a) Sections 8.5 and 9.5 of this bill incorporate  
13 amendments to Section 1170.1 of the Penal Code proposed by  
14 both this bill and Assembly Bill 117, which has been chaptered  
15 but is not operative. Sections 8.5 and 9.5 shall become operative  
16 only if (1) this bill is enacted and becomes effective on or before  
17 January 1, 2012, (2) this bill amends Section 1170.1 of the Penal  
18 Code, (3) *neither Assembly Bill 17 of the First Extraordinary*  
19 *Session or Senate Bill 5 of the First Extraordinary Session is*  
20 *enacted, or as enacted, neither amends that section, and*~~(3)~~ (4)  
21 *Assembly Bill 117 becomes operative, in which case Sections 8.7*  
22 *and 9.7 of this bill shall not become operative and Section 1170.1*  
23 *of the Penal Code, as amended by Sections 8 and 9 of this bill,*  
24 *shall remain operative only until the operative date of Assembly*  
25 *Bill 117, at which time Sections 8.5 and 9.5 of this bill shall*  
26 *become operative.*

27 (b) *Sections 8.7 and 9.7 of this bill incorporate amendments to*  
28 *Section 1170.1 of the Penal Code proposed by this bill, either*  
29 *Assembly Bill 17 of the First Extraordinary Session or Senate Bill*  
30 *5 of the First Extraordinary Session, and Assembly Bill 117, which*  
31 *has been chaptered but is not operative. Sections 8.7 and 9.7 shall*  
32 *become operative only if (1) this bill and either Assembly Bill 17*  
33 *of the First Extraordinary Session or Senate Bill 5 of the First*  
34 *Extraordinary Session are enacted and become effective on or*  
35 *before January 1, 2012, (2) the bills, as enacted, amend Section*  
36 *1170.1 of the Penal Code, and (3) Assembly Bill 117 becomes*  
37 *operative, in which case Sections 8.5 and 9.5 of this bill shall not*  
38 *become effective and Section 1170.1 of the Penal Code, as amended*  
39 *by Sections 8 and 9 of this bill, shall remain operative only until*

1 *the operative date of Assembly Bill 117, at which time Sections*  
2 *8.7 and 9.7 of this bill shall become operative.*

3 SEC. 20. Section 12.3 of this bill incorporates amendments to  
4 Section 12021.5 of the Penal Code proposed by both this bill and  
5 Assembly Bill 109, which has been chaptered but is not operative.  
6 Section 12.3 shall become operative only if (1) this bill is enacted  
7 and becomes effective on or before January 1, 2012, (2) this bill  
8 amends Section 12021.5 of the Penal Code, and (3) Assembly Bill  
9 109 becomes operative, in which case Section 12021.5, as amended  
10 by Section 12 of this bill, shall remain operative only until the  
11 operative date of Assembly Bill 109, at which time Section 12.3  
12 of this bill shall become operative.

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

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

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

- 1 In order to ensure, at the earliest possible time, appropriate
- 2 sentencing of those convicted of committing crimes, it is necessary
- 3 for this act to take effect immediately.

O