

**Introduced by Senator Monning**

February 11, 2016

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

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1016, as introduced, Monning. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and sentencing generally, operative until January 1, 2017, specify that the appropriate term rests within the sound discretion of the court. Existing law, operative on and after January 1, 2017, 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, 2022, 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 2/3 vote of the membership of each house, and therefore requires a 2/3 vote.

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

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

1     SECTION 1. Section 186.22 of the Penal Code, as amended  
2     by Section 1 of Chapter 508 of the Statutes of 2013, is amended  
3     to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (6) Discharging or permitting the discharge of a firearm from  
33 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
34 12034 until January 1, 2012, and, on or after that date, subdivisions  
35 (a) and (b) of Section 26100.

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

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

- 1 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
2 487.
- 3 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 4 (11) Burglary, as defined in Section 459.
- 5 (12) Rape, as defined in Section 261.
- 6 (13) Looting, as defined in Section 463.
- 7 (14) Money laundering, as defined in Section 186.10.
- 8 (15) Kidnapping, as defined in Section 207.
- 9 (16) Mayhem, as defined in Section 203.
- 10 (17) Aggravated mayhem, as defined in Section 205.
- 11 (18) Torture, as defined in Section 206.
- 12 (19) Felony extortion, as defined in Sections 518 and 520.
- 13 (20) Felony vandalism, as defined in paragraph (1) of  
14 subdivision (b) of Section 594.
- 15 (21) Carjacking, as defined in Section 215.
- 16 (22) The sale, delivery, or transfer of a firearm, as defined in  
17 Section 12072 until January 1, 2012, and, on or after that date,  
18 Article 1 (commencing with Section 27500) of Chapter 4 of  
19 Division 6 of Title 4 of Part 6.
- 20 (23) Possession of a pistol, revolver, or other firearm capable  
21 of being concealed upon the person in violation of paragraph (1)  
22 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
23 or after that date, Section 29610.
- 24 (24) Threats to commit crimes resulting in death or great bodily  
25 injury, as defined in Section 422.
- 26 (25) Theft and unlawful taking or driving of a vehicle, as defined  
27 in Section 10851 of the Vehicle Code.
- 28 (26) Felony theft of an access card or account information, as  
29 defined in Section 484e.
- 30 (27) Counterfeiting, designing, using, or attempting to use an  
31 access card, as defined in Section 484f.
- 32 (28) Felony fraudulent use of an access card or account  
33 information, as defined in Section 484g.
- 34 (29) Unlawful use of personal identifying information to obtain  
35 credit, goods, services, or medical information, as defined in  
36 Section 530.5.
- 37 (30) Wrongfully obtaining Department of Motor Vehicles  
38 documentation, as defined in Section 529.7.
- 39 (31) Prohibited possession of a firearm in violation of Section  
40 12021 until January 1, 2012, and on or after that date, Chapter 2

1 (commencing with Section 29800) of Division 9 of Title 4 of Part  
2 6.

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

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

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

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

23 (h) Notwithstanding any other provision of law, for each person  
24 committed to the Department of Corrections and Rehabilitation,  
25 Division of Juvenile Facilities for a conviction pursuant to  
26 subdivision (a) or (b) of this section, the offense shall be deemed  
27 one for which the state shall pay the rate of 100 percent of the per  
28 capita institutional cost of the Department of Corrections and  
29 Rehabilitation, Division of Juvenile Facilities, pursuant to Section  
30 912.5 of the Welfare and Institutions Code.

31 (i) In order to secure a conviction or sustain a juvenile petition,  
32 pursuant to subdivision (a) it is not necessary for the prosecution  
33 to prove that the person devotes all, or a substantial part, of his or  
34 her time or efforts to the criminal street gang, nor is it necessary  
35 to prove that the person is a member of the criminal street gang.  
36 Active participation in the criminal street gang is all that is  
37 required.

38 (j) A pattern of gang activity may be shown by the commission  
39 of one or more of the offenses enumerated in paragraphs (26) to  
40 (30), inclusive, of subdivision (e), and the commission of one or

1 more of the offenses enumerated in paragraphs (1) to (25),  
2 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
3 of gang activity cannot be established solely by proof of  
4 commission of offenses enumerated in paragraphs (26) to (30),  
5 inclusive, of subdivision (e), alone.

6 (k) This section shall remain in effect only until January 1, ~~2017~~,  
7 2022, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
9 that date.

10 SEC. 2. Section 186.22 of the Penal Code, as amended by  
11 Section 2 of Chapter 508 of the Statutes of 2013, is amended to  
12 read:

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

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

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

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

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

38 (2) If the underlying felony described in paragraph (1) is  
39 committed on the grounds of, or within 1,000 feet of, a public or  
40 private elementary, vocational, junior high, or high school, during

1 hours in which the facility is open for classes or school-related  
2 programs or when minors are using the facility, that fact shall be  
3 a circumstance in aggravation of the crime in imposing a term  
4 under paragraph (1).

5 (3) The court shall order the imposition of the middle term of  
6 the sentence enhancement, unless there are circumstances in  
7 aggravation or mitigation. The court shall state the reasons for its  
8 choice of sentencing enhancements on the record at the time of  
9 the sentencing.

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

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

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

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

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

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



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

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

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

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

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

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

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

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034 until January 1, 2012, and, on or after that date, subdivisions (a) and (b) of Section 26100.

- 1 (7) Arson, as defined in Chapter 1 (commencing with Section  
2 450) of Title 13.
- 3 (8) The intimidation of witnesses and victims, as defined in  
4 Section 136.1.
- 5 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
6 487.
- 7 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 8 (11) Burglary, as defined in Section 459.
- 9 (12) Rape, as defined in Section 261.
- 10 (13) Looting, as defined in Section 463.
- 11 (14) Money laundering, as defined in Section 186.10.
- 12 (15) Kidnapping, as defined in Section 207.
- 13 (16) Mayhem, as defined in Section 203.
- 14 (17) Aggravated mayhem, as defined in Section 205.
- 15 (18) Torture, as defined in Section 206.
- 16 (19) Felony extortion, as defined in Sections 518 and 520.
- 17 (20) Felony vandalism, as defined in paragraph (1) of  
18 subdivision (b) of Section 594.
- 19 (21) Carjacking, as defined in Section 215.
- 20 (22) The sale, delivery, or transfer of a firearm, as defined in  
21 Section 12072 until January 1, 2012, and, on or after that date,  
22 Article 1 (commencing with Section 27500) of Chapter 4 of  
23 Division 6 of Title 4 of Part 6.
- 24 (23) Possession of a pistol, revolver, or other firearm capable  
25 of being concealed upon the person in violation of paragraph (1)  
26 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
27 or after that date, Section 29610.
- 28 (24) Threats to commit crimes resulting in death or great bodily  
29 injury, as defined in Section 422.
- 30 (25) Theft and unlawful taking or driving of a vehicle, as defined  
31 in Section 10851 of the Vehicle Code.
- 32 (26) Felony theft of an access card or account information, as  
33 defined in Section 484e.
- 34 (27) Counterfeiting, designing, using, or attempting to use an  
35 access card, as defined in Section 484f.
- 36 (28) Felony fraudulent use of an access card or account  
37 information, as defined in Section 484g.
- 38 (29) Unlawful use of personal identifying information to obtain  
39 credit, goods, services, or medical information, as defined in  
40 Section 530.5.

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

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

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

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

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

20 (g) Notwithstanding any other law, the court may strike the  
21 additional punishment for the enhancements provided in this  
22 section or refuse to impose the minimum jail sentence for  
23 misdemeanors in an unusual case where the interests of justice  
24 would best be served, if the court specifies on the record and enters  
25 into the minutes the circumstances indicating that the interests of  
26 justice would best be served by that disposition.

27 (h) Notwithstanding any other provision of law, for each person  
28 committed to the Department of Corrections and Rehabilitation,  
29 Division of Juvenile Facilities for a conviction pursuant to  
30 subdivision (a) or (b) of this section, the offense shall be deemed  
31 one for which the state shall pay the rate of 100 percent of the per  
32 capita institutional cost of the Department of Corrections and  
33 Rehabilitation, Division of Juvenile Facilities, pursuant to Section  
34 912.5 of the Welfare and Institutions Code.

35 (i) In order to secure a conviction or sustain a juvenile petition,  
36 pursuant to subdivision (a) it is not necessary for the prosecution  
37 to prove that the person devotes all, or a substantial part, of his or  
38 her time or efforts to the criminal street gang, nor is it necessary  
39 to prove that the person is a member of the criminal street gang.

1 Active participation in the criminal street gang is all that is  
2 required.

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

11 (k) This section shall become operative on January 1, ~~2017~~.  
12 2022.

13 SEC. 3. Section 186.33 of the Penal Code, as amended by  
14 Section 3 of Chapter 508 of the Statutes of 2013, is amended to  
15 read:

16 186.33. (a) Any person required to register pursuant to Section  
17 186.30 who knowingly violates any of its provisions is guilty of  
18 a misdemeanor.

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

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

33 (c) This section shall remain in effect only until January 1, ~~2017~~,  
34 2022, and as of that date is repealed, unless a later enacted statute,  
35 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
36 that date.

37 SEC. 4. Section 186.33 of the Penal Code, as amended by  
38 Section 4 of Chapter 508 of the Statutes of 2013, is amended to  
39 read:

1 186.33. (a) Any person required to register pursuant to Section  
2 186.30 who knowingly violates any of its provisions is guilty of  
3 a misdemeanor.

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

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

17 (c) This section shall become operative on January 1, ~~2017~~.  
18 2022.

19 SEC. 5. Section 1170 of the Penal Code, as amended by Section  
20 1 of Chapter 378 of the Statutes of 2015, is amended to read:

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

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

1 remaining term of commitment and a release date that would allow  
2 him or her adequate time to complete the program.

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

1 of the judgment and other necessary documentation shall be  
2 forwarded to the secretary.

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

22 (c) The court shall state the reasons for its sentence choice on  
23 the record at the time of sentencing. The court shall also inform  
24 the defendant that as part of the sentence after expiration of the  
25 term he or she may be on parole for a period as provided in Section  
26 3000 or 3000.08 or postrelease community supervision for a period  
27 as provided in Section 3451.

28 (d) (1) When a defendant subject to this section or subdivision  
29 (b) of Section 1168 has been sentenced to be imprisoned in the  
30 state prison or county jail pursuant to subdivision (h) and has been  
31 committed to the custody of the secretary or the county correctional  
32 administrator, the court may, within 120 days of the date of  
33 commitment on its own motion, or at any time upon the  
34 recommendation of the secretary or the Board of Parole Hearings  
35 in the case of state prison inmates, or the county correctional  
36 administrator in the case of county jail inmates, recall the sentence  
37 and commitment previously ordered and resentence the defendant  
38 in the same manner as if he or she had not previously been  
39 sentenced, provided the new sentence, if any, is no greater than  
40 the initial sentence. The 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  
6 defendant was sentenced to imprisonment for life without the  
7 possibility of parole has served at least 15 years of that sentence,  
8 the defendant may submit to the sentencing court a petition for  
9 recall and resentencing.

10 (ii) Notwithstanding clause (i), this paragraph 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 defendant's  
26 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 not  
37 limited to, availing himself or herself of rehabilitative, educational,  
38 or vocational programs, if those programs have been available at  
39 his or her classification level and facility, using self-study for  
40 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 hearing  
12 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  
36 involvement in the offense.

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

1 his or her classification level and facility, using self-study for  
2 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 may  
28 consider any other criteria that the court deems relevant to its  
29 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 resentence  
16 or recall to the court. This subdivision does not apply to a prisoner  
17 sentenced to death or a term of life without the possibility of parole.

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

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

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

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

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

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

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

(10) The secretary shall issue a directive to medical and correctional staff employed by the department that details the guidelines and procedures for initiating a recall and resentencing procedure. The directive shall clearly state that any prisoner who 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 (11) The provisions of this subdivision shall be available to an  
4 inmate who is sentenced to a county jail pursuant to subdivision  
5 (h). For purposes of those inmates, “secretary” or “warden” shall  
6 mean the county correctional administrator and “chief medical  
7 officer” shall mean a physician designated by the county  
8 correctional administrator for this purpose.

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

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

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

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

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

38 (4) Nothing in this subdivision shall be construed to prevent  
39 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) Unless the court finds that, in the interests of justice, it  
4 is not appropriate in a particular case, the court, when imposing a  
5 sentence pursuant to paragraph (1) or (2), shall suspend execution  
6 of a concluding portion of the term for a period selected at the  
7 court's discretion.

8 (B) The portion of a defendant's sentenced term that is  
9 suspended pursuant to this paragraph shall be known as mandatory  
10 supervision, and, unless otherwise ordered by the court, shall  
11 commence upon release from physical custody or an alternative  
12 custody program, whichever is later. During the period of  
13 mandatory supervision, the defendant shall be supervised by the  
14 county probation officer in accordance with the terms, conditions,  
15 and procedures generally applicable to persons placed on probation,  
16 for the remaining unserved portion of the sentence imposed by the  
17 court. The period of supervision shall be mandatory, and may not  
18 be earlier terminated except by court order. Any proceeding to  
19 revoke or modify mandatory supervision under this subparagraph  
20 shall be conducted pursuant to either subdivisions (a) and (b) of  
21 Section 1203.2 or Section 1203.3. During the period when the  
22 defendant is under that supervision, unless in actual custody related  
23 to the sentence imposed by the court, the defendant shall be entitled  
24 to only actual time credit against the term of imprisonment imposed  
25 by the court. Any time period which is suspended because a person  
26 has absconded shall not be credited toward the period of  
27 supervision.

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

31 (7) The sentencing changes made to paragraph (5) by the act  
32 that added this paragraph shall become effective and operative on  
33 January 1, 2015, and shall be applied prospectively to any person  
34 sentenced on or after January 1, 2015.

35 (i) This section shall remain in effect only until January 1, 2017,  
36 2022, and as of that date is repealed, unless a later enacted statute,  
37 that is enacted before ~~that date~~, *January 1, 2022*, deletes or extends  
38 that date.

39 SEC. 6. Section 1170 of the Penal Code, as amended by Section  
40 2 of Chapter 378 of the Statutes of 2015, is amended to read:

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

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

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

1 prison for life, except as provided in paragraph (2) of subdivision  
2 (d). In any case in which the amount of preimprisonment credit  
3 under Section 2900.5 or any other provision of law is equal to or  
4 exceeds any sentence imposed pursuant to this chapter, except for  
5 a remaining portion of mandatory supervision imposed pursuant  
6 to subparagraph (B) of paragraph (5) of subdivision (h), the entire  
7 sentence shall be deemed to have been served, except for the  
8 remaining period of mandatory supervision, and the defendant  
9 shall not be actually delivered to the custody of the secretary or  
10 the county correctional administrator. The court shall advise the  
11 defendant that he or she shall serve an applicable period of parole,  
12 postrelease community supervision, or mandatory supervision and  
13 order the defendant to report to the parole or probation office  
14 closest to the defendant's last legal residence, unless the in-custody  
15 credits equal the total sentence, including both confinement time  
16 and the period of parole, postrelease community supervision, or  
17 mandatory supervision. The sentence shall be deemed a separate  
18 prior prison term or a sentence of imprisonment in a county jail  
19 under subdivision (h) for purposes of Section 667.5, and a copy  
20 of the judgment and other necessary documentation shall be  
21 forwarded to the secretary.

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



1 of law. A term of imprisonment shall not be specified if imposition  
2 of sentence is suspended.

3 (c) The court shall state the reasons for its sentence choice on  
4 the record at the time of sentencing. The court shall also inform  
5 the defendant that as part of the sentence after expiration of the  
6 term he or she may be on parole for a period as provided in Section  
7 3000 or 3000.08 or postrelease community supervision for a period  
8 as provided in Section 3451.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (iv) Prior to the offense for which the sentence is being  
13 considered for recall, the defendant had insufficient adult support  
14 or supervision and had suffered from psychological or physical  
15 trauma, or significant stress.

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

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

26 (vii) The defendant has maintained family ties or connections  
27 with others through letter writing, calls, or visits, or has eliminated  
28 contact with individuals outside of prison who are currently  
29 involved with crime.

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

33 (G) The court shall have the discretion to recall the sentence  
34 and commitment previously ordered and to resentence the  
35 defendant in the same manner as if the defendant had not  
36 previously been sentenced, provided that the new sentence, if any,  
37 is not greater than the initial sentence. The discretion of the court  
38 shall be exercised in consideration of the criteria in subparagraph  
39 (B). Victims, or victim family members if the victim is deceased,

1 shall be notified of the resentencing hearing and shall retain their  
2 rights to participate in the hearing.

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

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

16 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (11) The provisions of this subdivision shall be available to an  
28 inmate who is sentenced to a county jail pursuant to subdivision  
29 (h). For purposes of those inmates, "secretary" or "warden" shall  
30 mean the county correctional administrator and "chief medical  
31 officer" shall mean a physician designated by the county  
32 correctional administrator for this purpose.

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

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

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

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

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

28 (5) (A) Unless the court finds, in the interest of justice, that it  
29 is not appropriate in a particular case, the court, when imposing a  
30 sentence pursuant to paragraph (1) or (2), shall suspend execution  
31 of a concluding portion of the term for a period selected at the  
32 court's discretion.

33 (B) The portion of a defendant's sentenced term that is  
34 suspended pursuant to this paragraph shall be known as mandatory  
35 supervision, and, unless otherwise ordered by the court, shall  
36 commence upon release from physical custody or an alternative  
37 custody program, whichever is later. During the period of  
38 mandatory supervision, the defendant shall be supervised by the  
39 county probation officer in accordance with the terms, conditions,  
40 and procedures generally applicable to persons placed on probation,

1 for the remaining unserved portion of the sentence imposed by the  
2 court. The period of supervision shall be mandatory, and may not  
3 be earlier terminated except by court order. Any proceeding to  
4 revoke or modify mandatory supervision under this subparagraph  
5 shall be conducted pursuant to either subdivisions (a) and (b) of  
6 Section 1203.2 or Section 1203.3. During the period when the  
7 defendant is under that supervision, unless in actual custody related  
8 to the sentence imposed by the court, the defendant shall be entitled  
9 to only actual time credit against the term of imprisonment imposed  
10 by the court. Any time period which is suspended because a person  
11 has absconded shall not be credited toward the period of  
12 supervision.

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

16 (7) The sentencing changes made to paragraph (5) by the act  
17 that added this paragraph shall become effective and operative on  
18 January 1, 2015, and shall be applied prospectively to any person  
19 sentenced on or after January 1, 2015.

20 (i) This section shall become operative on January 1, ~~2017~~.  
21 ~~2022~~.

22 SEC. 7. Section 1170.1 of the Penal Code, as amended by  
23 Section 7 of Chapter 508 of the Statutes of 2013, is amended to  
24 read:

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



1 include one-third of the term imposed for any specific  
2 enhancements applicable to those subordinate offenses. Whenever  
3 a court imposes a term of imprisonment in the state prison, whether  
4 the term is a principal or subordinate term, the aggregate term shall  
5 be served in the state prison, regardless as to whether or not one  
6 of the terms specifies imprisonment in a county jail pursuant to  
7 subdivision (h) of Section 1170.

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

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

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

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

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

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

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

23 (i) This section shall remain in effect only until January 1, ~~2017~~,  
24 2022, and as of that date is repealed, unless a later enacted statute,  
25 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
26 that date.

27 SEC. 8. Section 1170.1 of the Penal Code, as amended by  
28 Section 8 of Chapter 508 of the Statutes of 2013, is amended to  
29 read:

30 1170.1. (a) Except as otherwise provided by law, and subject  
31 to Section 654, when any person is convicted of two or more  
32 felonies, whether in the same proceeding or court or in different  
33 proceedings or courts, and whether by judgment rendered by the  
34 same or by a different court, and a consecutive term of  
35 imprisonment is imposed under Sections 669 and 1170, the  
36 aggregate term of imprisonment for all these convictions shall be  
37 the sum of the principal term, the subordinate term, and any  
38 additional term imposed for applicable enhancements for prior  
39 convictions, prior prison terms, and Section 12022.1. The principal  
40 term shall consist of the greatest term of imprisonment imposed

1 by the court for any of the crimes, including any term imposed for  
2 applicable specific enhancements. The subordinate term for each  
3 consecutive offense shall consist of one-third of the middle term  
4 of imprisonment prescribed for each other felony conviction for  
5 which a consecutive term of imprisonment is imposed, and shall  
6 include one-third of the term imposed for any specific  
7 enhancements applicable to those subordinate offenses. Whenever  
8 a court imposes a term of imprisonment in the state prison, whether  
9 the term is a principal or subordinate term, the aggregate term shall  
10 be served in the state prison, regardless as to whether or not one  
11 of the terms specifies imprisonment in a county jail pursuant to  
12 subdivision (h) of Section 1170.

13 (b) If a person is convicted of two or more violations of  
14 kidnapping, as defined in Section 207, involving separate victims,  
15 the subordinate term for each consecutive offense of kidnapping  
16 shall consist of the full middle term and shall include the full term  
17 imposed for specific enhancements applicable to those subordinate  
18 offenses.

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

31 (d) When the court imposes a sentence for a felony pursuant to  
32 Section 1170 or subdivision (b) of Section 1168, the court shall  
33 also impose, in addition and consecutive to the offense of which  
34 the person has been convicted, the additional terms provided for  
35 any applicable enhancements. If an enhancement is punishable by  
36 one of three terms, the court shall impose the middle term unless  
37 there are circumstances in aggravation or mitigation, and state the  
38 reasons for its sentence choice, other than the middle term, on the  
39 record at the time of sentencing. The court shall also impose any  
40 other additional term that the court determines in its discretion or

1 as required by law shall run consecutive to the term imposed under  
2 Section 1170 or subdivision (b) of Section 1168. In considering  
3 the imposition of the additional term, the court shall apply the  
4 sentencing rules of the Judicial Council.

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

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

15 (g) When two or more enhancements may be imposed for the  
16 infliction of great bodily injury on the same victim in the  
17 commission of a single offense, only the greatest of those  
18 enhancements shall be imposed for that offense. This subdivision  
19 shall not limit the imposition of any other enhancements applicable  
20 to that offense, including an enhancement for being armed with  
21 or using a dangerous or deadly weapon or a firearm.

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

27 (i) This section shall become operative on January 1, ~~2017~~.  
28 2022.

29 SEC. 9. Section 1170.3 of the Penal Code, as amended by  
30 Section 3 of Chapter 378 of the Statutes of 2015, is amended to  
31 read:

32 1170.3. The Judicial Council shall seek to promote uniformity  
33 in sentencing under Section 1170 by:

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

37 (1) Grant or deny probation.

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

39 (3) Impose the lower, middle, or upper term pursuant to  
40 paragraph (1) or (2) of subdivision (h) of Section 1170.

1 (4) Impose concurrent or consecutive sentences.

2 (5) Determine whether or not to impose an enhancement where  
3 that determination is permitted by law.

4 (6) Deny a period of mandatory supervision in the interests of  
5 justice under paragraph (5) of subdivision (h) of Section 1170 or  
6 determine the appropriate period and conditions of mandatory  
7 supervision. The rules implementing this paragraph shall be  
8 adopted no later than January 1, 2015.

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 regarding probation and mandatory  
12 supervision under paragraph (5) of subdivision (h) of Section 1170.

13 (c) This section shall remain in effect only until January 1, ~~2017~~,  
14 2022, and as of that date is repealed, unless a later enacted statute,  
15 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
16 that date.

17 SEC. 10. Section 1170.3 of the Penal Code, as amended by  
18 Section 4 of Chapter 378 of the Statutes of 2015, is amended to  
19 read:

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

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

25 (1) Grant or deny probation.

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

27 (3) Impose the lower or upper term pursuant to paragraph (1)  
28 or (2) of subdivision (h) of Section 1170.

29 (4) Impose concurrent or consecutive sentences.

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

32 (6) Deny a period of mandatory supervision in the interests of  
33 justice under paragraph (5) of subdivision (h) of Section 1170 or  
34 determine the appropriate period and conditions of mandatory  
35 supervision. The rules implementing this paragraph shall be  
36 adopted no later than January 1, 2015.

37 (b) The adoption of rules standardizing the minimum content  
38 and the sequential presentation of material in probation officer  
39 reports submitted to the court regarding probation and mandatory  
40 supervision under paragraph (5) of subdivision (h) of Section 1170.

(c) This section shall become operative on January 1, ~~2017~~  
2022.

SEC. 11. Section 12021.5 of the Penal Code, as amended by  
Section 11 of Chapter 508 of the Statutes of 2013, is amended to  
read:

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

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

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

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

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

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

(C) To feed ammunition continuously and directly into the  
loading mechanism of a rifle that is designed or redesigned to fire  
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, ~~2017~~,  
30 2022, and as of that date is repealed, unless a later enacted statute,  
31 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
32 that date.

33 SEC. 12. Section 12021.5 of the Penal Code, as amended by  
34 Section 12 of Chapter 508 of the Statutes of 2013, is amended to  
35 read:

36 12021.5. (a) Every person who carries a loaded or unloaded  
37 firearm on his or her person, or in a vehicle, during the commission  
38 or attempted commission of any street gang crimes described in  
39 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
40 the felony or attempted felony, be punished by an additional term

1 of imprisonment pursuant to subdivision (h) of Section 1170 for  
2 one, two, or three years in the court's discretion. The court shall  
3 impose the middle term unless there are circumstances in  
4 aggravation or mitigation. The court shall state the reasons for its  
5 enhancement choice on the record at the time of sentence.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

10 (5) “Rifle” shall have the same meaning as specified in Section  
11 17090.

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

14 (d) This section shall become operative on January 1, ~~2017~~.  
15 ~~2022~~.

16 SEC. 13. Section 12022.2 of the Penal Code, as amended by  
17 Section 13 of Chapter 508 of the Statutes of 2013, is amended to  
18 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, ~~2017~~,  
7 2022, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
9 that date.

10 SEC. 14. Section 12022.2 of the Penal Code, as amended by  
11 Section 14 of Chapter 508 of the Statutes of 2013, is amended to  
12 read:

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

23 (b) Any person who wears a body vest in the commission or  
24 attempted commission of a violent offense, as defined in Section  
25 29905, shall, upon conviction of that felony or attempted felony,  
26 in addition and consecutive to the punishment prescribed for the  
27 felony or attempted felony of which he or she has been convicted,  
28 be punished by an additional term of one, two, or five years. The  
29 court shall order the middle term unless there are circumstances  
30 in aggravation or mitigation. The court shall state the reasons for  
31 its enhancement choice on the record at the time of the sentence.

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

35 (d) This section shall become operative on January 1, ~~2017~~.  
36 2022.

37 SEC. 15. Section 12022.4 of the Penal Code, as amended by  
38 Section 15 of Chapter 508 of the Statutes of 2013, is amended to  
39 read:

1 12022.4. (a) Any person who, during the commission or  
2 attempted commission of a felony, furnishes or offers to furnish  
3 a firearm to another for the purpose of aiding, abetting, or enabling  
4 that person or any other person to commit a felony shall, in addition  
5 and consecutive to the punishment prescribed by the felony or  
6 attempted felony of which the person has been convicted, be  
7 punished by an additional term of one, two, or three years in the  
8 state prison. The court shall select the sentence enhancement which,  
9 in the court's discretion, best serves the interests of justice and  
10 shall state the reasons for its choice on the record at the time of  
11 the sentence, in accordance with the provisions of subdivision (d)  
12 of Section 1170.1. The additional term provided in this section  
13 shall not be imposed unless the fact of the furnishing is charged  
14 in the accusatory pleading and admitted or found to be true by the  
15 trier of fact.

16 (b) This section shall remain in effect only until January 1, ~~2017~~,  
17 2022, and as of that date is repealed, unless a later enacted statute,  
18 that is enacted before January 1, ~~2017~~, 2022, deletes or extends  
19 that date.

20 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
21 Section 16 of Chapter 508 of the Statutes of 2013, is amended to  
22 read:

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

37 (b) This section shall become operative on January 1, ~~2017~~.  
38 2022.

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