

AMENDED IN ASSEMBLY SEPTEMBER 2, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

**SENATE BILL**

**No. 5**

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**Introduced by Committee on Budget and Fiscal Review**

May 18, 2011

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~~An act relating to the Budget Act of 2010.~~ *An act to amend Sections 26605 and 30025 of the Government Code, to amend Sections 11355 and 11382 of the Health and Safety Code, to amend Sections 17, 18, 273d, 667.5, 800, 1170, 1170.1, 2933, 3000.08, 3000.09, 3001, 3003, 3056, 3057, 3060.7, 3067, 3073.1, 3450, 3453, 3454, 3455, 3456, 4000, 4019, 4501.1, 4530, 12021.5, and 12025 of, to add Sections 1233.15, 3460, 3465, 4019.2, and 4115.56 to, and to repeal and add Section 2932 of, the Penal Code, to amend Section 9 of Chapter 136 of the Statutes of 2011, and to amend Item 5225-007-0001 of Section 2.00 of the Budget Act of 2011 (Chapter 33 of the Statutes of 2011), relating to criminal justice realignment, and making an appropriation therefor, to take effect immediately, bill related to the budget.*

LEGISLATIVE COUNSEL'S DIGEST

SB 5, as amended, Committee on Budget and Fiscal Review. Budget Act of 2010.

(1) *Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except for persons with a prior or current felony conviction for serious or violent felony, persons required to register as sex offenders, or persons convicted of a crime as part of a sentence enhancement, as specified, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county in a county jail for 16 months, or two or three years and a felony punishable*

by a term of imprisonment described in the underlying offense shall be punishable by imprisonment in a county jail. Those persons excepted from this requirement are subject to imprisonment in the state prison.

This bill would additionally require persons with a current or prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious or violent felony, as specified, and persons with prior juvenile adjudication where the defendant was 16 years of age or older at the time of the commission of a serious or violent felony or a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony offense, as specified, to serve the term of imprisonment in the state prison.

(2) Existing law provides that certain specified felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer are punishable by incarceration in state prison. If Chapter 15 of the Statutes of 2011 becomes operative, certain of those felonies shall instead be punishable by incarceration in county jail.

This bill would make various technical and conforming changes to provisions related to the incarceration of persons for felony convictions in county jail. The bill would make certain felonies, including agreeing, consenting, or offering to unlawfully sell, furnish, transport, or administer a specified controlled substance, or “gassing” a peace officer punishable by incarceration in county jail pursuant to Chapter 15 of the Statutes of 2011 instead punishable by incarceration in state prison.

(3) Existing law provides for the enhancement of prison terms for new offenses because of prior prison terms, as specified. If Chapter 15 of the Statutes of 2011 becomes operative, a judge, when imposing a sentence pursuant to these provisions, may order the defendant to serve a term in a county jail for a period not to exceed the maximum possible term of confinement or may impose a sentence that includes a period of county jail time and a period of mandatory probation not to exceed the maximum possible sentence.

This bill would provide that a term imposed under the above-referenced provision, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of a specified enhancement, and make conforming changes.

(4) Existing law provides that, except as specified, every felony is punishable by imprisonment in any of the state prisons for 16 months,

or 2 or 3 years. If Chapter 15 of the Statutes of 2011 becomes operative, a felony punishable pursuant to specified provisions where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or 2 or 3 years and where the term is specified for the term described in the underlying offense. Chapter 15 of the Statutes of 2011 requires that the punishment for certain felonies be served in state prison.

This bill would place specified parameters on the imposition of sentences under the provisions added by Chapter 15 of the Statutes of 2011. The bill would provide that when imposing a sentence pursuant to the above-reference provisions, the court may commit the defendant for term served in custody, as specified, or for a term as determined in accordance with the applicable sentencing law but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer, as specified.

(5) Existing law provides that the moneys in the District Attorney and Public Defender Account shall be used exclusively to fund costs associated with revocation proceedings involving persons subject to state parole and the Postrelease Community Supervision Act of 2011. Existing law requires that the moneys be allocated equally by the county or city and county to the district attorney's office and the county public defender's office.

This bill would require that where no public defender's office is established, the moneys be allocated to the county for distribution for the same purpose.

(6) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, applies certain provisions relating to the denial of time credits to persons confined in local facilities pursuant to provisions added by Chapter 15 of the Statutes of 2011 providing for the incarceration of felons in local facilities, as specified.

This bill would repeal the amendments made by Chapter 15 of the Statutes of 2011, restore prior law, and instead subject these felons to other credit provisions applicable to persons confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, as specified. The bill would provide that no credits may be earned for periods of flash incarceration, as specified. The bill would provide that any inmate sentenced to county jail assigned to a conservation camp who is eligible to earn one day of credit for every one day of

*incarceration shall instead earn two days of credit for every one day of service and make related changes.*

*(7) Existing law provides that, except as specified, a prisoner sentenced to state prison under specified provisions, for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits are applicable to the prisoner.*

*This bill would delete the above-referenced provisions, thereby making other time credit provisions applicable to prisoners confined in or committed to specified local facilities applicable to the above-referenced prisoners.*

*(8) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, provides that, except as specified, when specified persons who were not imprisoned for committing a violent felony, as defined, who have been released on parole from the state prison, and who have been on parole continuously for 6 months since release from confinement, within 30 days, shall be discharged from parole.*

*This bill would additionally make the above provision related to discharge from parole inapplicable to persons who were imprisoned for committing a serious felony or who are required to register as a sex offender, as specified.*

*(9) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, subjects certain persons released from state prison to the jurisdiction of and parole supervision by the Department of Corrections and Rehabilitation, as specified.*

*This bill would provide that persons required to register as sex offenders and persons subject to life-time parole, as specified, who are released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to 3 years or the parole term the person was subject to at the time of the commission of the offense. The bill would make other conforming and related changes regarding the parole periods, revocations, search and seizure requirements, and the release of high-risk parolees.*

*(10) Existing law, if Chapter 15 of the Statutes of 2011 becomes operative, makes felons subject to postrelease supervision as established by the Postrelease Community Supervision Act of 2011 eligible to participate in reentry court programs, as specified, and would authorize counties to contract with the Department of Corrections and*

*Rehabilitation in order to obtain day treatment and crisis care services for inmates with mental health problems who are released on postrelease community supervision.*

*This bill would instead authorize counties to contract with the department to obtain correctional clinical services. The bill would make changes to the postrelease community supervision agreement, require persons placed on postrelease supervision to be subject to search and seizure, and make other related changes regarding postrelease supervision sanctions, and revocations. The bill would require a supervising agency, upon determining that a person subject to postrelease supervision no longer permanently resides within its jurisdiction, where a change in residence was either approved or did not violate the terms and conditions of postrelease supervision, to transmit, within 2 weeks, the prison release packet to the designated supervising agency in the county in which the person permanently resides. By imposing additional duties on local agencies, the bill would create a state-mandated local program.*

*(11) Existing law provides that upon agreement with the sheriff or director of the county department of corrections, a board of supervisors may enter into a contract with other public agencies to provide housing for inmates sentenced to county jail in community correction facilities, as specified.*

*This bill would authorize, upon agreement with the sheriff or director of the county department of corrections, a board of supervisors to enter into a contract with the Department of Corrections and Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes. The bill would provide that when housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.*

*(12) Existing law provides that, except as specified, an inmate who is released on parole or postrelease supervision shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. Existing law requires that specified information be released by the Department of Corrections and Rehabilitation to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease supervision. Existing law provides that, except as specified, the department shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff*

implementing the Law Enforcement Automated Data System (LEADS) and, if Chapter 15 of the Statutes of 2011 becomes operative, requires county agencies supervising inmates released to postrelease supervision to provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison, as specified.

This bill would additionally require the Department of Corrections and Rehabilitation to submit, via electronic transfer, to the Department of Justice data to be included in the supervised released file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision.

(13) The Budget Act of 2011 reduced the amount appropriated, \$95,254,000, for support of the Department of Corrections and Rehabilitation by \$77,406,000 to reflect the portion of realignment savings to be achieved through the reduction or elimination of contracts with private entities for inmate housing of state inmates.

This bill would instead reduced the amount appropriated by \$54,200,00 for those purposes.

(14) Existing law requires the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers, and the Administrative Office of the Courts to make certain calculations, including, among others, the cost to the state to incarcerate in prison and supervise on parole a probationer sent to prison and the statewide probation failure rate.

This bill would additionally require, except for the Joint Legislative Budget Committee, the above-referenced entities to develop a revised formula for the California Community Corrections Performance Incentives Act of 2009 that takes into consideration the significant changes to the eligibility of some felony probationers for revocation to the state prison resulting from the implementation of the 2011 public safety realignment.

(15) This bill would include additional changes proposed by SB 9 and SB 576 contingent on the enactment of those bills.

(16) This bill would appropriate \$1,000 to the Department of Corrections and Rehabilitation for the purpose of state operations.

(17) The bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

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

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

(19) *The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.*

*This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.*

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2010.~~

~~The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010.~~

~~This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 6, 2010, pursuant to the California Constitution.~~

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~  
yes. State-mandated local program: ~~no~~-yes.

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

1     SECTION 1. *This act is titled and may be cited as the 2011*  
2     *realignment Legislation addressing public safety.*

3     SEC. 2. *Section 26605 of the Government Code is amended to*  
4     *read:*

5     26605. *Notwithstanding any other provision of law, except in*  
6     *counties in which the sheriff, as of July 1, 1993, is not in charge*

1 of and the sole and exclusive authority to keep the county jail and  
2 the prisoners in it, the sheriff shall take charge of and be the sole  
3 and exclusive authority to keep the county jail and the prisoners  
4 in it *including persons confined to the county jail pursuant to*  
5 *subdivision (b) of Section 3454 of the Penal Code for a violation*  
6 *of the terms and conditions of their postrelease community*  
7 *supervision*, except for work furlough facilities where by county  
8 ordinance the work furlough administrator is someone other than  
9 the sheriff.

10 SEC. 3. *Section 30025 of the Government Code is amended to*  
11 *read:*

12 30025. (a) The Local Revenue Fund 2011 is hereby created  
13 in the State Treasury and shall receive all revenues, less refunds,  
14 derived from the taxes described in Sections 6051.15 and 6201.15;  
15 revenues as may be allocated to the fund pursuant to Sections  
16 11001.5 and 11005 of the Revenue and Taxation Code; and other  
17 moneys that may be specifically appropriated to the fund.

18 (b) The Trial Court Security Account, the Local Community  
19 Corrections Account, the Local Law Enforcement Services  
20 Account, the Mental Health Account, the District Attorney and  
21 Public Defender Account, the Juvenile Justice Account, the Health  
22 and Human Services Account, and the Reserve Account are hereby  
23 created within the Local Revenue Fund 2011.

24 (c) The Youthful Offender Block Grant Subaccount and the  
25 Juvenile Reentry Grant Subaccount are hereby created within the  
26 Juvenile Justice Account.

27 (d) The Adult Protective Services Subaccount, the Foster Care  
28 Subaccount, the Child Welfare Services Subaccount, the Adoptions  
29 Subaccount, the Adoption Assistance Program Subaccount, the  
30 Child Abuse Prevention Subaccount, the Women and Children's  
31 Residential Treatment Services Subaccount, the Drug Court  
32 Subaccount, the Nondrug Medi-Cal Substance Abuse Treatment  
33 Services Subaccount, and the Drug Medi-Cal Subaccount are  
34 hereby created within the Health and Human Services Account  
35 within the Local Revenue Fund 2011.

36 (e) Funds transferred to the Local Revenue Fund 2011 and its  
37 accounts and subaccounts are, notwithstanding Section 13340,  
38 continuously appropriated and shall be allocated pursuant to statute  
39 exclusively for Public Safety Services as defined in subdivision  
40 (h) and as further limited by statute. The moneys derived from



1 taxes described in subdivision (a) and deposited in the Local  
2 Revenue Fund 2011 shall be available to reimburse the General  
3 Fund for moneys that are advanced to the Local Revenue Fund  
4 2011. Additionally, all funds deposited in the Local Revenue Fund  
5 2011 and its accounts shall be available to pay for state costs  
6 incurred resulting from phasing in the implementation of Chapter  
7 15 of the Statutes of 2011 and to reimburse the state for costs  
8 incurred on behalf of a local governmental entity in providing  
9 Public Safety Services.

10 (f) (1) Each county treasurer, city and county treasurer, or other  
11 appropriate official shall create a County Local Revenue Fund  
12 2011 for the county or city and county and shall create the Local  
13 Community Corrections Account, the Trial Court Security Account,  
14 the District Attorney and Public Defender Account, the Juvenile  
15 Justice Account, the Health and Human Services Account, and the  
16 Supplemental Law Enforcement Account within the County Local  
17 Revenue Fund 2011 for the county or city and county.

18 (2) The moneys in the County Local Revenue Fund 2011 for  
19 each county or city and county and its accounts shall be exclusively  
20 used for Public Safety Services as defined in subdivision (h) and  
21 as further described in this section.

22 (3) The moneys in the Trial Court Security Account shall be  
23 used exclusively to fund trial court security provided by county  
24 sheriffs. No general county administrative costs may be charged  
25 to this account, including, but not limited to, the costs of  
26 administering the account.

27 (4) The moneys in the Local Community Corrections Account  
28 shall be used exclusively to fund the provisions of Chapter 15 of  
29 the Statutes of 2011. The moneys within this account shall not be  
30 used by local agencies to supplant other funding for Public Safety  
31 Services. This account shall be the source of funding for the  
32 Postrelease Community Supervision Act of 2011, as enacted by  
33 Section 479 of Chapter 15 of the Statutes of 2011, and to fund the  
34 housing of parolees in county jails.

35 (5) The moneys in the District Attorney and Public Defender  
36 Account shall be used exclusively to fund costs associated with  
37 revocation proceedings involving persons subject to state parole  
38 and the Postrelease Community Supervision Act of 2011 (Title  
39 2.05 (commencing with Section 3450) of Part 3 of the Penal Code).  
40 The moneys shall be allocated equally by the county or city and

1 county to the district attorney's office and county public defender's  
2 office *or, where no public defender's office is established, to the*  
3 *county for distribution for the same purpose.*

4 (6) The moneys in the Juvenile Justice Account shall only be  
5 used to fund activities in connection with the grant programs  
6 described in this paragraph.

7 (A) The Youthful Offender Block Grant Subaccount shall be  
8 used to fund grants solely to enhance the capacity of county  
9 probation, mental health, drug and alcohol, and other county  
10 departments to provide appropriate rehabilitative, housing, and  
11 supervision services to youthful offenders, subject to Sections  
12 731.1, 733, 1766, and 1767.35 of the Welfare and Institutions  
13 Code. Counties, in expending an allocation from this subaccount,  
14 shall provide all necessary services related to the custody and  
15 parole of the offenders.

16 (B) The Juvenile Reentry Grant Subaccount shall be used to  
17 fund grants exclusively to address local program needs for persons  
18 discharged from the custody of the Department of Corrections and  
19 Rehabilitation, Division of Juvenile Facilities. County probation  
20 departments, in expending the Juvenile Reentry Grant allocation,  
21 shall provide evidence-based supervision and detention practices  
22 and rehabilitative services to persons who are subject to the  
23 jurisdiction of the juvenile court, and who were committed to and  
24 discharged from the Department of Corrections and Rehabilitation,  
25 Division of Juvenile Facilities. "Evidence-based" refers to  
26 supervision and detention policies, procedures, programs, and  
27 practices demonstrated by scientific research to reduce recidivism  
28 among individuals on probation or under postrelease supervision.  
29 The funds allocated from this subaccount shall supplement existing  
30 services and shall not be used by local agencies to supplant any  
31 existing funding for existing services provided by those entities.  
32 The funding provided from this subaccount is intended to provide  
33 payment in full for all local government costs of the supervision,  
34 programming, education, incarceration, or any other cost resulting  
35 from persons discharged from custody or held in local facilities  
36 pursuant to the provisions of Chapter 729 of the Statutes of 2010.

37 (7) The Health and Human Services Account and its subaccounts  
38 described in subdivision (d) shall be used only to fund activities  
39 performed in connection with the programs described in this  
40 subdivision. The subaccounts shall be used exclusively as follows:

1 (A) The Adult Protective Services Subaccount shall be used to  
2 fund adult protective services described in statute and regulation.

3 (B) The Foster Care Subaccount shall be used to fund the  
4 administrative costs and cost of foster care grants and services as  
5 those services are described in statute and regulation, including  
6 the costs for the Title IV-E Child Welfare Waiver Demonstration  
7 Capped Allocation Project.

8 (C) The Child Welfare Services Subaccount shall be used to  
9 fund the costs of child welfare services as those services are  
10 described in statute and regulation.

11 (D) The Adoptions Subaccount shall be used to fund the costs  
12 connected with providing adoptive services, including agency  
13 adoptions, as described in statute and regulation, including the  
14 costs incurred by the county or city and county if the county or  
15 city and county elects to contract with the state to provide those  
16 services.

17 (E) The Child Abuse Prevention Subaccount shall be used to  
18 fund the costs of child abuse prevention, intervention, and treatment  
19 services as those costs and services are described in statute and  
20 regulation.

21 (F) The Adoption Assistance Program Subaccount shall be used  
22 to fund the administrative costs and payments for families adopting  
23 children with special needs.

24 (G) The Women and Children's Residential Treatment Services  
25 Subaccount shall be used to fund the costs of residential perinatal  
26 drug services and treatment as those services and treatment are  
27 described in statute and regulation.

28 (H) The Drug Court Subaccount shall be used to fund the costs  
29 of drug court operations and services as those costs are currently  
30 permitted and described by statute and regulation.

31 (I) The Nondrug Medi-Cal Substance Abuse Treatment Services  
32 Subaccount shall be used to fund the costs of nondrug Medi-Cal  
33 substance abuse treatment programs, as described in statute and  
34 regulation.

35 (J) The Drug Medi-Cal Subaccount shall be used to fund the  
36 costs of the Drug Medi-Cal program as that program is described  
37 in statute, regulation, or the current State Plan Amendment.

38 (g) The moneys in the Reserve Account shall be used to fund  
39 entitlements paid from the Foster Care Subaccount, the Drug

1 Medi-Cal Subaccount and the Adoption Assistance Program  
2 Subaccount of the Health and Human Services Account.

3 (h) For purposes of this section, “Public Safety Services” shall  
4 include all of the following:

5 (1) Employing public safety officials, prosecutors, public  
6 defenders, and court security staff.

7 (2) Managing local jails, housing and treating youthful offenders,  
8 and providing services for, and overseeing the supervised release  
9 of, offenders.

10 (3) Preventing child abuse, providing services to children who  
11 are abused, neglected, or exploited, providing services to vulnerable  
12 children and their families, and providing adult protective services.

13 (4) Providing mental health services to children and adults in  
14 order to reduce failure in school, harm to themselves and others,  
15 homelessness, and preventable incarceration.

16 (5) Preventing, treating, and providing recovery services for  
17 alcohol and drug abuse.

18 *SEC. 4. Section 11355 of the Health and Safety Code is*  
19 *amended to read:*

20 11355. Every person who agrees, consents, or in any manner  
21 offers to unlawfully sell, furnish, transport, administer, or give (1)  
22 any controlled substance specified in subdivision (b), (c), or (e),  
23 or paragraph (1) of subdivision (f) of Section 11054, specified in  
24 paragraph (13), (14), (15), or (20) of subdivision (d) of Section  
25 11054, or specified in subdivision (b) or (c) of Section 11055, or  
26 specified in subdivision (h) of Section 11056, or (2) any controlled  
27 substance classified in Schedule III, IV, or V which is a narcotic  
28 drug to any person, or who offers, arranges, or negotiates to have  
29 any such controlled substance unlawfully sold, delivered,  
30 transported, furnished, administered, or given to any person and  
31 who then sells, delivers, furnishes, transports, administers, or gives,  
32 or offers, arranges, or negotiates to have sold, delivered,  
33 transported, furnished, administered, or given to any person any  
34 other liquid, substance, or material in lieu of any such controlled  
35 substance shall be punished by imprisonment in the county jail for  
36 not more than one year, or ~~in the state prison pursuant to~~  
37 *subdivision (h) of Section 1170 of the Penal Code.*

38 *SEC. 5. Section 11382 of the Health and Safety Code is*  
39 *amended to read:*

11382. Every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is ~~(1) (a)~~ classified in Schedule III, IV, or V and which is not a narcotic drug, or ~~(2) (b)~~ specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or ~~in the state prison pursuant to subdivision (h) of Section 1170 of the Penal Code.~~

SEC. 6. Section 17 of the Penal Code, as amended by Section 228 of Chapter 15 of the Statutes of 2011, is amended to read:

17. (a) A felony is a crime that is punishable with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170.~~ Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison or imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170,~~ or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison or imprisonment in a county jail ~~for more than one year under the provisions of subdivision (h) of Section 1170.~~

(2) When the court, upon committing the defendant to the ~~Youth Authority~~ Division of Juvenile Justice, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or

1 on application of the defendant or probation officer thereafter, the  
2 court declares the offense to be a misdemeanor.

3 (4) When the prosecuting attorney files in a court having  
4 jurisdiction over misdemeanor offenses a complaint specifying  
5 that the offense is a misdemeanor, unless the defendant at the time  
6 of his or her arraignment or plea objects to the offense being made  
7 a misdemeanor, in which event the complaint shall be amended  
8 to charge the felony and the case shall proceed on the felony  
9 complaint.

10 (5) When, at or before the preliminary examination or prior to  
11 filing an order pursuant to Section 872, the magistrate determines  
12 that the offense is a misdemeanor, in which event the case shall  
13 proceed as if the defendant had been arraigned on a misdemeanor  
14 complaint.

15 (c) When a defendant is committed to the ~~Youth Authority~~  
16 *Division of Juvenile Justice* for a crime punishable, in the discretion  
17 of the court, either by imprisonment in the state prison or  
18 imprisonment in a county jail ~~for more than one year under the~~  
19 *provisions of subdivision (h) of Section 1170*, or by fine or  
20 imprisonment in the county jail not exceeding one year, the offense  
21 shall, upon the discharge of the defendant from the ~~Youth Authority~~  
22 *Division of Juvenile Justice*, thereafter be deemed a misdemeanor  
23 for all purposes.

24 (d) A violation of any code section listed in Section 19.8 is an  
25 infraction subject to the procedures described in Sections 19.6 and  
26 19.7 when:

27 (1) The prosecutor files a complaint charging the offense as an  
28 infraction unless the defendant, at the time he or she is arraigned,  
29 after being informed of his or her rights, elects to have the case  
30 proceed as a misdemeanor, or;

31 (2) The court, with the consent of the defendant, determines  
32 that the offense is an infraction in which event the case shall  
33 proceed as if the defendant had been arraigned on an infraction  
34 complaint.

35 (e) Nothing in this section authorizes a judge to relieve a  
36 defendant of the duty to register as a sex offender pursuant to  
37 Section 290 if the defendant is charged with an offense for which  
38 registration as a sex offender is required pursuant to Section 290,  
39 and for which the trier of fact has found the defendant guilty.

1     *SEC. 7. Section 18 of the Penal Code, as amended by Section*  
2     *230 of Chapter 15 of the Statutes of 2011, is amended to read:*

3     18. (a) Except in cases where a different punishment is  
4     prescribed by any law of this state, every offense declared to be a  
5     felony is punishable by imprisonment for 16 months, or two or  
6     three years ~~as provided in the state prison unless the offense is~~  
7     *punishable pursuant to subdivision (h) of Section 1170.*

8     (b) Every offense which is prescribed by any law of the state  
9     to be a felony punishable by imprisonment or by a fine, but without  
10    an alternate sentence to the county jail for a period not exceeding  
11    one year, may be punishable by imprisonment in the county jail  
12    not exceeding one year or by a fine, or by both.

13    *SEC. 8. Section 273d of the Penal Code, as amended by Section*  
14    *312 of Chapter 15 of the Statutes of 2011, is amended to read:*

15    273d. (a) Any person who willfully inflicts upon a child any  
16    cruel or inhuman corporal punishment or an injury resulting in a  
17    traumatic condition is guilty of a felony and shall be punished by  
18    imprisonment pursuant to subdivision (h) of Section 1170 for two,  
19    four, or six years, or in a county jail for not more than one year,  
20    by a fine of up to six thousand dollars (\$6,000), or by both that  
21    imprisonment and fine.

22    (b) Any person who is found guilty of violating subdivision (a)  
23    shall receive a four-year enhancement for a prior conviction of  
24    that offense provided that no additional term shall be imposed  
25    under this subdivision for any prison term *or term imposed under*  
26    *the provisions of subdivision (h) of Section 1170* served prior to a  
27    period of 10 years in which the defendant remained free of both  
28    the commission of an offense that results in a felony conviction  
29    and prison custody or custody ~~for more than one year~~ in a county  
30    jail *under the provisions of subdivision (h) of Section 1170.*

31    (c) If a person is convicted of violating this section and probation  
32    is granted, the court shall require the following minimum  
33    conditions of probation:

34    (1) A mandatory minimum period of probation of 36 months.

35    (2) A criminal court protective order protecting the victim from  
36    further acts of violence or threats, and, if appropriate, residence  
37    exclusion or stay-away conditions.

38    (3) (A) Successful completion of no less than one year of a  
39    child abuser's treatment counseling program. The defendant shall  
40    be ordered to begin participation in the program immediately upon

1 the grant of probation. The counseling program shall meet the  
2 criteria specified in Section 273.1. The defendant shall produce  
3 documentation of program enrollment to the court within 30 days  
4 of enrollment, along with quarterly progress reports.

5 (B) The terms of probation for offenders shall not be lifted until  
6 all reasonable fees due to the counseling program have been paid  
7 in full, but in no case shall probation be extended beyond the term  
8 provided in subdivision (a) of Section 1203.1. If the court finds  
9 that the defendant does not have the ability to pay the fees based  
10 on the defendant's changed circumstances, the court may reduce  
11 or waive the fees.

12 (4) If the offense was committed while the defendant was under  
13 the influence of drugs or alcohol, the defendant shall abstain from  
14 the use of drugs or alcohol during the period of probation and shall  
15 be subject to random drug testing by his or her probation officer.

16 (5) The court may waive any of the above minimum conditions  
17 of probation upon a finding that the condition would not be in the  
18 best interests of justice. The court shall state on the record its  
19 reasons for any waiver.

20 *SEC. 9. Section 667.5 of the Penal Code, as amended by*  
21 *Section 22 of Chapter 39 of the Statutes of 2011, is amended to*  
22 *read:*

23 667.5. Enhancement of prison terms for new offenses because  
24 of prior prison terms shall be imposed as follows:

25 (a) Where one of the new offenses is one of the violent felonies  
26 specified in subdivision (c), in addition to and consecutive to any  
27 other prison terms therefor, the court shall impose a three-year  
28 term for each prior separate prison term served by the defendant  
29 where the prior offense was one of the violent felonies specified  
30 in subdivision (c). However, no additional term shall be imposed  
31 under this subdivision for any prison term served prior to a period  
32 of 10 years in which the defendant remained free of both prison  
33 custody and the commission of an offense which results in a felony  
34 conviction.

35 (b) Except where subdivision (a) applies, where the new offense  
36 is any felony for which a prison sentence or a sentence of  
37 imprisonment in a county jail ~~for more than one year under~~  
38 ~~subdivision (h) of Section 1170~~ is imposed or is not suspended, in  
39 addition and consecutive to any other ~~prison terms sentence~~  
40 therefor, the court shall impose a one-year term for each prior



1 separate prison term or county jail term ~~of more than one year~~  
2 ~~imposed~~ *imposed under subdivision (h) of Section 1170* or when  
3 sentence is not suspended for any felony; provided that no  
4 additional term shall be imposed under this subdivision for any  
5 prison term or county jail term ~~of more than one year~~ imposed  
6 *under subdivision (h) of Section 1170* or when sentence is not  
7 suspended prior to a period of five years in which the defendant  
8 remained free of both the commission of an offense which results  
9 in a felony conviction, and prison custody or the imposition of a  
10 term of jail custody ~~of more than one year~~ *imposed under*  
11 *subdivision (h) of Section 1170* or any felony sentence that is not  
12 suspended. *A term imposed under the provisions of paragraph (5)*  
13 *of subdivision (h) of Section 1170, wherein a portion of the term*  
14 *is suspended by the court to allow postrelease supervision, shall*  
15 *qualify as a prior county jail term for the purposes of the one-year*  
16 *enhancement.*

17 (c) For the purpose of this section, “violent felony” shall mean  
18 any of the following:

- 19 (1) Murder or voluntary manslaughter.
- 20 (2) Mayhem.
- 21 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
22 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
23 262.
- 24 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
- 25 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
26 288a.
- 27 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
28 of Section 288.
- 29 (7) Any felony punishable by death or imprisonment in the state  
30 prison for life.
- 31 (8) Any felony in which the defendant inflicts great bodily injury  
32 on any person other than an accomplice which has been charged  
33 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
34 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
35 Sections 213, 264, and 461, or any felony in which the defendant  
36 uses a firearm which use has been charged and proved as provided  
37 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
38 12022.55.
- 39 (9) Any robbery.
- 40 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

- 1 (11) Sexual penetration as defined in subdivision (a) or (j) of  
2 Section 289.
- 3 (12) Attempted murder.
- 4 (13) A violation of Section 12308, 12309, or 12310.
- 5 (14) Kidnapping.
- 6 (15) Assault with the intent to commit a specified felony, in  
7 violation of Section 220.
- 8 (16) Continuous sexual abuse of a child, in violation of Section  
9 288.5.
- 10 (17) Carjacking, as defined in subdivision (a) of Section 215.
- 11 (18) Rape, spousal rape, or sexual penetration, in concert, in  
12 violation of Section 264.1.
- 13 (19) Extortion, as defined in Section 518, which would constitute  
14 a felony violation of Section 186.22 of the Penal Code.
- 15 (20) Threats to victims or witnesses, as defined in Section 136.1,  
16 which would constitute a felony violation of Section 186.22 of the  
17 Penal Code.
- 18 (21) Any burglary of the first degree, as defined in subdivision  
19 (a) of Section 460, wherein it is charged and proved that another  
20 person, other than an accomplice, was present in the residence  
21 during the commission of the burglary.
- 22 (22) Any violation of Section 12022.53.
- 23 (23) A violation of subdivision (b) or (c) of Section 11418. The  
24 Legislature finds and declares that these specified crimes merit  
25 special consideration when imposing a sentence to display society's  
26 condemnation for these extraordinary crimes of violence against  
27 the person.
- 28 (d) For the purposes of this section, the defendant shall be  
29 deemed to remain in prison custody for an offense until the official  
30 discharge from custody or until release on parole, whichever first  
31 occurs, including any time during which the defendant remains  
32 subject to reimprisonment for escape from custody or is  
33 reimprisoned on revocation of parole. The additional penalties  
34 provided for prior prison terms shall not be imposed unless they  
35 are charged and admitted or found true in the action for the new  
36 offense.
- 37 (e) The additional penalties provided for prior prison terms shall  
38 not be imposed for any felony for which the defendant did not  
39 serve a prior separate term in state prison *or in a county jail under*  
40 *subdivision (h) of Section 1170.*

1 (f) A prior conviction of a felony shall include a conviction in  
2 another jurisdiction for an offense which, if committed in  
3 California, is punishable by imprisonment in the state prison *or in*  
4 *county jail under subdivision (h) of Section 1170* if the defendant  
5 served one year or more in prison for the offense in the other  
6 jurisdiction. A prior conviction of a particular felony shall include  
7 a conviction in another jurisdiction for an offense which includes  
8 all of the elements of the particular felony as defined under  
9 California law if the defendant served one year or more in prison  
10 for the offense in the other jurisdiction.

11 (g) A prior separate prison term for the purposes of this section  
12 shall mean a continuous completed period of prison incarceration  
13 imposed for the particular offense alone or in combination with  
14 concurrent or consecutive sentences for other crimes, including  
15 any reimprisonment on revocation of parole which is not  
16 accompanied by a new commitment to prison, and including any  
17 reimprisonment after an escape from incarceration.

18 (h) Serving a prison term includes any confinement time in any  
19 state prison or federal penal institution as punishment for  
20 commission of an offense, including confinement in a hospital or  
21 other institution or facility credited as service of prison time in the  
22 jurisdiction of the confinement.

23 (i) For the purposes of this section, a commitment to the State  
24 Department of Mental Health as a mentally disordered sex offender  
25 following a conviction of a felony, which commitment exceeds  
26 one year in duration, shall be deemed a prior prison term.

27 (j) For the purposes of this section, when a person subject to  
28 the custody, control, and discipline of the Director of Corrections  
29 is incarcerated at a facility operated by the Department of the Youth  
30 Authority, that incarceration shall be deemed to be a term served  
31 in state prison.

32 (k) (1) Notwithstanding subdivisions (d) and (g) or any other  
33 provision of law, where one of the new offenses is committed  
34 while the defendant is temporarily removed from prison pursuant  
35 to Section 2690 or while the defendant is transferred to a  
36 community facility pursuant to Section 3416, 6253, or 6263, or  
37 while the defendant is on furlough pursuant to Section 6254, the  
38 defendant shall be subject to the full enhancements provided for  
39 in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

*SEC. 10. Section 667.5 of the Penal Code, as amended by Section 23 of Chapter 39 of the Statutes of 2011, is amended to read:*

667.5. Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail ~~for more than one year under subdivision (h) of Section 1170~~ is imposed or is not suspended, in addition and consecutive to any other ~~prison terms sentence~~ therefor, the court shall impose a one-year term for each prior separate prison term or county jail term ~~of more than one year imposed under subdivision (h) of Section 1170~~ or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term ~~of more than one year imposed under subdivision (h) of Section 1170~~ or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody ~~of more than one year imposed under subdivision (h) of Section 1170~~ or any felony sentence that is not suspended. A term imposed under the provisions of paragraph (5) of subdivision (h) of Section 1170, wherein a portion of the term is suspended by the court to allow postrelease supervision, shall qualify as a prior county jail term for the purposes of the one-year enhancement.

1 (c) For the purpose of this section, “violent felony” shall mean  
2 any of the following:

3 (1) Murder or voluntary manslaughter.

4 (2) Mayhem.

5 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
6 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
7 262.

8 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

9 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
10 288a.

11 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
12 of Section 288.

13 (7) Any felony punishable by death or imprisonment in the state  
14 prison for life.

15 (8) Any felony in which the defendant inflicts great bodily injury  
16 on any person other than an accomplice which has been charged  
17 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
18 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
19 Sections 213, 264, and 461, or any felony in which the defendant  
20 uses a firearm which use has been charged and proved as provided  
21 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
22 12022.55.

23 (9) Any robbery.

24 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

25 (11) Sexual penetration as defined in subdivision (a) or (j) of  
26 Section 289.

27 (12) Attempted murder.

28 (13) A violation of Section 18745, 18750, or 18755.

29 (14) Kidnapping.

30 (15) Assault with the intent to commit a specified felony, in  
31 violation of Section 220.

32 (16) Continuous sexual abuse of a child, in violation of Section  
33 288.5.

34 (17) Carjacking, as defined in subdivision (a) of Section 215.

35 (18) Rape, spousal rape, or sexual penetration, in concert, in  
36 violation of Section 264.1.

37 (19) Extortion, as defined in Section 518, which would constitute  
38 a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison *or in county jail under subdivision (h) of Section 1170*.

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison *or in county jail under subdivision (h) of Section 1170* if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including

any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.

(k) (1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

*SEC. 11. Section 800 of the Penal Code, as amended by Section 24 of Chapter 39 of the Statutes of 2011, is amended to read:*

800. Except as provided in Section 799, prosecution for an offense punishable by imprisonment *in the state prison for eight years or more or by imprisonment* pursuant to subdivision (h) of Section 1170 for eight years or more shall be commenced within six years after commission of the offense.

*SEC. 12. Section 1170 of the Penal Code, as amended by Section 3 of Chapter 136 of the Statutes of 2011, is amended to read:*

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the prisoner's medical condition and the status of the prisoner's recall 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 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 recall and resentencing consideration, and that recall and resentencing procedures shall be initiated upon that prognosis.

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent

felony described in subdivision (c) of Section 667.5, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

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

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

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

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

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

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

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

11 *SEC. 12.1. Section 1170 of the Penal Code, as amended by*  
12 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
13 *read:*

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

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

36 (3) In any case in which the punishment prescribed by statute  
37 for a person convicted of a public offense is a term of imprisonment  
38 in the state prison of any specification of three time periods, the  
39 court shall sentence the defendant to one of the terms of  
40 imprisonment specified unless the convicted person is given any

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

27 (b) When a judgment of imprisonment is to be imposed and the  
28 statute specifies three possible terms, the choice of the appropriate  
29 term shall rest within the sound discretion of the court. At least  
30 four days prior to the time set for imposition of judgment, either  
31 party or the victim, or the family of the victim if the victim is  
32 deceased, may submit a statement in aggravation or mitigation. In  
33 determining the appropriate term, the court may consider the record  
34 in the case, the probation officer's report, other reports, including  
35 reports received pursuant to Section 1203.03, and statements in  
36 aggravation or mitigation submitted by the prosecution, the  
37 defendant, or the victim, or the family of the victim if the victim  
38 is deceased, and any further evidence introduced at the sentencing  
39 hearing. The court shall select the term which, in the court's  
40 discretion, best serves the interests of justice. The court shall set

1 forth on the record the reasons for imposing the term selected and  
2 the court may not impose an upper term by using the fact of any  
3 enhancement upon which sentence is imposed under any provision  
4 of law. A term of imprisonment shall not be specified if imposition  
5 of sentence is suspended.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
31 (A) has a prior or current felony conviction for a serious felony  
32 described in subdivision (c) of Section 1192.7 *or a prior or current*  
33 *conviction for a violent felony described in subdivision (c) of*  
34 *Section 667.5, (B) has a prior felony conviction in another*  
35 *jurisdiction for an offense that has all of the elements of a serious*  
36 *felony described in subdivision (c) of Section 1192.7 or a violent*  
37 *felony described in subdivision (c) of Section 667.5, (C) has a*  
38 *prior juvenile adjudication where the defendant was 16 years of*  
39 *age or older at the time he or she committed the prior offense of*  
40 *a serious felony described in subdivision (c) of Section 1192.7 or*

1 a violent felony described in subdivision (c) of Section 667.5, a  
2 prior juvenile adjudication in another jurisdiction for an offense  
3 that has all the elements of a serious felony described in  
4 subdivision (c) of Section 1192.7 or a violent felony described in  
5 subdivision (c) of Section 667.5, or a felony described in  
6 subdivision (b) of Section 707 of the Welfare and Institutions Code,  
7 (D) is required to register as a sex offender pursuant to Chapter  
8 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
9 convicted of a crime and as part of the sentence an enhancement  
10 pursuant to Section 186.11 is imposed, an executed sentence for  
11 a felony punishable pursuant to this subdivision shall be served in  
12 state prison.

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

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

23 (5) The court, when imposing a sentence pursuant to paragraphs  
24 (1) or (2) of this subdivision, may commit the defendant to county  
25 jail as follows:

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

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

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

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

*SEC. 12.2. Section 1170 of the Penal Code, as amended by Section 3 of Chapter 136 of the Statutes of 2011, is amended to read:*

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
7 (A) has a prior or current felony conviction for a serious felony  
8 described in subdivision (c) of Section 1192.7 *or a prior or current*  
9 *conviction for a violent felony described in subdivision (c) of*  
10 *Section 667.5, (B) has prior felony conviction in another*  
11 *jurisdiction for an offense that has all of the elements of a serious*  
12 *felony described in subdivision (c) of Section 1192.7 or a violent*  
13 *felony described in subdivision (c) of Section 667.5, (C) has a*  
14 *prior juvenile adjudication where the defendant was 16 years of*  
15 *age or older at the time he or she committed the prior offense of*  
16 *a serious felony described in subdivision (c) of Section 1192.7 or*  
17 *a violent felony described in subdivision (c) of Section 667.5, a*  
18 *prior juvenile adjudication in another jurisdiction for an offense*  
19 *that has all the elements of a serious felony described in*  
20 *subdivision (c) of Section 1192.7 or a violent felony described in*  
21 *subdivision (c) of Section 667.5, or a felony described in*  
22 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
23 *(D) is required to register as a sex offender pursuant to Chapter*  
24 *5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is*  
25 *convicted of a crime and as part of the sentence an enhancement*  
26 *pursuant to Section 186.11 is imposed, an executed sentence for*  
27 *a felony punishable pursuant to this subdivision shall be served in*  
28 *state prison.*

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

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

1     (5) *The court, when imposing a sentence pursuant to paragraphs*  
2 *(1) or (2) of this subdivision, may commit the defendant to county*  
3 *jail as follows:*

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

6     (B) *For a term as determined in accordance with the applicable*  
7 *sentencing law, but suspend execution of a concluding portion of*  
8 *the term selected in the court's discretion, during which time the*  
9 *defendant shall be supervised by the county probation officer in*  
10 *accordance with the terms, conditions, and procedures generally*  
11 *applicable to persons placed on probation, for the remaining*  
12 *unserved portion of the sentence imposed by the court. The period*  
13 *of supervision shall be mandatory, and may not be earlier*  
14 *terminated except by court order. During the period when the*  
15 *defendant is under such supervision, unless in actual custody*  
16 *related to the sentence imposed by the court, the defendant shall*  
17 *be entitled to only actual time credit against the term of*  
18 *imprisonment imposed by the court.*

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

22     (i) *This section shall remain in effect only until January 1, 2012*  
23 *2014, and as of that date is repealed, unless a later enacted statute,*  
24 *that is enacted before that date, deletes or extends that date.*

25     *SEC. 12.3. Section 1170 of the Penal Code, as amended by*  
26 *Section 3 of Chapter 136 of the Statutes of 2011, is amended to*  
27 *read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (E) If the court finds by a preponderance of the evidence that  
36 the statements in the petition are true, the court shall hold a  
37 hearing to consider whether to recall the sentence and commitment  
38 previously ordered and to resentence the defendant in the same  
39 manner as if the defendant had not previously been sentenced,  
40 provided that the new sentence, if any, is not greater than the initial



1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

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

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

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

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

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

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

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

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

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

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

1 (B). Victims, or victim family members if the victim is deceased,  
2 shall be notified of the resentencing hearing and shall retain their  
3 rights to participate in the hearing.

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

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

(5) The court, when imposing a sentence pursuant to paragraphs (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

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

3 (B) For a term as determined in accordance with the applicable  
4 sentencing law, but suspend execution of a concluding portion of  
5 the term selected in the court's discretion, during which time the  
6 defendant shall be supervised by the county probation officer in  
7 accordance with the terms, conditions, and procedures generally  
8 applicable to persons placed on probation, for the remaining  
9 unserved portion of the sentence imposed by the court. The period  
10 of supervision shall be mandatory, and may not be earlier  
11 terminated except by court order. During the period when the  
12 defendant is under such supervision, unless in actual custody  
13 related to the sentence imposed by the court, the defendant shall  
14 be entitled to only actual time credit against the term of  
15 imprisonment imposed by the court.

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

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

22 SEC. 12.4. Section 1170 of the Penal Code, as amended by  
23 Section 4 of Chapter 136 of the Statutes of 2011, is amended to  
24 read:

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

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

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

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

37 (b) When a judgment of imprisonment is to be imposed and the  
38 statute specifies three possible terms, the court shall order  
39 imposition of the middle term, unless there are circumstances in  
40 aggravation or mitigation of the crime. At least four days prior to

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

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

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

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



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

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

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

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

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

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

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

(5) The warden or the warden's representative shall provide the prisoner and his or her family member, agent, or emergency contact, as described in paragraph (4), updated information throughout the recall and resentencing process with regard to the

1 prisoner's medical condition and the status of the prisoner's recall  
2 and resentencing proceedings.

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

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

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

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

38 (10) The secretary shall issue a directive to medical and  
39 correctional staff employed by the department that details the  
40 guidelines and procedures for initiating a recall and resentencing

1 procedure. The directive shall clearly state that any prisoner who  
2 is given a prognosis of six months or less to live is eligible for  
3 recall and resentencing consideration, and that recall and  
4 resentencing procedures shall be initiated upon that prognosis.

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

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

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

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

21 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
22 (A) has a prior or current felony conviction for a serious felony  
23 described in subdivision (c) of Section 1192.7 *or a prior or current*  
24 *conviction for a violent felony described in subdivision (c) of*  
25 *Section 667.5, (B) has a prior felony conviction in another*  
26 *jurisdiction for an offense that has all of the elements of a serious*  
27 *felony described in subdivision (c) of Section 1192.7 or a violent*  
28 *felony described in subdivision (c) of Section 667.5, (C) has a*  
29 *prior juvenile adjudication where the defendant was 16 years of*  
30 *age or older at the time he or she committed the prior offense of*  
31 *a serious felony described in subdivision (c) of Section 1192.7 or*  
32 *a violent felony described in subdivision (c) of Section 667.5, a*  
33 *prior juvenile adjudication in another jurisdiction for an offense*  
34 *that has all the elements of a serious felony described in*  
35 *subdivision (c) of Section 1192.7 or a violent felony described in*  
36 *subdivision (c) of Section 667.5, or a felony described in*  
37 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
38 (D) is required to register as a sex offender pursuant to Chapter  
39 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is  
40 convicted of a crime and as part of the sentence an enhancement

1 pursuant to Section 186.11 is imposed, an executed sentence for  
2 a felony punishable pursuant to this subdivision shall be served in  
3 state prison.

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

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

14 (5) *The court, when imposing a sentence pursuant to paragraph*  
15 *(1) or (2) of this subdivision, may commit the defendant to county*  
16 *jail as follows:*

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

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

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

35 (i) This section shall become operative on January 1, 2012.

36 SEC. 12.5. *Section 1170 of the Penal Code, as amended by*  
37 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
38 *read:*

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

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

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

21 (3) In any case in which the punishment prescribed by statute  
22 for a person convicted of a public offense is a term of imprisonment  
23 in the state prison of any specification of three time periods, the  
24 court shall sentence the defendant to one of the terms of  
25 imprisonment specified unless the convicted person is given any  
26 other disposition provided by law, including a fine, jail, probation,  
27 or the suspension of imposition or execution of sentence or is  
28 sentenced pursuant to subdivision (b) of Section 1168 because he  
29 or she had committed his or her crime prior to July 1, 1977. In  
30 sentencing the convicted person, the court shall apply the  
31 sentencing rules of the Judicial Council. The court, unless it  
32 determines that there are circumstances in mitigation of the  
33 punishment prescribed, shall also impose any other term that it is  
34 required by law to impose as an additional term. Nothing in this  
35 article shall affect any provision of law that imposes the death  
36 penalty, that authorizes or restricts the granting of probation or  
37 suspending the execution or imposition of sentence, or expressly  
38 provides for imprisonment in the state prison for ~~life~~: *life, except*  
39 *as provided in paragraph (2) of subdivision (d)*. In any case in  
40 which the amount of preimprisonment credit under Section 2900.5

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

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

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

38 (d) (1) When a defendant subject to this section or subdivision  
39 (b) of Section 1168 has been sentenced to be imprisoned in the  
40 state prison and has been committed to the custody of the secretary,

the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence. ~~The resentence court resentencing~~ under this subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

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

(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*

1 agency is not provided, the court shall return the petition to the  
2 defendant and advise the defendant that the matter cannot be  
3 considered without the missing information.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

30 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 *or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5*, (B) has a prior felony conviction in another jurisdiction for an offense that has all of the elements of a serious felony described in subdivision (c) of Section 1192.7 *or a violent felony described in subdivision (c) of Section 667.5*, (C) has a prior juvenile adjudication where the defendant was 16 years of age or older at the time he or she committed the prior offense of a serious felony described in subdivision (c) of Section 1192.7 *or a violent felony described in subdivision (c) of Section 667.5*, a prior juvenile adjudication in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 *or a violent felony described in subdivision (c) of Section 667.5*, or a felony described in subdivision (b) of Section 707 of the Welfare and Institutions Code, (D) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

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

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

11 (5) *The court, when imposing a sentence pursuant to paragraphs*  
12 *(1) or (2) of this subdivision, may commit the defendant to county*  
13 *jail as follows:*

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

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

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

32 (i) This section shall become operative on January 1, 2012.

33 *SEC. 12.6. Section 1170 of the Penal Code, as amended by*  
34 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
35 *read:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

32 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
33 (A) has a prior or current felony conviction for a serious felony  
34 described in subdivision (c) of Section 1192.7 *or a prior or current*  
35 *conviction for a violent felony described in subdivision (c) of*  
36 *Section 667.5, (B) has a prior felony conviction in another*  
37 *jurisdiction for an offense that has all of the elements of a serious*  
38 *felony described in subdivision (c) of Section 1192.7 or a violent*  
39 *felony described in subdivision (c) of Section 667.5, (C) has a*  
40 *prior juvenile adjudication where the defendant was 16 years of*

1 *age or older at the time he or she committed the prior offense of*  
2 *a serious felony described in subdivision (c) of Section 1192.7 or*  
3 *a violent felony described in subdivision (c) of Section 667.5, a*  
4 *prior juvenile adjudication in another jurisdiction for an offense*  
5 *that has all the elements of a serious felony described in*  
6 *subdivision (c) of Section 1192.7 or a violent felony described in*  
7 *subdivision (c) of Section 667.5, or a felony described in*  
8 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
9 *(D) is required to register as a sex offender pursuant to Chapter*  
10 *5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is*  
11 *convicted of a crime and as part of the sentence an enhancement*  
12 *pursuant to Section 186.11 is imposed, an executed sentence for*  
13 *a felony punishable pursuant to this subdivision shall be served in*  
14 *state prison.*

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

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

25 (5) *The court, when imposing a sentence pursuant to paragraphs*  
26 *(1) or (2) of this subdivision, may commit the defendant to county*  
27 *jail as follows:*

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

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

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

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

6 (i) This section shall become operative on January 1, ~~2012~~.  
7 2014.

8 *SEC. 12.7. Section 1170 of the Penal Code, as amended by*  
9 *Section 4 of Chapter 136 of the Statutes of 2011, is amended to*  
10 *read:*

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

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

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

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

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

1 may not impose an upper term by using the fact of any  
2 enhancement upon which sentence is imposed under any provision  
3 of law. A term of imprisonment shall not be specified if imposition  
4 of sentence is suspended.

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

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

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

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

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

39 (ii) *The defendant does not have juvenile felony adjudications*  
40 *for assault or other felony crimes with a significant potential for*

1 *personal harm to victims prior to the offense for which the sentence*  
2 *is being considered for recall.*

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

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

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

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

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

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

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

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

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

39 *(iv) Prior to the offense for which the sentence is being*  
40 *considered for recall, the defendant had insufficient adult support*

1 or supervision and had suffered from psychological or physical  
2 trauma, or significant stress.

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

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

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

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

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

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

37 (I) In addition to the criteria in subparagraph (F), the court  
38 may consider any other criteria that the court deems relevant to  
39 its decision, so long as the court identifies them on the record,



1 *provides a statement of reasons for adopting them, and states why*  
2 *the defendant does or does not satisfy the criteria.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
30 (A) has a prior or current felony conviction for a serious felony  
31 described in subdivision (c) of Section 1192.7 *or a prior or current*  
32 *conviction for a violent felony described in subdivision (c) of*  
33 *Section 667.5, (B) has a prior felony conviction in another*  
34 *jurisdiction for an offense that has all of the elements of a serious*  
35 *felony described in subdivision (c) of Section 1192.7 or a violent*  
36 *felony described in subdivision (c) of Section 667.5, (C) has a*  
37 *prior juvenile adjudication where the defendant was 16 years of*  
38 *age or older at the time he or she committed the prior offense of*  
39 *a serious felony described in subdivision (c) of Section 1192.7 or*  
40 *a violent felony described in subdivision (c) of Section 667.5, a*

1 *prior juvenile adjudication in another jurisdiction for an offense*  
2 *that has all the elements of a serious felony described in*  
3 *subdivision (c) of Section 1192.7 or a violent felony described in*  
4 *subdivision (c) of Section 667.5, or a felony described in*  
5 *subdivision (b) of Section 707 of the Welfare and Institutions Code,*  
6 *(D) is required to register as a sex offender pursuant to Chapter*  
7 *5.5 (commencing with Section 290) of Title 9 of Part 1, or (E) is*  
8 *convicted of a crime and as part of the sentence an enhancement*  
9 *pursuant to Section 186.11 is imposed, an executed sentence for*  
10 *a felony punishable pursuant to this subdivision shall be served in*  
11 *state prison.*

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

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

22 (5) *The court, when imposing a sentence pursuant to paragraphs*  
23 *(1) or (2) of this subdivision, may commit the defendant to county*  
24 *jail as follows:*

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

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

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

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

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

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

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

(c) In the case of any person convicted of one or more felonies committed while the person is confined in a state prison or is subject to reimprisonment for escape from custody and the law

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

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

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

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

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

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

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

*SEC. 13.1. Section 1170.1 of the Penal Code, as amended by Section 29 of Chapter 39 of the Statutes of 2011, is amended to read:*

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

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

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

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

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

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

(g) When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision



1 shall not limit the imposition of any other enhancements applicable  
2 to that offense, including an enhancement for being armed with  
3 or using a dangerous or deadly weapon or a firearm.

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

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

13 *SEC. 13.2. Section 1170.1 of the Penal Code, as amended by*  
14 *Section 30 of Chapter 39 of the Statutes of 2011, is amended to*  
15 *read:*

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

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

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

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

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

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

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

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

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

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

*SEC. 13.3. Section 1170.1 of the Penal Code, as amended by Section 30 of Chapter 39 of the Statutes of 2011, is amended to read:*

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

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

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

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

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

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

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

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

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

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

17 *SEC. 14. Section 1233.15 is added to the Penal Code, to read:*

18 *1233.15. The Director of Finance, in consultation with the*  
19 *Administrative Office of the Courts, the Department of Corrections*  
20 *and Rehabilitation, and the Chief Probation Officers of California,*  
21 *shall develop a revised formula for the California Community*  
22 *Corrections Performance Incentives Act of 2009 that takes into*  
23 *consideration the significant changes to the eligibility of some*  
24 *felony probationers for revocation to the state prison resulting*  
25 *from the implementation of the 2011 Public Safety realignment.*  
26 *The revised formula may include adjustments to the baseline failure*  
27 *rate for each county.*

28 *SEC. 15. Section 2932 of the Penal Code, as amended by*  
29 *Section 35 of Chapter 39 of the Statutes of 2011, is repealed.*

30 ~~2932. (a) (1) For any time credit accumulated pursuant to~~  
31 ~~Section 2931, 2933, or 4019, not more than 360 days of credit may~~  
32 ~~be denied or lost for a single act of murder, attempted murder,~~  
33 ~~solicitation of murder, manslaughter, rape, sodomy, or oral~~  
34 ~~copulation accomplished against the victim's will, attempted rape,~~  
35 ~~attempted sodomy, or attempted oral copulation accomplished~~  
36 ~~against the victim's will, assault or battery causing serious bodily~~  
37 ~~injury, assault with a deadly weapon or caustic substance, taking~~  
38 ~~of a hostage, escape with force or violence, or possession or~~  
39 ~~manufacture of a deadly weapon or explosive device, whether or~~  
40 ~~not prosecution is undertaken for purposes of this paragraph.~~

1 Solicitation of murder shall be proved by the testimony of two  
2 witnesses, or of one witness and corroborating circumstances.

3 (2) Not more than 180 days of credit may be denied or lost for  
4 a single act of misconduct, except as specified in paragraph (1);  
5 which could be prosecuted as a felony whether or not prosecution  
6 is undertaken.

7 (3) Not more than 90 days of credit may be denied or lost for a  
8 single act of misconduct which could be prosecuted as a  
9 misdemeanor, whether or not prosecution is undertaken.

10 (4) Not more than 30 days of credit may be denied or lost for a  
11 single act of misconduct defined by regulation as a serious  
12 disciplinary offense by the Department of Corrections and  
13 Rehabilitation. Any person confined due to a change in custodial  
14 classification following the commission of any serious disciplinary  
15 infraction shall, in addition to any loss of time credits, be ineligible  
16 to receive participation or worktime credit for a period not to  
17 exceed the number of days of credit which have been lost for the  
18 act of misconduct or 180 days, whichever is less. Any person  
19 confined in a secure housing unit for having committed any  
20 misconduct specified in paragraph (1) in which great bodily injury  
21 is inflicted upon a nonprisoner shall, in addition to any loss of time  
22 credits, be ineligible to receive participation or worktime credit  
23 for a period not to exceed the number of days of credit which have  
24 been lost for that act of misconduct. In unusual cases, an inmate  
25 may be denied the opportunity to participate in a credit qualifying  
26 assignment for up to six months beyond the period specified in  
27 this subdivision if the Secretary of the Department of Corrections  
28 and Rehabilitation, or for prisoners confined in local facilities as  
29 specified in Section 4019, the sheriff or director of the county  
30 correctional department, finds, after a hearing, that no credit  
31 qualifying program may be assigned to the inmate without creating  
32 a substantial risk of physical harm to staff or other inmates. At the  
33 end of the six-month period and of successive six-month periods,  
34 the denial of the opportunity to participate in a credit qualifying  
35 assignment may be renewed upon a hearing and finding by the  
36 secretary, or for prisoners confined in local facilities as specified  
37 in Section 4019, the sheriff or director of the county correctional  
38 department.

39 (5) The prisoner may appeal the decision through the  
40 department's review procedure, or in the case of prisoners confined

1 in local facilities as specified in Section 4019, through the sheriff's  
2 or director of the county correctional department's review  
3 procedure, which shall include a review by an individual  
4 independent of the institution who has supervisory authority over  
5 the institution.

6 (b) For any credit accumulated pursuant to Section 2931, not  
7 more than 30 days of participation credit may be denied or lost for  
8 a single failure or refusal to participate. Any act of misconduct  
9 described by the Department of Corrections and Rehabilitation,  
10 or for prisoners confined in local facilities as specified in Section  
11 4019, the sheriff or director of the county correctional department,  
12 as a serious disciplinary infraction if committed while participating  
13 in work, educational, vocational, therapeutic, or other prison  
14 activity shall be deemed a failure to participate.

15 (c) Any procedure not provided for by this section, but necessary  
16 to carry out the purposes of this section, shall be those procedures  
17 provided for by the Department of Corrections and Rehabilitation  
18 for serious disciplinary infractions if those procedures are not in  
19 conflict with this section, or in the case of prisoners confined in  
20 local facilities as specified in Section 4019, by the sheriff or  
21 director of the county correctional department.

22 (1) (A) The Department of Corrections and Rehabilitation, or  
23 in the case of prisoners confined in local facilities as specified in  
24 Section 4019, the sheriff or director of the county correctional  
25 department, shall, using reasonable diligence to investigate, provide  
26 written notice to the prisoner. The written notice shall be given  
27 within 15 days after the discovery of information leading to charges  
28 that may result in a possible denial of credit, except that if the  
29 prisoner has escaped, the notice shall be given within 15 days of  
30 the prisoner's return to the custody of the Secretary of the  
31 Department of Corrections and Rehabilitation, or in the case of  
32 prisoners confined in local facilities as specified in Section 4019,  
33 the sheriff or director of the county correctional department. The  
34 written notice shall include the specific charge, the date, the time,  
35 the place that the alleged misbehavior took place, the evidence  
36 relied upon, a written explanation of the procedures that will be  
37 employed at the proceedings and the prisoner's rights at the  
38 hearing. The hearing shall be conducted by an individual who shall  
39 be independent of the case and shall take place within 30 days of  
40 the written notice.

~~(B) The Secretary of the Department of Corrections and Rehabilitation, or in the case of prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department, may delay written notice beyond 15 days when all of the following factors are true:~~

~~(i) An act of misconduct is involved which could be prosecuted as murder, attempted murder, or assault on a prison employee, whether or not prosecution is undertaken.~~

~~(ii) Further investigation is being undertaken for the purpose of identifying other prisoners involved in the misconduct.~~

~~(iii) Within 15 days after the discovery of information leading to charges that may result in a possible denial of credit, the investigating officer makes a written request to delay notifying that prisoner and states the reasons for the delay.~~

~~(iv) The warden of the institution, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department, approves of the delay in writing.~~

~~(C) The period of delay under this paragraph shall not exceed 30 days. The prisoner's hearing shall take place within 30 days of the written notice.~~

~~(2) The prisoner may elect to be assigned an employee to assist in the investigation, preparation, or presentation of a defense at the disciplinary hearing if it is determined by the department, or for prisoners confined in local facilities as specified in Section 4019, the sheriff or director of the county correctional department, that: (A) the prisoner is illiterate; or (B) the complexity of the issues or the prisoner's confinement status makes it unlikely that the prisoner can collect and present the evidence necessary for an adequate comprehension of the case.~~

~~(3) The prisoner may request witnesses to attend the hearing and they shall be called unless the person conducting the hearing has specific reasons to deny this request. The specific reasons shall be set forth in writing and a copy of the document shall be presented to the prisoner.~~

~~(4) The prisoner has the right, under the direction of the person conducting the hearing, to question all witnesses.~~

~~(5) At the conclusion of the hearing the charge shall be dismissed if the facts do not support the charge, or the prisoner~~



1 may be found guilty on the basis of a preponderance of the  
2 evidence.

3 (d) If found guilty the prisoner shall be advised in writing of  
4 the guilty finding and the specific evidence relied upon to reach  
5 this conclusion and the amount of time-credit loss. The prisoner  
6 may appeal the decision through the Department of Corrections  
7 and Rehabilitation's review procedure, or in the case of prisoners  
8 confined in local facilities as specified in Section 4019, the review  
9 procedure established by the sheriff or the director of the county  
10 correctional department, and may, upon final notification of appeal  
11 denial, within 15 days of the notification demand review of the  
12 denial of credit to the Board of Parole Hearings, or in the case of  
13 prisoners confined in local facilities as specified in Section 4019,  
14 through a procedure established by the sheriff or the director of  
15 the county correctional department and the board or the local entity  
16 acting for the county may affirm, reverse, or modify the decision  
17 or grant a hearing before the board or the local entity at which  
18 hearing the prisoner shall have the rights specified in Section  
19 3041.5.

20 (e) Each prisoner subject to Section 2931 shall be notified of  
21 the total amount of good behavior and participation credit which  
22 may be credited pursuant to Section 2931, and his or her anticipated  
23 time-credit release date. The prisoner shall be notified of any  
24 change in the anticipated release date due to denial or loss of  
25 credits, award of worktime credit, under Section 2933, or the  
26 restoration of any credits previously forfeited.

27 (f) (1) If the conduct the prisoner is charged with also  
28 constitutes a crime, the Department of Corrections and  
29 Rehabilitation, or in the case of prisoners confined in local facilities  
30 as specified in Section 4019, the sheriff or director of the county  
31 correctional department, may refer the case to criminal authorities  
32 for possible prosecution. The department, or in the case of prisoners  
33 confined in local facilities as specified in Section 4019, the sheriff  
34 or director of the county correctional department, shall notify the  
35 prisoner, who may request postponement of the disciplinary  
36 proceedings pending the referral.

37 (2) The prisoner may revoke his or her request for postponement  
38 of the disciplinary proceedings up until the filing of the accusatory  
39 pleading. In the event of the revocation of the request for

1 postponement of the proceeding, the department or the local entity  
2 shall hold the hearing within 30 days of the revocation.

3 ~~(3) Notwithstanding the notification requirements in this~~  
4 ~~paragraph and subparagraphs (A) and (B) of paragraph (1) of~~  
5 ~~subdivision (c), in the event the case is referred to criminal~~  
6 ~~authorities for prosecution and the authority requests that the~~  
7 ~~prisoner not be notified so as to protect the confidentiality of its~~  
8 ~~investigation, no notice to the prisoner shall be required until an~~  
9 ~~accusatory pleading is filed with the court, or the authority notifies~~  
10 ~~the warden, in writing, that it will not prosecute or it authorizes~~  
11 ~~the notification of the prisoner. The notice exceptions provided~~  
12 ~~for in this paragraph shall only apply if the criminal authority~~  
13 ~~requests of the warden, in writing, and within the 15 days provided~~  
14 ~~in subparagraph (A) of paragraph (1) of subdivision (c), that the~~  
15 ~~prisoner not be notified. Any period of delay of notice to the~~  
16 ~~prisoner shall not exceed 30 days beyond the 15 days referred to~~  
17 ~~in subdivision (c). In the event that no prosecution is undertaken,~~  
18 ~~the procedures in subdivision (c) shall apply, and the time periods~~  
19 ~~set forth in that subdivision shall commence to run from the date~~  
20 ~~the warden is notified in writing of the decision not to prosecute.~~  
21 ~~In the event the authority either cancels its requests that the prisoner~~  
22 ~~not be notified before it makes a decision on prosecution or files~~  
23 ~~an accusatory pleading, the provisions of this paragraph shall apply~~  
24 ~~as if no request had been received, beginning from the date of the~~  
25 ~~cancellation or filing.~~

26 ~~(4) In the case where the prisoner is prosecuted by the district~~  
27 ~~attorney, the Department of Corrections and Rehabilitation, or in~~  
28 ~~the case of prisoners confined in local facilities as specified in~~  
29 ~~Section 4019, the sheriff or the director of the county department~~  
30 ~~of corrections, shall not deny time credit where the prisoner is~~  
31 ~~found not guilty and may deny credit if the prisoner is found guilty,~~  
32 ~~in which case the procedures in subdivision (c) shall not apply.~~

33 ~~(g) If time credit denial proceedings or criminal prosecution~~  
34 ~~prohibit the release of a prisoner who would have otherwise been~~  
35 ~~released, and the prisoner is found not guilty of the alleged~~  
36 ~~misconduct, the amount of time spent incarcerated, in excess of~~  
37 ~~what the period of incarceration would have been absent the alleged~~  
38 ~~misbehavior, shall be deducted from the prisoner's parole period.~~

39 ~~(h) Nothing in the amendments to this section made at the~~  
40 ~~1981-82 Regular Session of the Legislature shall affect the granting~~

1 or revocation of credits attributable to that portion of the prisoner's  
2 sentence served prior to January 1, 1983.

3 SEC. 15.5. Section 2932 is added to the Penal Code, to read:

4 2932. (a) (1) For any time credit accumulated pursuant to  
5 Section 2931 or to Section 2933, not more than 360 days of credit  
6 may be denied or lost for a single act of murder, attempted murder,  
7 solicitation of murder, manslaughter, rape, sodomy, or oral  
8 copulation accomplished against the victim's will, attempted rape,  
9 attempted sodomy, or attempted oral copulation accomplished  
10 against the victim's will, assault or battery causing serious bodily  
11 injury, assault with a deadly weapon or caustic substance, taking  
12 of a hostage, escape with force or violence, or possession or  
13 manufacture of a deadly weapon or explosive device, whether or  
14 not prosecution is undertaken for purposes of this paragraph.  
15 Solicitation of murder shall be proved by the testimony of two  
16 witnesses, or of one witness and corroborating circumstances.

17 (2) Not more than 180 days of credit may be denied or lost for  
18 a single act of misconduct, except as specified in paragraph (1),  
19 which could be prosecuted as a felony whether or not prosecution  
20 is undertaken.

21 (3) Not more than 90 days of credit may be denied or lost for  
22 a single act of misconduct which could be prosecuted as a  
23 misdemeanor, whether or not prosecution is undertaken.

24 (4) Not more than 30 days of credit may be denied or lost for  
25 a single act of misconduct defined by regulation as a serious  
26 disciplinary offense by the Department of Corrections and  
27 Rehabilitation. Any person confined due to a change in custodial  
28 classification following the commission of any serious disciplinary  
29 infraction shall, in addition to any loss of time credits, be ineligible  
30 to receive participation or worktime credit for a period not to  
31 exceed the number of days of credit which have been lost for the  
32 act of misconduct or 180 days, whichever is less. Any person  
33 confined in a secure housing unit for having committed any  
34 misconduct specified in paragraph (1) in which great bodily injury  
35 is inflicted upon a nonprisoner shall, in addition to any loss of  
36 time credits, be ineligible to receive participation or worktime  
37 credit for a period not to exceed the number of days of credit which  
38 have been lost for that act of misconduct. In unusual cases, an  
39 inmate may be denied the opportunity to participate in a credit  
40 qualifying assignment for up to six months beyond the period

1 specified in this subdivision if the Secretary of the Department of  
2 Corrections and Rehabilitation finds, after a hearing, that no credit  
3 qualifying program may be assigned to the inmate without creating  
4 a substantial risk of physical harm to staff or other inmates. At the  
5 end of the six-month period and of successive six-month periods,  
6 the denial of the opportunity to participate in a credit qualifying  
7 assignment may be renewed upon a hearing and finding by the  
8 director.

9 (5) The prisoner may appeal the decision through the  
10 department's review procedure, which shall include a review by  
11 an individual independent of the institution who has supervisory  
12 authority over the institution.

13 (b) For any credit accumulated pursuant to Section 2931, not  
14 more than 30 days of participation credit may be denied or lost  
15 for a single failure or refusal to participate. Any act of misconduct  
16 described by the Department of Corrections and Rehabilitation  
17 as a serious disciplinary infraction if committed while participating  
18 in work, educational, vocational, therapeutic, or other prison  
19 activity shall be deemed a failure to participate.

20 (c) Any procedure not provided for by this section, but necessary  
21 to carry out the purposes of this section, shall be those procedures  
22 provided for by the Department of Corrections and Rehabilitation  
23 for serious disciplinary infractions if those procedures are not in  
24 conflict with this section.

25 (1) (A) The Department of Corrections and Rehabilitation shall,  
26 using reasonable diligence to investigate, provide written notice  
27 to the prisoner. The written notice shall be given within 15 days  
28 after the discovery of information leading to charges that may  
29 result in a possible denial of credit, except that if the prisoner has  
30 escaped, the notice shall be given within 15 days of the prisoner's  
31 return to the custody of the secretary. The written notice shall  
32 include the specific charge, the date, the time, the place that the  
33 alleged misbehavior took place, the evidence relied upon, a written  
34 explanation of the procedures that will be employed at the  
35 proceedings and the prisoner's rights at the hearing. The hearing  
36 shall be conducted by an individual who shall be independent of  
37 the case and shall take place within 30 days of the written notice.

38 (B) The Department of Corrections and Rehabilitation may  
39 delay written notice beyond 15 days when all of the following  
40 factors are true:

1 (i) An act of misconduct is involved which could be prosecuted  
2 as murder, attempted murder, or assault on a prison employee,  
3 whether or not prosecution is undertaken.

4 (ii) Further investigation is being undertaken for the purpose  
5 of identifying other prisoners involved in the misconduct.

6 (iii) Within 15 days after the discovery of information leading  
7 to charges that may result in a possible denial of credit, the  
8 investigating officer makes a written request to delay notifying  
9 that prisoner and states the reasons for the delay.

10 (iv) The warden of the institution approves of the delay in  
11 writing.

12 The period of delay under this paragraph shall not exceed 30  
13 days. The prisoner's hearing shall take place within 30 days of  
14 the written notice.

15 (2) The prisoner may elect to be assigned an employee to assist  
16 in the investigation, preparation, or presentation of a defense at  
17 the disciplinary hearing if it is determined by the department that:  
18 (i) the prisoner is illiterate; or (ii) the complexity of the issues or  
19 the prisoner's confinement status makes it unlikely that the prisoner  
20 can collect and present the evidence necessary for an adequate  
21 comprehension of the case.

22 (3) The prisoner may request witnesses to attend the hearing  
23 and they shall be called unless the person conducting the hearing  
24 has specific reasons to deny this request. The specific reasons shall  
25 be set forth in writing and a copy of the document shall be  
26 presented to the prisoner.

27 (4) The prisoner has the right, under the direction of the person  
28 conducting the hearing, to question all witnesses.

29 (5) At the conclusion of the hearing the charge shall be  
30 dismissed if the facts do not support the charge, or the prisoner  
31 may be found guilty on the basis of a preponderance of the  
32 evidence.

33 (d) If found guilty the prisoner shall be advised in writing of  
34 the guilty finding and the specific evidence relied upon to reach  
35 this conclusion and the amount of time-credit loss. The prisoner  
36 may appeal the decision through the department's review  
37 procedure, and may, upon final notification of appeal denial, within  
38 15 days of the notification demand review of the department's  
39 denial of credit to the Board of Prison Terms, and the board may  
40 affirm, reverse, or modify the department's decision or grant a

1 hearing before the board at which hearing the prisoner shall have  
2 the rights specified in Section 3041.5.

3 (e) Each prisoner subject to Section 2931 shall be notified of  
4 the total amount of good behavior and participation credit which  
5 may be credited pursuant to Section 2931, and his or her  
6 anticipated time-credit release date. The prisoner shall be notified  
7 of any change in the anticipated release date due to denial or loss  
8 of credits, award of worktime credit, under Section 2933, or the  
9 restoration of any credits previously forfeited.

10 (f) (1) If the conduct the prisoner is charged with also  
11 constitutes a crime, the department may refer the case to criminal  
12 authorities for possible prosecution. The department shall notify  
13 the prisoner, who may request postponement of the disciplinary  
14 proceedings pending the referral.

15 (2) The prisoner may revoke his or her request for postponement  
16 of the disciplinary proceedings up until the filing of the accusatory  
17 pleading. In the event of the revocation of the request for  
18 postponement of the proceeding, the department shall hold the  
19 hearing within 30 days of the revocation.

20 (3) Notwithstanding the notification requirements in this  
21 paragraph and subparagraphs (A) and (B) of paragraph (1) of  
22 subdivision (c), in the event the case is referred to criminal  
23 authorities for prosecution and the authority requests that the  
24 prisoner not be notified so as to protect the confidentiality of its  
25 investigation, no notice to the prisoner shall be required until an  
26 accusatory pleading is filed with the court, or the authority notifies  
27 the warden, in writing, that it will not prosecute or it authorizes  
28 the notification of the prisoner. The notice exceptions provided  
29 for in this paragraph shall only apply if the criminal authority  
30 requests of the warden, in writing, and within the 15 days provided  
31 in subparagraph (A) of paragraph (1) of subdivision (c), that the  
32 prisoner not be notified. Any period of delay of notice to the  
33 prisoner shall not exceed 30 days beyond the 15 days referred to  
34 in subdivision (c). In the event that no prosecution is undertaken,  
35 the procedures in subdivision (c) shall apply, and the time periods  
36 set forth in that subdivision shall commence to run from the date  
37 the warden is notified in writing of the decision not to prosecute.  
38 In the event the authority either cancels its requests that the  
39 prisoner not be notified before it makes a decision on prosecution  
40 or files an accusatory pleading, the provisions of this paragraph

1 shall apply as if no request had been received, beginning from the  
2 date of the cancellation or filing.

3 (4) In the case where the prisoner is prosecuted by the district  
4 attorney, the Department of Corrections and Rehabilitation shall  
5 not deny time credit where the prisoner is found not guilty and  
6 may deny credit if the prisoner is found guilty, in which case the  
7 procedures in subdivision (c) shall not apply.

8 (g) If time credit denial proceedings or criminal prosecution  
9 prohibit the release of a prisoner who would have otherwise been  
10 released, and the prisoner is found not guilty of the alleged  
11 misconduct, the amount of time spent incarcerated, in excess of  
12 what the period of incarceration would have been absent the  
13 alleged misbehavior, shall be deducted from the prisoner's parole  
14 period.

15 (h) Nothing in the amendments to this section made at the  
16 1981–82 Regular Session of the Legislature shall affect the  
17 granting or revocation of credits attributable to that portion of  
18 the prisoner's sentence served prior to January 1, 1983.

19 SEC. 16. Section 2933 of the Penal Code is amended to read:

20 2933. (a) It is the intent of the Legislature that persons  
21 convicted of a crime and sentenced to the state prison under Section  
22 1170 serve the entire sentence imposed by the court, except for a  
23 reduction in the time served in the custody of the Secretary of the  
24 Department of Corrections and Rehabilitation pursuant to this  
25 section and Section 2933.05.

26 (b) For every six months of continuous incarceration, a prisoner  
27 shall be awarded credit reductions from his or her term of  
28 confinement of six months. A lesser amount of credit based on  
29 this ratio shall be awarded for any lesser period of continuous  
30 incarceration. Credit should be awarded pursuant to regulations  
31 adopted by the secretary. Prisoners who are denied the opportunity  
32 to earn credits pursuant to subdivision (a) of Section 2932 shall  
33 be awarded no credit reduction pursuant to this section. Under no  
34 circumstances shall any prisoner receive more than six months'  
35 credit reduction for any six-month period under this section.

36 (c) Credit is a privilege, not a right. Credit must be earned and  
37 may be forfeited pursuant to the provisions of Section 2932. Except  
38 as provided in subdivision (a) of Section 2932, every eligible  
39 prisoner shall have a reasonable opportunity to participate.

(d) Under regulations adopted by the Department of Corrections and Rehabilitation, which shall require a period of not more than one year free of disciplinary infractions, credit which has been previously forfeited may be restored by the secretary. The regulations shall provide for separate classifications of serious disciplinary infractions as they relate to restoration of credits, the time period required before forfeited credits or a portion thereof may be restored, and the percentage of forfeited credits that may be restored for these time periods. For credits forfeited as specified in paragraph (1) of subdivision (a) of Section 2932, the Department of Corrections and Rehabilitation may provide that up to 180 days of lost credit shall not be restored and up to 90 days of credit shall not be restored for a forfeiture resulting from conspiracy or attempts to commit one of those acts. No credits may be restored if they were forfeited for a serious disciplinary infraction in which the victim died or was permanently disabled. Upon application of the prisoner and following completion of the required time period free of disciplinary offenses, forfeited credits eligible for restoration under the regulations for disciplinary offenses other than serious disciplinary infractions punishable by a credit loss of more than 90 days shall be restored unless, at a hearing, it is found that the prisoner refused to accept or failed to perform in a credit qualifying assignment, or extraordinary circumstances are present that require that credits not be restored. "Extraordinary circumstances" shall be defined in the regulations adopted by the secretary. However, in any case in which credit was forfeited for a serious disciplinary infraction punishable by a credit loss of more than 90 days, restoration of credit shall be at the discretion of the secretary.

The prisoner may appeal the finding through the Department of Corrections and Rehabilitation's review procedure, which shall include a review by an individual independent of the institution who has supervisory authority over the institution.

~~(e) (1) Notwithstanding Section 4019 and subject to the limitations of this subdivision, a prisoner sentenced to the state prison under Section 1170 for whom the sentence is executed shall have one day deducted from his or her period of confinement for every day he or she served in a county jail, city jail, industrial farm, or road camp from the date of arrest until state prison credits pursuant to this article are applicable to the prisoner.~~



1     ~~(2) A prisoner may not receive the credit specified in paragraph~~  
2     ~~(1) if it appears by the record that the prisoner has refused to~~  
3     ~~satisfactorily perform labor as assigned by, or has not satisfactorily~~  
4     ~~complied with the reasonable rules and regulations established by,~~  
5     ~~the sheriff, chief of police, or superintendent of an industrial farm~~  
6     ~~or road camp.~~

7     ~~(3) Section 4019, and not this subdivision, shall apply if the~~  
8     ~~prisoner is required to register as a sex offender, pursuant to~~  
9     ~~Chapter 5.5 (commencing with Section 290), was committed for~~  
10    ~~a serious felony, as defined in Section 1192.7, or has a prior~~  
11    ~~conviction for a serious felony, as defined in Section 1192.7, or a~~  
12    ~~violent felony, as defined in Section 667.5.~~

13    ~~(f)~~

14    ~~(e) The provisions of subdivision (d) shall also apply in cases~~  
15    ~~of credit forfeited under Section 2931 for offenses and serious~~  
16    ~~disciplinary infractions occurring on or after January 1, 1983.~~

17    ~~SEC. 17. Section 3000.08 of the Penal Code, as amended by~~  
18    ~~Section 37 of Chapter 39 of the Statutes of 2011, is amended to~~  
19    ~~read:~~

20    ~~3000.08. (a) Persons released from state prison on or after~~  
21    ~~October 1, 2011, after serving a prison term or, whose sentence~~  
22    ~~has been deemed served pursuant to Section 2900.5, for any of the~~  
23    ~~following crimes shall be subject to the jurisdiction of and parole~~  
24    ~~supervision by the Department of Corrections and Rehabilitation:~~

25    ~~(1) A serious felony as described in subdivision (c) of Section~~  
26    ~~1192.7.~~

27    ~~(2) A violent felony as described in subdivision (c) of Section~~  
28    ~~667.5.~~

29    ~~(3) A crime for which the person was sentenced pursuant to~~  
30    ~~paragraph (2) of subdivision (e) of Section 667 or paragraph (2)~~  
31    ~~of subdivision (c) of Section 1170.12.~~

32    ~~(4) Any crime where the person eligible for release from prison~~  
33    ~~is classified as a High Risk Sex Offender.~~

34    ~~(5) Any crime where the person is required, as a condition of~~  
35    ~~parole, to undergo treatment by the Department of Mental Health~~  
36    ~~pursuant to Section 2962.~~

37    ~~(b) Notwithstanding any other provision of law, all other~~  
38    ~~offenders released from prison shall be placed on postrelease~~  
39    ~~supervision pursuant to Title 2.05 (commencing with Section~~  
40    ~~3450).~~

(c) Notwithstanding subdivision (a), any of the following persons released from state prison shall be subject to the jurisdiction of, and parole supervision by, the Department of Corrections and Rehabilitation for a period of parole up to three years or the parole term the person was subject to at the time of the commission of the offense, whichever is greater:

(1) The person is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, and was subject to a period of parole exceeding three years at the time he or she committed a felony for which they were convicted and subsequently sentenced to state prison.

(2) The person was subject to parole for life pursuant to Section 3000.1 at the time of the commission of the offense that resulted in a conviction and state prison sentence.

(d) Except as described in subdivision (c), any person who is convicted of a felony that requires community supervision and who still has a period of state parole to serve shall discharge from state parole at the time of release to community supervision.

(e)

(e) This section shall operative only until July 1, 2013, and as of January 1, 2014 is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 18. Section 3000.08 of the Penal Code, as amended by Section 5 of Chapter 136 of the Statutes of 2011, is amended to read:

3000.08. (a) Persons released from state prison prior to or on or after July 1, 2013, after serving a prison term or, whose sentence has been deemed served pursuant to Section 2900.5, for any of the following crimes shall be subject to parole supervision by the Department of Corrections and Rehabilitation and the jurisdiction of the court in the county where the parolee is released or resides for the purpose of hearing petitions to revoke parole and impose a term of custody:

(1) A serious felony as described in subdivision (c) of Section 1192.7.

(2) A violent felony as described in subdivision (c) of Section 667.5.

(3) A crime for which the person was sentenced pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12.

1 (4) Any crime where the person eligible for release from prison  
2 is classified as a High Risk Sex Offender.

3 (5) Any crime where the person is required, as a condition of  
4 parole, to undergo treatment by the Department of Mental Health  
5 pursuant to Section 2962.

6 (b) Notwithstanding any other provision of law, all other  
7 offenders released from prison shall be placed on postrelease  
8 supervision pursuant to Title 2.05 (commencing with Section  
9 3450).

10 (c) At any time during the period of parole of a person subject  
11 to this section, if any parole agent or peace officer has probable  
12 cause to believe that the parolee is violating any term or condition  
13 of his or her parole, the agent or officer may, without warrant or  
14 other process and at any time until the final disposition of the case,  
15 arrest the person and bring him or her before the parole authority,  
16 or the parole authority may, in its discretion, issue a warrant for  
17 that person's arrest.

18 (d) Upon review of the alleged violation and a finding of good  
19 cause that the parolee has committed a violation of law or violated  
20 his or her conditions of parole, the parole authority may impose  
21 additional and appropriate conditions of supervision, including  
22 rehabilitation and treatment services and appropriate incentives  
23 for compliance, and impose immediate, structured, and intermediate  
24 sanctions for parole violations, including flash incarceration in a  
25 county jail. Periods of "flash incarceration," as defined in  
26 subdivision (e) are encouraged as one method of punishment for  
27 violations of a parolee's conditions of parole. Nothing in this  
28 section is intended to preclude referrals to a reentry court pursuant  
29 to Section 3015.

30 (e) "Flash incarceration" is a period of detention in county jail  
31 due to a violation of a parolee's conditions of parole. The length  
32 of the detention period can range between one and 10 consecutive  
33 days. Shorter, but if necessary more frequent, periods of detention  
34 for violations of a parolee's conditions of parole shall appropriately  
35 punish a parolee while preventing the disruption in a work or home  
36 establishment that typically arises from longer periods of detention.

37 (f) If the supervising parole agency has determined, following  
38 application of its assessment processes, that intermediate sanctions  
39 up to and including flash incarceration are not appropriate, the  
40 supervising agency shall petition the revocation hearing officer

1 appointed pursuant to Section 71622.5 of the Government Code  
2 in the county in which the parolee is being supervised to revoke  
3 parole. At any point during the process initiated pursuant to this  
4 section, a parolee may waive, in writing, his or her right to counsel,  
5 admit the parole violation, waive a court hearing, and accept the  
6 proposed parole modification. The petition shall include a written  
7 report that contains additional information regarding the petition,  
8 including the relevant terms and conditions of parole, the  
9 circumstances of the alleged underlying violation, the history and  
10 background of the parolee, and any recommendations. The Judicial  
11 Council shall adopt forms and rules of court to establish uniform  
12 statewide procedures to implement this subdivision, including the  
13 minimum contents of supervision agency reports. Upon a finding  
14 that the person has violated the conditions of parole, the revocation  
15 hearing officer shall have authority to do any of the following:

16 (1) Return the person to parole supervision with modifications  
17 of conditions, if appropriate, including a period of incarceration  
18 in county jail.

19 (2) Revoke parole and order the person to confinement in the  
20 county jail.

21 (3) Refer the person to a reentry court pursuant to Section 3015  
22 or other evidence-based program in the court's discretion.

23 (g) Confinement pursuant to paragraphs (1) and (2) of  
24 subdivision (f) shall not exceed a period of 180 days in the county  
25 jail.

26 (h) Notwithstanding any other provision of law, in any case  
27 where Section 3000.1 applies to a person who is on parole and  
28 there is good cause to believe that the person has committed a  
29 violation of law or violated his or her conditions of parole, and  
30 there is imposed a period of imprisonment of longer than 30 days,  
31 that person shall be remanded to the custody of the Department of  
32 Corrections and Rehabilitation and the jurisdiction of the Board  
33 of Parole Hearings for the purpose of future parole consideration.

34 (i) *Notwithstanding subdivision (a), any of the following persons*  
35 *released from state prison shall be subject to the jurisdiction of,*  
36 *and parole supervision by, the Department of Corrections and*  
37 *Rehabilitation for a period of parole up to three years or the parole*  
38 *term the person was subject to at the time of the commission of*  
39 *the offense, whichever is greater:*

1     (1) *The person is required to register as a sex offender pursuant*  
2 *to Chapter 5.5 (commencing with Section 290) of Title 9 of Part*  
3 *1, and was subject to a period of parole exceeding three years at*  
4 *the time he or she committed a felony for which they were convicted*  
5 *and subsequently sentenced to state prison.*

6     (2) *The person was subject to parole for life pursuant to Section*  
7 *3000.1 at the time of the commission of the offense that resulted*  
8 *in a conviction and state prison sentence.*

9     (i)

10    (j) *Parolees subject to this section who are being held for a*  
11 *parole violation in a county jail on July 1, 2013, shall be subject*  
12 *to the jurisdiction of the Board of Parole Hearings.*

13    (j)

14    (k) *Except as described in subdivision (c), any person who is*  
15 *convicted of a felony that requires community supervision and*  
16 *who still has a period of state parole to serve shall discharge from*  
17 *state parole at the time of release to community supervision.*

18    (l) *This section shall become operative on July 1, 2013.*

19    SEC. 19. *Section 3000.09 of the Penal Code is amended to*  
20 *read:*

21    3000.09. (a) *Notwithstanding any other law, any parolee who*  
22 *was paroled from state prison prior to October 1, 2011, shall be*  
23 *subject to this section.*

24    (b) *Parolees subject to this section shall remain under*  
25 *supervision by the Department of Corrections and Rehabilitation*  
26 *until one of the following occurs:*

27    (1) *Jurisdiction over the person is terminated by operation of*  
28 *law.*

29    (2) *The supervising agent recommends to the parole authority*  
30 *that the offender be discharged and the parole authority approves*  
31 *the discharge.*

32    (3) ~~*The offender, except an offender who if released from prison*~~  
33 ~~*after October 1, 2011, would be subject to parole based on the*~~  
34 ~~*criteria identified in subdivision (a) of Section 3000.08, is subject*~~  
35 ~~*to a period of parole of up to three years pursuant to paragraph*~~  
36 ~~*(1) of subdivision (b) of Section 3000 and was not imprisoned for*~~  
37 ~~*committing a violent felony, as defined in subdivision (c) of Section*~~  
38 ~~*667.5, a serious felony, as defined by subdivision (c) of Section*~~  
39 ~~*1192.7, or is required to register as a sex offender pursuant to*~~  
40 ~~*Section 290, and completes six consecutive months of parole*~~

1 without violating their conditions, at which time the supervising  
2 agent shall review and make a recommendation on whether to  
3 discharge the offender to the parole authority and the parole  
4 authority approves the discharge.

5 (c) Parolees subject to this section who are being held for a  
6 parole violation in ~~county jail~~ *state prison* on October 1, 2011,  
7 ~~shall be subject to the jurisdiction of the Board of Parole Hearings~~  
8 ~~and may, upon revocation, be remanded to the state prison. Upon~~  
9 ~~upon completion of a revocation term on or after November 1,~~  
10 ~~2011, the parolee shall either remain under parole supervision of~~  
11 ~~the department pursuant to Section 3000.08 or shall be placed on~~  
12 ~~postrelease community supervision pursuant to Title 2.05~~  
13 ~~(commencing with Section 3450). Notwithstanding Section~~  
14 ~~3000.08, any parolee who is in a county jail serving a term of~~  
15 ~~parole revocation or being held pursuant to Section 3056 on~~  
16 ~~October 1, 2011, and is released directly from county jail without~~  
17 ~~returning to a state facility on or after October 1, 2011, shall~~  
18 ~~remain under the parole supervision of the department. Any parolee~~  
19 ~~that is pending final adjudication of a parole revocation charge~~  
20 ~~prior to October 1, whether located in county jail or state prison,~~  
21 ~~may be returned to state prison and shall be confined pursuant to~~  
22 ~~subdivisions (a) to (d), inclusive, of Section 3057. Any subsequent~~  
23 ~~parole revocations of a parolee on postrelease community~~  
24 ~~supervision shall be served in county jail pursuant to Section 3056.~~

25 (d) Any parolee who was paroled prior to October 1, 2011, who  
26 commits a violation of parole shall, *until July 1, 2013*, be subject  
27 to parole revocation procedures in accordance with the *rules and*  
28 *regulations of the department consistent with Division 2 of Title*  
29 *15 of the California Code of Regulations. On and after July 1,*  
30 *2013, any parolee who was paroled prior to October 1, 2011, shall*  
31 *be subject to the procedures established under Section 3000.08.*

32 SEC. 20. Section 3001 of the Penal Code, as amended by  
33 Section 41 of Chapter 39 of the Statutes of 2011, is amended to  
34 read:

35 3001. (a) Notwithstanding any other provision of law, when  
36 any person referred to in paragraph (1) of subdivision (b) of Section  
37 3000 who was not imprisoned for committing a violent felony, as  
38 defined in subdivision (c) of Section 667.5, *not imprisoned for a*  
39 *serious felony, as defined by subdivision (c) of Section 1192.7, or*  
40 *is not required to register as a sex offender pursuant to Section*

290, has been released on parole from the state prison, and has been on parole continuously for six months since release from confinement, within 30 days, that person shall be discharged from parole, unless the Department of Corrections and Rehabilitation recommends to the Board of Parole Hearings that the person be retained on parole and the board, for good cause, determines that the person will be retained. Notwithstanding any other provision of law, when any person referred to in paragraph (1) of subdivision (b) of Section 3000 who was imprisoned for committing a violent felony, as defined in subdivision (c) of Section 667.5, has been released on parole from the state prison for a period not exceeding three years and has been on parole continuously for two years since release from confinement, or has been released on parole from the state prison for a period not exceeding five years and has been on parole continuously for three years since release from confinement, the department shall discharge, within 30 days, that person from parole, unless the department recommends to the board that the person be retained on parole and the board, for good cause, determines that the person will be retained. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(b) Notwithstanding any other provision of law, when any person referred to in paragraph (2) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for three years since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy of that determination to the parolee.

(c) Notwithstanding any other provision of law, when any person referred to in paragraph (3) of subdivision (b) of Section 3000 has been released on parole from the state prison, and has been on parole continuously for six years and six months since release from confinement, the board shall discharge, within 30 days, the person from parole, unless the board, for good cause, determines that the person will be retained on parole. The board shall make a written record of its determination and the department shall transmit a copy thereof to the parolee.

(d) In the event of a retention on parole, the parolee shall be entitled to a review by the parole authority each year thereafter until the maximum statutory period of parole has expired.

(e) The amendments to this section made during the 1987–88 Regular Session of the Legislature shall only be applied prospectively and shall not extend the parole period for any person whose eligibility for discharge from parole was fixed as of the effective date of those amendments.

(f) *The amendments made to subdivision (a) during the 2011–12 Regular Session and the First Extraordinary Session of the Legislature shall apply prospectively from October 1, 2011, and no person on parole prior to October 1, 2011, shall be discharged from parole pursuant to subdivision (a) unless one of the following circumstances exist:*

*(1) The person has been on parole continuously for six consecutive months after October 1, 2011, and the person is not retained by the Board of Parole Hearings for good cause.*

*(2) The person has, on or after October 1, 2011, been on parole for one year and the Board of Parole Hearings does not retain the person for good cause.*

SEC. 21. *Section 3003 of the Penal Code, as amended by Section 473 of Chapter 39 of the Statutes of 2011, is amended to read:*

3003. (a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to his or her incarceration. For purposes of this subdivision, “last legal residence” shall not be construed to mean the county wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.

(b) Notwithstanding subdivision (a), an inmate may be returned to another county if that would be in the best interests of the public. If the Board of Parole Hearings setting the conditions of parole for inmates sentenced pursuant to subdivision (b) of Section 1168, as determined by the parole consideration panel, or the Department of Corrections and Rehabilitation setting the conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county, it shall place its reasons in writing in the



1 parolee's permanent record and include these reasons in the notice  
2 to the sheriff or chief of police pursuant to Section 3058.6. In  
3 making its decision, the paroling authority shall consider, among  
4 others, the following factors, giving the greatest weight to the  
5 protection of the victim and the safety of the community:

6 (1) The need to protect the life or safety of a victim, the parolee,  
7 a witness, or any other person.

8 (2) Public concern that would reduce the chance that the  
9 inmate's parole would be successfully completed.

10 (3) The verified existence of a work offer, or an educational or  
11 vocational training program.

12 (4) The existence of family in another county with whom the  
13 inmate has maintained strong ties and whose support would  
14 increase the chance that the inmate's parole would be successfully  
15 completed.

16 (5) The lack of necessary outpatient treatment programs for  
17 parolees receiving treatment pursuant to Section 2960.

18 (c) The Department of Corrections and Rehabilitation, in  
19 determining an out-of-county commitment, shall give priority to  
20 the safety of the community and any witnesses and victims.

21 (d) In making its decision about an inmate who participated in  
22 a joint venture program pursuant to Article 1.5 (commencing with  
23 Section 2717.1) of Chapter 5, the paroling authority shall give  
24 serious consideration to releasing him or her to the county where  
25 the joint venture program employer is located if that employer  
26 states to the paroling authority that he or she intends to employ  
27 the inmate upon release.

28 (e) (1) The following information, if available, shall be released  
29 by the Department of Corrections and Rehabilitation to local law  
30 enforcement agencies regarding a paroled inmate or inmate placed  
31 on postrelease supervision pursuant to Title 2.05 (commencing  
32 with Section 3450) who is released in their jurisdictions:

33 (A) Last, first, and middle name.

34 (B) Birth date.

35 (C) Sex, race, height, weight, and hair and eye color.

36 (D) Date of parole and discharge.

37 (E) Registration status, if the inmate is required to register as a  
38 result of a controlled substance, sex, or arson offense.

39 (F) California Criminal Information Number, FBI number, social  
40 security number, and driver's license number.

1 (G) County of commitment.

2 (H) A description of scars, marks, and tattoos on the inmate.

3 (I) Offense or offenses for which the inmate was convicted that  
4 resulted in parole in this instance.

5 (J) Address, including all of the following information:

6 (i) Street name and number. Post office box numbers are not  
7 acceptable for purposes of this subparagraph.

8 (ii) City and ZIP Code.

9 (iii) Date that the address provided pursuant to this subparagraph  
10 was proposed to be effective.

11 (K) Contact officer and unit, including all of the following  
12 information:

13 (i) Name and telephone number of each contact officer.

14 (ii) Contact unit type of each contact officer such as units  
15 responsible for parole, registration, or county probation.

16 (L) A digitized image of the photograph and at least a single  
17 digit fingerprint of the parolee.

18 (M) A geographic coordinate for the parolee's residence location  
19 for use with a Geographical Information System (GIS) or  
20 comparable computer program.

21 (2) The information required by this subdivision shall come  
22 from the statewide parolee database. The information obtained  
23 from each source shall be based on the same timeframe.

24 (3) All of the information required by this subdivision shall be  
25 provided utilizing a computer-to-computer transfer in a format  
26 usable by a desktop computer system. The transfer of this  
27 information shall be continually available to local law enforcement  
28 agencies upon request.

29 (4) The unauthorized release or receipt of the information  
30 described in this subdivision is a violation of Section 11143.

31 (f) Notwithstanding any other provision of law, an inmate who  
32 is released on parole shall not be returned to a location within 35  
33 miles of the actual residence of a victim of, or a witness to, a  
34 violent felony as defined in paragraphs (1) to (7), inclusive, and  
35 paragraph (16) of subdivision (c) of Section 667.5 or a felony in  
36 which the defendant inflicts great bodily injury on any person other  
37 than an accomplice that has been charged and proved as provided  
38 for in Section 12022.53, 12022.7, or 12022.9, if the victim or  
39 witness has requested additional distance in the placement of the  
40 inmate on parole, and if the Board of Parole Hearings or the

Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of a victim or witness.

(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of any public or private school including any or all of kindergarten and grades 1 to 12, inclusive.

(h) Notwithstanding any other law, an inmate who is released on parole for an offense involving stalking shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim.

(i) The authority shall give consideration to the equitable distribution of parolees and the proportion of out-of-county commitments from a county compared to the number of commitments from that county when making parole decisions.

(j) An inmate may be paroled to another state pursuant to any other law. The Department of Corrections and Rehabilitation shall coordinate with local entities regarding the placement of inmates placed out of state on postrelease supervision pursuant to Title 2.05 (commencing with Section 3450).

(k) (1) Except as provided in paragraph (2), the Department of Corrections and Rehabilitation shall be the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include the issuance of warrants, revocations, or the termination of postrelease supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease supervision shall notify

1 the department that the county agencies have been designated as  
2 the local entity responsible for providing that supervision.

3 (2) Notwithstanding paragraph (1), the Department of Justice  
4 shall be the agency primarily responsible for the proper release of  
5 information under LEADS that relates to fingerprint cards.

6 *(l) In addition to the requirements under subdivision (k), the*  
7 *Department of Corrections and Rehabilitation shall submit to the*  
8 *Department of Justice data to be included in the supervised release*  
9 *file of the California Law Enforcement Telecommunications System*  
10 *(CLETS) so that law enforcement can be advised through CLETS*  
11 *of all persons on postrelease community supervision and the county*  
12 *agency designated to provide supervision. The data required by*  
13 *this subdivision shall be provided via electronic transfer.*

14 SEC. 22. Section 3056 of the Penal Code, as amended by  
15 Section 44 of Chapter 39 of the Statutes of 2011, is amended to  
16 read:

17 3056. (a) Prisoners on parole shall remain under the  
18 supervision of the department but shall not be returned to prison  
19 except as provided in subdivision (b) *or as provided by subdivision*  
20 *(c) of Section 3000.09.* Except as provided by subdivision (c) of  
21 Section 3000.09, upon revocation of parole, a parolee may be  
22 housed in a county jail for a maximum of 180 days. When housed  
23 in county facilities, parolees shall be under the legal custody and  
24 jurisdiction of local county facilities. When released from custody,  
25 parolees shall be returned to the parole supervision of the  
26 department for the duration of parole.

27 (b) Inmates paroled pursuant to Section 3000.1 may be returned  
28 to prison following the revocation of parole by the Board of Parole  
29 Hearings until July 1, 2013, and thereafter by a court pursuant to  
30 Section 3000.08.

31 SEC. 23. Section 3057 of the Penal Code, as amended by  
32 Section 45 of Chapter 39 of the Statutes of 2011, is amended to  
33 read:

34 3057. (a) Confinement pursuant to a revocation of parole in  
35 the absence of a new conviction and commitment to prison under  
36 other provisions of law, shall not exceed 12 months, except as  
37 provided in subdivision (c).

38 (b) Upon completion of confinement pursuant to parole  
39 revocation without a new commitment to prison, the inmate shall  
40 be released on parole for a period which shall not extend beyond

1 that portion of the maximum statutory period of parole specified  
2 by Section 3000 which was unexpired at the time of each  
3 revocation.

4 (c) Notwithstanding the limitations in subdivision (a) and in  
5 Section 3060.5 upon confinement pursuant to a parole revocation,  
6 the parole authority may extend the confinement pursuant to parole  
7 revocation for a maximum of an additional 12 months for  
8 subsequent acts of misconduct committed by the parolee while  
9 confined pursuant to that parole revocation. Upon a finding of  
10 good cause to believe that a parolee has committed a subsequent  
11 act of misconduct and utilizing procedures governing parole  
12 revocation proceedings, the parole authority may extend the period  
13 of confinement pursuant to parole revocation as follows: (1) not  
14 more than 180 days for an act punishable as a felony, whether or  
15 not prosecution is undertaken, (2) not more than 90 days for an  
16 act punishable as a misdemeanor, whether or not prosecution is  
17 undertaken, and (3) not more than 30 days for an act defined as a  
18 serious disciplinary offense pursuant to subdivision (a) of Section  
19 2932.

20 (d) (1) Except for parolees specified in paragraph (2), any  
21 revocation period imposed under subdivision (a) may be reduced  
22 in the same manner and to the same extent as a term of  
23 imprisonment may be reduced by worktime credits under Section  
24 2933. Worktime credit must be earned and may be forfeited  
25 pursuant to the provisions of Section 2932.

26 Worktime credit forfeited shall not be restored.

27 (2) The following parolees shall not be eligible for credit under  
28 this subdivision:

29 (A) Parolees who are sentenced under Section 1168 with a  
30 maximum term of life imprisonment.

31 (B) Parolees who violated a condition of parole relating to  
32 association with specified persons, entering prohibited areas,  
33 attendance at parole outpatient clinics, or psychiatric attention.

34 (C) Parolees who were revoked for conduct described in, or that  
35 could be prosecuted under any of the following sections, whether  
36 or not prosecution is undertaken: Section 189, Section 191.5,  
37 subdivision (a) of Section 192, subdivision (a) of Section 192.5,  
38 Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of  
39 Section 241, Section 244, paragraph (1) or (2) of subdivision (a)  
40 of Section 245, paragraph (2) or (6) of subdivision (a) of Section

1 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section  
2 264.1, subdivision (c) or (d) of Section 286, Section 288,  
3 subdivision (c) or (d) of Section 288a, subdivision (a) of Section  
4 289, 347, or 404, subdivision (a) of Section 451, Section 12022,  
5 12022.5, 12022.53, 12022.7, 12022.8, or 25400, Chapter 2  
6 (commencing with Section 29800) of Division 9 of Title 4 of Part  
7 6, any provision listed in Section 16590, or Section 664 for any  
8 attempt to engage in conduct described in or that could be  
9 prosecuted under any of the above-mentioned sections.

10 (D) Parolees who were revoked for any reason if they had been  
11 granted parole after conviction of any of the offenses specified in  
12 subparagraph (C).

13 (E) Parolees who the parole authority finds at a revocation  
14 hearing to be unsuitable for reduction of the period of confinement  
15 because of the circumstances and gravity of the parole violation,  
16 or because of prior criminal history.

17 (e) Commencing October 1, 2011, this section shall only apply  
18 to inmates sentenced to a term of life imprisonment *or parolees*  
19 *that on or before September 30, 2011, are pending a final*  
20 *adjudication of a parole revocation charge and subject to*  
21 *subdivision (c) of Section 3000.09.*

22 SEC. 24. Section 3060.7 of the Penal Code is amended to read:

23 3060.7. (a) (1) Notwithstanding any other law, the parole  
24 authority shall notify any person released on parole *or postrelease*  
25 *community supervision pursuant to Title 2.05 (commencing with*  
26 *Section 3450) of Part 3* who has been classified by the Department  
27 of Corrections as included within the highest control or risk  
28 classification that he or she shall be required to report to his or her  
29 assigned parole officer *or designated local supervising agency*  
30 within two days of release from the state prison.

31 ~~This~~

32 (2) *This* section shall not prohibit the parole authority *or local*  
33 *supervising agency* from requiring any person released on parole  
34 *or postrelease community supervision* to report to his or her  
35 assigned parole officer within a time period that is less than two  
36 days from the time of release.

37 (b) The parole authority, within 24 hours of a parolee's failure  
38 to report as required by this section, shall issue a written order  
39 suspending the parole of that parolee, pending a hearing before

the parole authority, and shall issue a warrant for the parolee's arrest.

(c) Upon the issuance of an arrest warrant for a parolee who has been classified within the highest control or risk classification, the assigned parole officer shall continue to carry the parolee on his or her regular caseload and shall continue to search for the parolee's whereabouts.

(d) With regard to any inmate subject to this section, the Department of Corrections *and Rehabilitation* shall release an inmate sentenced prior to the effective date of this section one or two days before his or her scheduled release date if the inmate's release date falls on the day before a holiday or weekend.

(e) With regard to any inmate subject to this section, the Department of Corrections *and Rehabilitation* shall release an inmate one or two days after his or her scheduled release date if the release date falls on the day before a holiday or weekend. ~~This subdivision shall not apply to an inmate sentenced prior to the effective date of this section.~~

SEC. 25. *Section 3067 of the Penal Code is amended to read:*

3067. (a) Any inmate who is eligible for release on parole pursuant to this chapter *or postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) of Part 3* shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause.

(b) Any inmate who does not comply with the provision of subdivision (a) shall lose worktime credit earned pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 on a day-for-day basis and shall not be released until he or she either complies with the provision of subdivision (a) or has no remaining worktime credit, whichever occurs earlier.

(c) This section shall only apply to an inmate who is eligible for release on parole for an offense committed on or after January 1, 1997.

(d) It is not the intent of the Legislature to authorize law enforcement officers to conduct searches for the sole purpose of harassment.

(e) This section does not affect the power of the ~~Director~~ *Secretary of the Department of Corrections and Rehabilitation* to

1 prescribe and amend rules and regulations pursuant to Section  
2 5058.

3 *SEC. 26. Section 3073.1 of the Penal Code is amended to read:*

4 3073.1. Counties are hereby authorized to contract with the  
5 Department of Corrections and Rehabilitation in order to obtain  
6 ~~day treatment and crisis care~~ *correctional clinical* services for  
7 inmates with mental health problems who are released on  
8 postrelease community supervision with mental health problems.

9 *SEC. 27. Section 3450 of the Penal Code is amended to read:*

10 3450. (a) This act shall be known and may be cited as the  
11 Postrelease Community Supervision Act of 2011.

12 (b) The Legislature finds and declares all of the following:

13 (1) The Legislature reaffirms its commitment to reducing  
14 recidivism among criminal offenders.

15 (2) Despite the dramatic increase in corrections spending over  
16 the past two decades, national reincarceration rates for people  
17 released from prison remain unchanged or have worsened. National  
18 data show that about 40 percent of released individuals are  
19 reincarcerated within three years. In California, the recidivism rate  
20 for persons who have served time in prison is even greater than  
21 the national average.

22 (3) Criminal justice policies that rely on the reincarceration of  
23 parolees for technical violations do not result in improved public  
24 safety.

25 (4) California must reinvest its criminal justice resources to  
26 support community corrections programs and evidence-based  
27 practices that will achieve improved public safety returns on this  
28 state's substantial investment in its criminal justice system.

29 (5) Realigning the postrelease supervision of certain felons  
30 reentering the community after serving a prison term to local  
31 community corrections programs, which are strengthened through  
32 community-based punishment, evidence-based practices, and  
33 improved supervision strategies, will improve public safety  
34 outcomes among adult felon parolees and will facilitate their  
35 successful reintegration back into society.

36 (6) Community corrections programs require a partnership  
37 between local public safety entities and the county to provide and  
38 expand the use of community-based punishment for offenders  
39 paroled from state prison. Each county's local Community  
40 Corrections Partnership, as established in paragraph (2) of



subdivision (b) of Section 1230, should play a critical role in developing programs and ensuring appropriate outcomes for persons subject to postrelease community supervision.

(7) Fiscal policy and correctional practices should align to promote a justice reinvestment strategy that fits each county. “Justice reinvestment” is a data-driven approach to reduce corrections and related criminal justice spending and reinvest savings in strategies designed to increase public safety. The purpose of justice reinvestment is to manage and allocate criminal justice populations more cost effectively, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.

(8) “Community-based punishment” means evidence-based correctional sanctions and programming encompassing a range of custodial and noncustodial responses to criminal or noncompliant offender activity. Intermediate sanctions may be provided by local public safety entities directly or through public or private correctional service providers and include, but are not limited to, the following:

(A) Short-term “flash” incarceration in jail for a period of not more than ~~seven~~ 10 days.

(B) Intensive community supervision.

(C) Home detention with electronic monitoring or GPS monitoring.

(D) Mandatory community service.

(E) Restorative justice programs, such as mandatory victim restitution and victim-offender reconciliation.

(F) Work, training, or education in a furlough program pursuant to Section 1208.

(G) Work, in lieu of confinement, in a work release program pursuant to Section 4024.2.

(H) Day reporting.

(I) Mandatory residential or nonresidential substance abuse treatment programs.

(J) Mandatory random drug testing.

(K) Mother-infant care programs.

(L) Community-based residential programs offering structure, supervision, drug treatment, alcohol treatment, literacy programming, employment counseling, psychological counseling,

1 mental health treatment, or any combination of these and other  
2 interventions.

3 (9) “Evidence-based practices” refers to supervision policies,  
4 procedures, programs, and practices demonstrated by scientific  
5 research to reduce recidivism among individuals under probation,  
6 parole, or postrelease supervision.

7 *SEC. 28. Section 3453 of the Penal Code is amended to read:*

8 3453. A postrelease community supervision agreement shall  
9 include the following conditions:

10 (a) The person shall sign and agree to the conditions of release.

11 (b) The person shall obey all laws.

12 (c) The person shall report to the supervising county agency  
13 within two working days of release from custody.

14 (d) The person shall follow the directives and instructions of  
15 the supervising county agency.

16 (e) The person shall report to the supervising county agency as  
17 directed by that agency.

18 (f) The person, and his or her residence and possessions, shall  
19 be subject to search at any time of the day or night, with or without  
20 a warrant, by an agent of the supervising county agency or by a  
21 peace officer.

22 (g) The person shall waive extradition if found outside the state.

23 (h) The person shall inform the supervising county agency of  
24 the person’s place of residence, employment, education, or training.

25 (i) (1) The person shall inform the supervising county agency  
26 of any pending or anticipated changes in residence, employment,  
27 education, or training.

28 (2) If the person enters into new employment, he or she shall  
29 inform the supervising county agency of the new employment  
30 within three business days of that entry.

31 (j) The person shall immediately inform the supervising county  
32 agency if he or she is arrested or receives a citation.

33 (k) The person shall obtain the permission of the supervising  
34 county agency to travel more than 50 miles from the person’s place  
35 of residence.

36 (l) The person shall obtain a travel pass from the supervising  
37 county agency before he or she may leave the county or state for  
38 more than two days.

1 (m) The person shall not be in the presence of a firearm or  
2 ammunition, or any item that appears to be a firearm or  
3 ammunition.

4 (n) The person shall not possess, use, or have access to any  
5 weapon listed in Section 12020, 16140, subdivision (c) of Section  
6 16170, Section 16220, 16260, 16320, 16330, or 16340, subdivision  
7 (b) of Section 16460, Section 16470, subdivision (f) of Section  
8 16520, or Section 16570, 16740, 16760, 16830, 16920, 16930,  
9 16940, 17090, 17125, 17160, 17170, 17180, 17190, 17200, 17270,  
10 17280, 17330, 17350, 17360, 17700, 17705, 17710, 17715, 17720,  
11 17725, 17730, 17735, 17740, 17745, 19100, 19200, 19205, 20200,  
12 20310, 20410, 20510, 20611, 20710, 20910, 21110, 21310, 21810,  
13 22010, 22015, 22210, 22215, 22410, 32430, 24310, 24410, 24510,  
14 24610, 24680, 24710, 30210, 30215, 31500, 32310, 32400, 32405,  
15 32410, 32415, 32420, 32425, 32435, 32440, 32445, 32450, 32900,  
16 33215, 33220, 33225, or 33600.

17 (o) (1) Except as provided in paragraph (2) and subdivision  
18 (p), the person shall not possess a knife with a blade longer than  
19 two inches.

20 (2) The person may possess a kitchen knife with a blade longer  
21 than two inches if the knife is used and kept only in the kitchen of  
22 the person's residence.

23 (p) The person may use a knife with a blade longer than two  
24 inches, if the use is required for that person's employment, the use  
25 has been approved in a document issued by the supervising county  
26 agency, and the person possesses the document of approval at all  
27 times and makes it available for inspection.

28 (q) The person agrees to waive any right to a court hearing prior  
29 to the imposition of a period of "flash incarceration" in a county  
30 jail of not more than 10 consecutive days for any violation of his  
31 or her postrelease supervision conditions.

32 (r) The person agrees to participate in rehabilitation  
33 programming as recommended by the supervising county agency.

34 (s) *The person agrees that he or she may be subject to arrest*  
35 *with or without a warrant by a peace officer employed by the*  
36 *supervising county agency or, at the direction of the supervising*  
37 *county agency, by any peace officer when there is probable cause*  
38 *to believe the person has violated the terms and conditions of his*  
39 *or her release.*

40 SEC. 29. Section 3454 of the Penal Code is amended to read:

1 3454. (a) Each supervising county agency, as established by  
2 the county board of supervisors pursuant to subdivision (a) of  
3 Section 3451, shall establish a review process for assessing and  
4 refining a person's program of postrelease supervision. Any  
5 additional postrelease supervision conditions shall be reasonably  
6 related to the underlying offense for which the offender spent time  
7 in prison, or to the offender's risk of recidivism, and the offender's  
8 criminal history, and be otherwise consistent with law.

9 (b) Each county agency responsible for postrelease supervision,  
10 as established by the county board of supervisors pursuant to  
11 subdivision (a) of Section 3451, may determine additional  
12 appropriate conditions of supervision listed in Section 3453  
13 consistent with public safety, *including the use of continuous*  
14 *electronic monitoring as defined in Section 1210.7*, order the  
15 provision of appropriate rehabilitation and treatment services,  
16 determine appropriate incentives, and determine and order  
17 appropriate responses to alleged violations, which can include, but  
18 shall not be limited to, immediate, structured, and ~~immediate~~  
19 *intermediate* sanctions up to and including referral to a reentry  
20 court pursuant to Section 3015, or flash incarceration in a county  
21 jail. Periods of flash incarceration are encouraged as one method  
22 of punishment for violations of an offender's condition of  
23 postrelease supervision.

24 (c) "Flash incarceration" is a period of detention in county jail  
25 due to a violation of an offender's conditions of postrelease  
26 supervision. The length of the detention period can range between  
27 one and 10 consecutive days. Flash incarceration is a tool that may  
28 be used by each county agency responsible for postrelease  
29 supervision. Shorter, but if necessary more frequent, periods of  
30 detention for violations of an offender's postrelease supervision  
31 conditions shall appropriately punish an offender while preventing  
32 the disruption in a work or home establishment that typically arises  
33 from longer term revocations.

34 *SEC. 30. Section 3455 of the Penal Code is amended to read:*

35 3455. (a) If the supervising county agency has determined,  
36 following application of its assessment processes, that intermediate  
37 sanctions as authorized in subdivision (b) of Section 3454 are not  
38 appropriate, the supervising county agency shall petition the  
39 revocation hearing officer appointed pursuant to Section 71622.5  
40 of the Government Code to revoke and terminate postrelease

1 supervision. At any point during the process initiated pursuant to  
2 this section, a person may waive, in writing, his or her right to  
3 counsel, admit the ~~parole~~ violation of *his or her postrelease*  
4 *supervision*, waive a court hearing, and accept the proposed ~~parole~~  
5 *modification of his or her postrelease supervision*. The petition  
6 shall include a written report that contains additional information  
7 regarding the petition, including the relevant terms and conditions  
8 of postrelease supervision, the circumstances of the alleged  
9 underlying violation, the history and background of the violator,  
10 and any recommendations. The Judicial Council shall adopt forms  
11 and rules of court to establish uniform statewide procedures to  
12 implement this subdivision, including the minimum contents of  
13 supervision agency reports. Upon a finding that the person has  
14 violated the conditions of postrelease supervision, the revocation  
15 hearing officer shall have authority to do all of the following:

16 (1) Return the person to ~~parole~~ *postrelease* supervision with  
17 modifications of conditions, if appropriate, including a period of  
18 incarceration in county jail.

19 (2) Revoke ~~parole~~ *postrelease supervision* and order the person  
20 to confinement in the county jail.

21 (3) Refer the person to a reentry court pursuant to Section 3015  
22 or other evidence-based program in the court's discretion.

23 (4) *At any time during the period of postrelease supervision, if*  
24 *any peace officer has probable cause to believe a person subject*  
25 *to postrelease community supervision is violating any term or*  
26 *condition of his or her release, the officer may, without a warrant*  
27 *or other process, arrest the person and bring him or her before*  
28 *the supervising county agency established by the county board of*  
29 *supervisors pursuant to subdivision (a) of Section 3451.*  
30 *Additionally, an officer employed by the supervising county agency*  
31 *may seek a warrant and a court or its designated hearing officer*  
32 *appointed pursuant to Section 71622.5 of the Government Code*  
33 *shall have the authority to issue a warrant for that person's arrest.*

34 (5) *The court or its designated hearing officer shall have the*  
35 *authority to issue a warrant for any person who is the subject of*  
36 *a petition filed under this section who has failed to appear for a*  
37 *hearing on the petition or for any reason in the interests of justice,*  
38 *or to remand to custody a person who does appear at a hearing*  
39 *on the petition for any reason in the interests of justice.*

(b) *The revocation hearing shall be held within a reasonable time after the filing of the revocation petition. Based upon a showing of a preponderance of the evidence that a person under supervision poses an unreasonable risk to public safety, or the person may not appear if released from custody, or for any reason in the interests of justice, the supervising county agency shall have the authority to make a determination whether the person should remain in custody pending a revocation hearing, and upon that determination, may order the person confined pending a revocation hearing.*

(b)

(c) *Confinement pursuant to paragraphs (1) and (2) of subdivision (a) shall not exceed a period of 180 days in the county jail.*

~~(c) In no case shall a person be under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease supervision.~~

(d) *A person shall not remain under supervision or in custody pursuant to this title on or after three years from the date of the person's initial entry onto postrelease supervision, except when a bench or arrest warrant has been issued by a court or its designated hearing officer and the person has not appeared. During the time the warrant is outstanding the supervision period shall be tolled and when the person appears before the court or its designated hearing officer the supervision period may be extended for a period equivalent to the time tolled.*

SEC. 31. *Section 3456 of the Penal Code is amended to read:*

3456. (a) *The county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall maintain postrelease supervision over a person under postrelease supervision pursuant to this title until one of the following events occurs:*

(a)

(1) *The person has been subject to postrelease supervision pursuant to this title for three years at which time the offender shall be immediately discharged from postrelease supervision.*

(b)

(2) *Any person on postrelease supervision for six consecutive months with no violations of his or her conditions of postrelease*

1 supervision *that result in a custodial sanction* may be considered  
2 for immediate discharge by the supervising county.

3 (e)

4 (3) The person who has been on postrelease supervision  
5 continuously for one year with no violations of his or her conditions  
6 of postrelease supervision *that result in a custodial sanction* shall  
7 be discharged from supervision within 30 days.

8 (d)

9 (4) Jurisdiction over the person has been terminated by operation  
10 of law.

11 (e)

12 (5) Jurisdiction is transferred to another supervising county  
13 agency.

14 (f)

15 (6) Jurisdiction is terminated by the revocation hearing officer  
16 upon a petition to revoke and terminate supervision by the  
17 supervising county agency.

18 (b) *Time during which a person on postrelease supervision is*  
19 *suspended because the person has absconded shall not be credited*  
20 *toward any period of postrelease supervision.*

21 SEC. 32. Section 3460 is added to the Penal Code, to read:

22 3460. (a) *Whenever a supervising agency determines that a*  
23 *person subject to postrelease supervision pursuant to this chapter*  
24 *no longer permanently resides within its jurisdiction, and a change*  
25 *in residence was either approved by the supervising agency or did*  
26 *not violate the terms and conditions of postrelease supervision,*  
27 *the supervising agency shall transmit, within two weeks, any*  
28 *information the agency received from the Department of*  
29 *Corrections and Rehabilitation prior to the release of the person*  
30 *in that jurisdiction to the designated supervising agency in the*  
31 *county in which the person permanently resides.*

32 (b) *Upon verification of permanent residency, the receiving*  
33 *supervising agency shall accept jurisdiction and supervision of*  
34 *the person on postrelease supervision.*

35 (c) *For purposes of this section, residence means the place*  
36 *where the person customarily lives exclusive of employment,*  
37 *school, or other special or temporary purpose. A person may have*  
38 *only one residence.*

39 (d) *No supervising agency shall be required to transfer*  
40 *jurisdiction to another county unless the person demonstrates an*

1 ability to establish permanent residency within another county  
2 without violating the terms and conditions of postrelease  
3 supervision.

4 SEC. 33. Section 3465 is added to the Penal Code, to read:

5 3465. Every person placed on postrelease community  
6 supervision, and his or her residence and possessions, shall be  
7 subject to search or seizure at any time of the day or night, with  
8 or without a warrant, by an agent of the supervising county agency  
9 or by a peace officer.

10 SEC. 34. Section 4000 of the Penal Code is amended to read:

11 4000. The common jails in the several counties of this State  
12 are kept by the sheriffs of the counties in which they are  
13 respectively situated, and are used as follows:

14 1. For the detention of persons committed in order to secure  
15 their attendance as witnesses in criminal cases;

16 2. For the detention of persons charged with crime and  
17 committed for trial;

18 3. For the confinement of persons committed for contempt, or  
19 upon civil process, or by other authority of law;

20 4. For the confinement of persons sentenced to imprisonment  
21 therein upon a conviction for crime.

22 5. For the confinement of persons pursuant to subdivision (b)  
23 of Section 3454 for a violation of the terms and conditions of their  
24 postrelease community supervision.

25 SEC. 35. Section 4019 of the Penal Code, as amended by  
26 Section 53 of Chapter 39 of the Statutes of 2011, is amended to  
27 read:

28 4019. (a) The provisions of this section shall apply in all of  
29 the following cases:

30 (1) When a prisoner is confined in or committed to a county  
31 jail, industrial farm, or road camp, or any city jail, industrial farm,  
32 or road camp, including all days of custody from the date of arrest  
33 to the date on which the serving of the sentence commences, under  
34 a judgment of imprisonment, or a fine and imprisonment until the  
35 fine is paid in a criminal action or proceeding.

36 (2) When a prisoner is confined in or committed to the county  
37 jail, industrial farm, or road camp or any city jail, industrial farm,  
38 or road camp as a condition of probation after suspension of  
39 imposition of a sentence or suspension of execution of sentence,  
40 in a criminal action or proceeding.



(3) When a prisoner is confined in or committed to the county jail, industrial farm, or road camp or any city jail, industrial farm, or road camp for a definite period of time for contempt pursuant to a proceeding, other than a criminal action or proceeding.

(4) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp following arrest and prior to the imposition of sentence for a felony conviction.

(5) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as part of custodial sanction imposed following a violation of postrelease community supervision or parole.

*(6) When a prisoner is confined in a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp as a result of a sentence imposed pursuant to subdivision (h) of Section 1170.*

(b) Subject to the provisions of subdivision (d), for each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(c) For each four-day period in which a prisoner is confined in or committed to a facility as specified in this section, one day shall be deducted from his or her period of confinement unless it appears by the record that the prisoner has not satisfactorily complied with the reasonable rules and regulations established by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

(d) Nothing in this section shall be construed to require the sheriff, chief of police, or superintendent of an industrial farm or road camp to assign labor to a prisoner if it appears from the record that the prisoner has refused to satisfactorily perform labor as assigned or that the prisoner has not satisfactorily complied with the reasonable rules and regulations of the sheriff, chief of police, or superintendent of any industrial farm or road camp.

(e) No deduction may be made under this section unless the person is committed for a period of four days or longer.

1 (f) It is the intent of the Legislature that if all days are earned  
2 under this section, a term of four days will be deemed to have been  
3 served for every two days spent in actual custody.

4 (g) The changes in this section as enacted by the act that added  
5 this subdivision shall apply to prisoners who are confined to a  
6 county jail, city jail, industrial farm, or road camp for a crime  
7 committed on or after the effective date of that act.

8 (h) The changes to this section enacted by the act that added  
9 this subdivision shall apply prospectively and shall apply to  
10 prisoners who are confined to a county jail, city jail, industrial  
11 farm, or road camp for a crime committed on or after October 1,  
12 2011. Any days earned by a prisoner prior to October 1, 2011,  
13 shall be calculated at the rate required by the prior law.

14 (i) *This section shall not apply, and no credits may be earned,*  
15 *for periods of flash incarceration imposed pursuant to Section*  
16 *3000.08 or 3454.*

17 SEC. 36. *Section 4019.2 is added to the Penal Code, to read:*

18 4019.2. (a) *Notwithstanding any other law, any inmate*  
19 *sentenced to county jail assigned to a conservation camp by a*  
20 *sheriff and who is eligible to earn one day of credit for every one*  
21 *day of incarceration pursuant to Section 4019 shall instead earn*  
22 *two days of credit for every one day of service.*

23 (b) *Notwithstanding any other law, any inmate who has*  
24 *completed training for assignment to a conservation camp or to*  
25 *a state or county facility as an inmate firefighter or who is assigned*  
26 *to a county or state correctional institution as an inmate firefighter*  
27 *and who is eligible to earn one day of credit for every one day of*  
28 *incarceration pursuant to Section 4019 shall instead earn two*  
29 *days of credit for every one day served in that assignment or after*  
30 *completing that training.*

31 (c) *In addition to credits granted pursuant to subdivision (a) or*  
32 *(b), inmates who have successfully completed training for*  
33 *firefighter assignments shall receive a credit reduction from his*  
34 *or her term of confinement.*

35 (d) *The credits authorized in subdivisions (b) and (c) shall only*  
36 *apply to inmates who are eligible after October 1, 2011.*

37 SEC. 37. *Section 4115.56 is added to the Penal Code, to read:*

38 4115.56. (a) *Upon agreement with the sheriff or director of*  
39 *the county department of corrections, a board of supervisors may*  
40 *enter into a contract with the Department of Corrections and*

*Rehabilitation to house inmates who are within 60 days or less of release from the state prison to a county jail facility for the purpose of reentry and community transition purposes.*

*(b) When housed in county facilities, inmates shall be under the legal custody and jurisdiction of local county facilities and not under the jurisdiction of the Department of Corrections and Rehabilitation.*

*SEC. 38. Section 4501.1 of the Penal Code, as amended by Section 484 of Chapter 15 of the Statutes of 2011, is amended to read:*

4501.1. (a) Every person confined in the state prison who commits a battery by gassing upon the person of any peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or employee of the state prison is guilty of aggravated battery and shall be punished by imprisonment in a county jail or by imprisonment pursuant to subdivision (h) of Section 1170 in the state prison for two, three, or four years. Every state prison inmate convicted of a felony under this section shall serve his or her term of imprisonment as prescribed in Section 4501.5.

(b) For purposes of this section, “gassing” means intentionally placing or throwing, or causing to be placed or thrown, upon the person of another, any human excrement or other bodily fluids or bodily substances or any mixture containing human excrement or other bodily fluids or bodily substances that results in actual contact with the person’s skin or membranes.

(c) The warden or other person in charge of the state prison shall use every available means to immediately investigate all reported or suspected violations of subdivision (a), including, but not limited to, the use of forensically acceptable means of preserving and testing the suspected gassing substance to confirm the presence of human excrement or other bodily fluids or bodily substances. If there is probable cause to believe that the inmate has violated subdivision (a), the chief medical officer of the state prison or his or her designee, may, when he or she deems it medically necessary to protect the health of an officer or employee who may have been subject to a violation of this section, order the inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in

1 order to ensure that further hepatitis or tuberculosis transmission  
2 does not occur. These decisions shall be consistent with an  
3 occupational exposure as defined by the Center for Disease Control  
4 and Prevention. The results of any examination or test shall be  
5 provided to the officer or employee who has been subject to a  
6 reported or suspected violation of this section. Nothing in this  
7 subdivision shall be construed to otherwise supersede the operation  
8 of Title 8 (commencing with Section 7500). Any person performing  
9 tests, transmitting test results, or disclosing information pursuant  
10 to this section shall be immune from civil liability for any action  
11 taken in accordance with this section.

12 (d) The warden or other person in charge of the state prison  
13 shall refer all reports for which there is probable cause to believe  
14 that the inmate has violated subdivision (a) to the local district  
15 attorney for prosecution.

16 (e) The Department of Corrections and Rehabilitation shall  
17 report to the Legislature, by January 1, 2000, its findings and  
18 recommendations on gassing incidents at the state prison and the  
19 medical testing authorized by this section. The report shall include,  
20 but not be limited to, all of the following:

21 (1) The total number of gassing incidents at each state prison  
22 facility up to the date of the report.

23 (2) The disposition of each gassing incident, including the  
24 administrative penalties imposed, the number of incidents that are  
25 prosecuted, and the results of those prosecutions, including any  
26 penalties imposed.

27 (3) A profile of the inmates who commit the aggravated  
28 batteries, including the number of inmates who have one or more  
29 prior serious or violent felony convictions.

30 (4) Efforts that the department has taken to limit these incidents,  
31 including staff training and the use of protective clothing and  
32 goggles.

33 (5) The results and costs of the medical testing authorized by  
34 this section.

35 (f) Nothing in this section shall preclude prosecution under both  
36 this section and any other provision of law.

37 *SEC. 39. Section 4530 of the Penal Code, as amended by*  
38 *Section 486 of Chapter 15 of the Statutes of 2011, is amended to*  
39 *read:*

4530. (a) Every prisoner confined in a state prison who, by force or violence, escapes or attempts to escape therefrom and every prisoner committed to a state prison who, by force or violence, escapes or attempts to escape while being conveyed to or from that prison or any other state prison, or any prison road camp, prison forestry camp, or other prison camp or prison farm or any other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape from any prison road camp, prison forestry camp, or other prison camp or prison farm or other place while under the custody of prison officials, officers or employees; or who, by force or violence, escapes or attempts to escape while at work outside or away from prison under custody of prison officials, officers, or employees, is punishable by imprisonment ~~pursuant to subdivision (h) of Section 1170 in the state prison~~ for a term of two, four, or six years. The second term of imprisonment of a person convicted under this subdivision shall commence from the time he or she would otherwise have been discharged from prison. No additional probation report shall be required with respect to that offense.

(b) Every prisoner who commits an escape or attempts an escape as described in subdivision (a), without force or violence, is punishable by imprisonment ~~pursuant to subdivision (h) of Section 1170 in the state prison~~ for 16 months, or two or three years to be served consecutively. No additional probation report shall be required with respect to such offense.

(c) The willful failure of a prisoner who is employed or continuing his education, or who is authorized to secure employment or education, or who is temporarily released pursuant to Section 2690, 2910, or 6254, or Section 3306 of the Welfare and Institutions Code, to return to the place of confinement not later than the expiration of a period during which he or she is authorized to be away from the place of confinement, is an escape from the place of confinement punishable as provided in this section. A conviction of a violation of this subdivision, not involving force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

SEC. 40. Section 12021.5 of the Penal Code, as amended by Section 504 of Chapter 15 of the Statutes of 2011, 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 pursuant to subdivision (h) of Section 1170 for one, two, or three years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(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 ~~pursuant to subdivision (h) of Section 1170~~ *in the state prison* for two, three, or four years in the court's discretion. The court shall impose the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of sentence.

(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.

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

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

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

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

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

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

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

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

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

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

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

(d) This section shall become operative on January 1, 2012.

SEC. 41. *Section 12025 of the Penal Code, as amended by Section 63 of Chapter 39 of the Statutes of 2011, is amended to read:*

12025. (a) A person is guilty of carrying a concealed firearm when he or she does any of the following:

(1) Carries concealed within any vehicle which is under his or her control or direction any pistol, revolver, or other firearm capable of being concealed upon the person.

(2) Carries concealed upon his or her person any pistol, revolver, or other firearm capable of being concealed upon the person.

(3) Causes to be carried concealed within any vehicle in which he or she is an occupant any pistol, revolver, or other firearm capable of being concealed upon the person.

(b) Carrying a concealed firearm in violation of this section is punishable, as follows:

(1) Where the person previously has been convicted of any felony, or of any crime made punishable by this chapter, as a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.

(2) Where the firearm is stolen and the person knew or had reasonable cause to believe that it was stolen, as a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170.

(3) Where the person is an active participant in a criminal street gang, as defined in subdivision (a) of Section 186.22, under the Street Terrorism Enforcement and Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1), as a felony.

(4) Where the person is not in lawful possession of the firearm, as defined in this section, or the person is within a class of persons prohibited from possessing or acquiring a firearm pursuant to Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code, as a felony ~~punishable by imprisonment pursuant to subdivision (h) of Section 1170 in the state prison.~~

(5) Where the person has been convicted of a crime against a person or property, or of a narcotics or dangerous drug violation, by imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that imprisonment and fine.

(6) By imprisonment pursuant to subdivision (h) of Section 1170, or by imprisonment in a county jail not to exceed one year, by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment if both of the following conditions are met:

(A) Both the pistol, revolver, or other firearm capable of being concealed upon the person and the unexpended ammunition capable of being discharged from that firearm are either in the immediate possession of the person or readily accessible to that person, or the pistol, revolver, or other firearm capable of being concealed upon the person is loaded as defined in subdivision (g) of Section 12031.

(B) The person is not listed with the Department of Justice pursuant to paragraph (1) of subdivision (c) of Section 11106, as the registered owner of that pistol, revolver, or other firearm capable of being concealed upon the person.

(7) In all cases other than those specified in paragraphs (1) to (6), inclusive, by imprisonment in a county jail not to exceed one



1 year, by a fine not to exceed one thousand dollars (\$1,000), or by  
2 both that imprisonment and fine.

3 (c) A peace officer may arrest a person for a violation of  
4 paragraph (6) of subdivision (b) if the peace officer has probable  
5 cause to believe that the person is not listed with the Department  
6 of Justice pursuant to paragraph (1) of subdivision (c) of Section  
7 11106 as the registered owner of the pistol, revolver, or other  
8 firearm capable of being concealed upon the person, and one or  
9 more of the conditions in subparagraph (A) of paragraph (6) of  
10 subdivision (b) is met.

11 (d) (1) Every person convicted under this section who  
12 previously has been convicted of a misdemeanor offense  
13 enumerated in Section 12001.6 shall be punished by imprisonment  
14 in a county jail for at least three months and not exceeding six  
15 months, or, if granted probation, or if the execution or imposition  
16 of sentence is suspended, it shall be a condition thereof that he or  
17 she be imprisoned in a county jail for at least three months.

18 (2) Every person convicted under this section who has  
19 previously been convicted of any felony, or of any crime made  
20 punishable by this chapter, if probation is granted, or if the  
21 execution or imposition of sentence is suspended, it shall be a  
22 condition thereof that he or she be imprisoned in a county jail for  
23 not less than three months.

24 (e) The court shall apply the three-month minimum sentence  
25 as specified in subdivision (d), except in unusual cases where the  
26 interests of justice would best be served by granting probation or  
27 suspending the imposition or execution of sentence without the  
28 minimum imprisonment required in subdivision (d) or by granting  
29 probation or suspending the imposition or execution of sentence  
30 with conditions other than those set forth in subdivision (d), in  
31 which case, the court shall specify on the record and shall enter  
32 on the minutes the circumstances indicating that the interests of  
33 justice would best be served by that disposition.

34 (f) Firearms carried openly in belt holsters are not concealed  
35 within the meaning of this section.

36 (g) For purposes of this section, “lawful possession of the  
37 firearm” means that the person who has possession or custody of  
38 the firearm either lawfully owns the firearm or has the permission  
39 of the lawful owner or a person who otherwise has apparent  
40 authority to possess or have custody of the firearm. A person who

1 takes a firearm without the permission of the lawful owner or  
 2 without the permission of a person who has lawful custody of the  
 3 firearm does not have lawful possession of the firearm.

4 (h) (1) The district attorney of each county shall submit annually  
 5 a report on or before June 30, to the Attorney General consisting  
 6 of profiles by race, age, gender, and ethnicity of any person charged  
 7 with a felony or a misdemeanor under this section and any other  
 8 offense charged in the same complaint, indictment, or information.

9 (2) The Attorney General shall submit annually, a report on or  
 10 before December 31, to the Legislature compiling all of the reports  
 11 submitted pursuant to paragraph (1).

12 (3) This subdivision shall remain operative until January 1,  
 13 2005, and as of that date shall be repealed.

14 *SEC. 42. Item 5225-007-0001 of Section 2.00 of the Budget*  
 15 *Act of 2011 is amended to read:*

16  
 17 5225-007-0001—For support of Department of Corrections and

18 Rehabilitation..... 95,254,000

19 Provisions:

- 20 1. The Director of Finance shall reduce this item by  
 21 \$77,406,000 \$54,200,000 to reflect the portion of re-  
 22 alignment savings to be achieved through the reduction  
 23 or elimination of contracts with private entities for in-  
 24 state housing of state inmates. No other item of appro-  
 25 priation may be used to pay for the costs of those  
 26 contracts.

27  
 28 *SEC. 43. Section 9 of Chapter 136 of the Statutes of 2011 is*  
 29 *amended to read:*

30 *SEC. 9. (a) Section-6 7 of this act shall remain operative until*  
 31 *July 1, 2012.*

32 *(b) Section-7 8 of this act shall become operative on July 1,*  
 33 *2012.*

34 *SEC. 44. An amount of one thousand dollars (\$1,000) is*  
 35 *provided to the Department of Corrections and Rehabilitation for*  
 36 *the purpose of state operations in the 2011–12 fiscal year, payable*  
 37 *from the General Fund.*

38 *SEC. 45. It is the intent of the Legislature to allow the*  
 39 *Department of Corrections and Rehabilitation additional flexibility*  
 40 *in managing its adult population following the enactment of 2011*

1 *Realignment Legislation. Enactment of this measure shall constitute*  
2 *the approval required by Section 2 of Chapter 706 of the statutes*  
3 *of 2007.*

4 SEC. 46. *This act shall not become operative until October 1,*  
5 *2011, and only if Chapter 15 of the statutes of 2011 becomes*  
6 *operative.*

7 SEC. 47. *This act is a bill providing for appropriations related*  
8 *to the Budget Bill within the meaning of subdivision (e) of Section*  
9 *12 of Article IV of the California Constitution, has been identified*  
10 *as related to the budget in the Budget Bill, and shall take effect*  
11 *immediately.*

12 SEC. 48. (a) *Section 12.1 of this bill incorporates amendments*  
13 *to Section 1170 of the Penal Code proposed by both this bill and*  
14 *Senate Bill 9. It shall only become operative if (1) both bills are*  
15 *enacted and become effective on or before January 1, 2012, (2)*  
16 *each bill amends Section 1170 of the Penal Code, and (3) Senate*  
17 *Bill 576 is not enacted or as enacted does not amend that section,*  
18 *and (4) this bill is enacted after Senate Bill 9, in which case*  
19 *Sections 12, 12.2, and 12.3 of this bill shall not become operative.*

20 (b) *Section 12.2 of this bill incorporates amendments to Section*  
21 *1170 of the Penal Code proposed by both this bill and Senate Bill*  
22 *576. It shall only become operative if (1) both bills are enacted*  
23 *and become effective on or before January 1, 2012, (2) each bill*  
24 *amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not*  
25 *enacted or as enacted does not amend that section, and (4) this*  
26 *bill is enacted after Senate Bill 576 in which case Sections 12,*  
27 *12.1, and 12.3 of this bill shall not become operative.*

28 (c) *Section 12.3 of this bill incorporates amendments to Section*  
29 *1170 of the Penal Code proposed by this bill, Senate Bill 9, and*  
30 *Senate Bill 576. It shall only become operative if (1) all three bills*  
31 *are enacted and become effective on or before January 1, 2012,*  
32 *(2) all three bills amend Section 1170 of the Penal Code, and (3)*  
33 *this bill is enacted after Senate Bill 9 and Senate Bill 576, in which*  
34 *case Sections 12, 12.1, and 12.2 of this bill shall not become*  
35 *operative.*

36 SEC. 49. (a) *Section 12.5 of this bill incorporates amendments*  
37 *to Section 1170 of the Penal Code proposed by both this bill and*  
38 *Senate Bill 9. It shall only become operative if (1) both bills are*  
39 *enacted and become effective on or before January 1, 2012, (2)*  
40 *each bill amends Section 1170 of the Penal Code, and (3) Senate*

1 Bill 576 is not enacted or as enacted does not amend that section,  
2 and (4) this bill is enacted after Senate Bill 9, in which case  
3 Sections 12.4, 12.6, and 12.7 of this bill shall not become operative.

4 (b) Section 12.6 of this bill incorporates amendments to Section  
5 1170 of the Penal Code proposed by both this bill and Senate Bill  
6 576. It shall only become operative if (1) both bills are enacted  
7 and become effective on or before January 1, 2012, (2) each bill  
8 amends Section 1170 of the Penal Code, (3) Senate Bill 9 is not  
9 enacted or as enacted does not amend that section, and (4) this  
10 bill is enacted after Senate Bill 576 in which case Sections 12.4,  
11 12.5, and 12.7 of this bill shall not become operative.

12 (c) Section 12.7 of this bill incorporates amendments to Section  
13 1170 of the Penal Code proposed by this bill, Senate Bill 9, and  
14 Senate Bill 576. It shall only become operative if (1) all three bills  
15 are enacted and become effective on or before January 1, 2012,  
16 (2) all three bills amend Section 1170 of the Penal Code, and (3)  
17 this bill is enacted after Senate Bill 9 and Senate Bill 576, in which  
18 case Sections 12.4, 12.5 and 12.6 of this bill shall not become  
19 operative.

20 SEC. 50. Sections 13.1 and 13.3 of this bill incorporate  
21 amendments to Section 1170.1 of the Penal Code proposed by both  
22 this bill and Senate Bill 576. Those sections shall only become  
23 operative if (1) both bills are enacted and become effective on or  
24 before January 1, 2012, (2) each bill amends Section 1170.1 of  
25 the Penal Code, and (3) this bill is enacted after Senate Bill 576,  
26 in which case Sections 13 and 13.2 of this bill shall not become  
27 operative.

28 SEC. 51. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.

33 SEC. 52. This act addresses the fiscal emergency declared and  
34 reaffirmed by the Governor by proclamation on January 20, 2011,  
35 pursuant to subdivision (f) of Section 10 of Article IV of the  
36 California Constitution.

37 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
38 ~~changes relating to the Budget Act of 2010.~~

39 ~~SEC. 2. This act addresses the fiscal emergency declared by~~  
40 ~~the Governor by proclamation on December 6, 2010, pursuant to~~

1 ~~subdivision (f) of Section 10 of Article IV of the California~~  
2 ~~Constitution.~~

O