

**Introduced by Senator Pavley**February 21, 2013

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

## LEGISLATIVE COUNSEL'S DIGEST

SB 463, as introduced, Pavley. Sentencing.

Existing law provides that most felonies are punishable by a triad of terms of incarceration in the state prison, comprised of low, middle, and upper terms. Previous law that required the court to impose the middle term, unless there were circumstances in aggravation or mitigation of the crime, was amended to provide that the choice of the appropriate term rests within the sound discretion of the court. Existing provisions related to sentence enhancements involving criminal street gang activity, firearms, and confirm, operative until January 1, 2014, generally specify that the appropriate term rests within the sound discretion of the court. Existing law, operative on and after January 1, 2014, instead requires the court to impose the middle term, unless there are circumstances in mitigation or aggravation of the crime.

This bill would extend to January 1, 2017, the provisions of law that provide that the court shall, in its discretion, impose the term or enhancement that best serves the interests of justice. The bill would also make conforming changes.

This bill would amend Proposition 21, an initiative statute adopted by the voters at the March 7, 2000, statewide primary election that provides that its provisions may be amended by the Legislature by a  $\frac{2}{3}$  vote of the membership of each house, and therefore requires a  $\frac{2}{3}$  vote.

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

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

1 SECTION 1. Section 186.22 of the Penal Code, as amended  
2 by Section 1 of Chapter 361 of the Statutes of 2011, is amended  
3 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) Any person who is convicted of a public offense punishable  
35 as a felony or a misdemeanor, which is committed for the benefit  
36 of, at the direction of, or in association with any criminal street  
37 gang, with the specific intent to promote, further, or assist in any  
38 criminal conduct by gang members, shall be punished by  
39 imprisonment in the county jail not to exceed one year, or by  
40 imprisonment in the state prison for one, two, or three years,

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

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

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

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

21 (3) Unlawful homicide or manslaughter, as defined in Chapter  
22 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

29 (6) Discharging or permitting the discharge of a firearm from  
30 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
31 12034 until January 1, 2012, and, on or after that date, subdivisions  
32 (a) and (b) of Section 26100.

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

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

37 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
38 487.

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

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

- 1 (12) Rape, as defined in Section 261.
- 2 (13) Looting, as defined in Section 463.
- 3 (14) Money laundering, as defined in Section 186.10.
- 4 (15) Kidnapping, as defined in Section 207.
- 5 (16) Mayhem, as defined in Section 203.
- 6 (17) Aggravated mayhem, as defined in Section 205.
- 7 (18) Torture, as defined in Section 206.
- 8 (19) Felony extortion, as defined in Sections 518 and 520.
- 9 (20) Felony vandalism, as defined in paragraph (1) of
- 10 subdivision (b) of Section 594.
- 11 (21) Carjacking, as defined in Section 215.
- 12 (22) The sale, delivery, or transfer of a firearm, as defined in
- 13 Section 12072 until January 1, 2012, and, on or after that date,
- 14 Article 1 (commencing with Section 27500) of Chapter 4 of
- 15 Division 6 of Title 4 of Part 6.
- 16 (23) Possession of a pistol, revolver, or other firearm capable
- 17 of being concealed upon the person in violation of paragraph (1)
- 18 of subdivision (a) of Section 12101 until January 1, 2012, and, on
- 19 or after that date, Section 29610.
- 20 (24) Threats to commit crimes resulting in death or great bodily
- 21 injury, as defined in Section 422.
- 22 (25) Theft and unlawful taking or driving of a vehicle, as defined
- 23 in Section 10851 of the Vehicle Code.
- 24 (26) Felony theft of an access card or account information, as
- 25 defined in Section 484e.
- 26 (27) Counterfeiting, designing, using, or attempting to use an
- 27 access card, as defined in Section 484f.
- 28 (28) Felony fraudulent use of an access card or account
- 29 information, as defined in Section 484g.
- 30 (29) Unlawful use of personal identifying information to obtain
- 31 credit, goods, services, or medical information, as defined in
- 32 Section 530.5.
- 33 (30) Wrongfully obtaining Department of Motor Vehicles
- 34 documentation, as defined in Section 529.7.
- 35 (31) Prohibited possession of a firearm in violation of Section
- 36 12021 until January 1, 2012, and on or after that date, Chapter 2
- 37 (commencing with Section 29800) of Division 9 of Title 4 of Part
- 38 6.
- 39 (32) Carrying a concealed firearm in violation of Section 12025
- 40 until January 1, 2012, and, on or after that date, Section 25400.

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

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

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

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

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

33 (j) A pattern of gang activity may be shown by the commission  
34 of one or more of the offenses enumerated in paragraphs (26) to  
35 (30), inclusive, of subdivision (e), and the commission of one or  
36 more of the offenses enumerated in paragraphs (1) to (25),  
37 inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern  
38 of gang activity cannot be established solely by proof of  
39 commission of offenses enumerated in paragraphs (26) to (30),  
40 inclusive, of subdivision (e), alone.

1 (k) This section shall remain in effect only until January 1, ~~2014~~  
2 2017, and as of that date is repealed, unless a later enacted statute,  
3 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
4 that date.

5 SEC. 2. Section 186.22 of the Penal Code, as amended by  
6 Section 2 of Chapter 361 of the Statutes of 2011, is amended to  
7 read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (j) A pattern of gang activity may be shown by the commission  
38 of one or more of the offenses enumerated in paragraphs (26) to  
39 (30), inclusive, of subdivision (e), and the commission of one or  
40 more of the offenses enumerated in paragraphs (1) to (25),

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

5 (k) This section shall become operative on January 1, ~~2014~~  
6 2017.

7 SEC. 3. Section 186.33 of the Penal Code, as amended by  
8 Section 3 of Chapter 361 of the Statutes of 2011, is amended to  
9 read:

10 186.33. (a) Any person required to register pursuant to Section  
11 186.30 who knowingly violates any of its provisions is guilty of  
12 a misdemeanor.

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

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

27 (c) This section shall remain in effect only until January 1, ~~2014~~  
28 2017, and as of that date is repealed, unless a later enacted statute,  
29 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
30 that date.

31 SEC. 4. Section 186.33 of the Penal Code, as amended by  
32 Section 4 of Chapter 361 of the Statutes of 2011, is amended to  
33 read:

34 186.33. (a) Any person required to register pursuant to Section  
35 186.30 who knowingly violates any of its provisions is guilty of  
36 a misdemeanor.

37 (b) (1) Any person who knowingly fails to register pursuant to  
38 Section 186.30 and is subsequently convicted of, or any person  
39 for whom a petition is subsequently sustained for a violation of,  
40 any of the offenses specified in Section 186.30, shall be punished

1 by an additional term of imprisonment in the state prison for 16  
2 months, or two or three years. The court shall order imposition of  
3 the middle term unless there are circumstances in aggravation or  
4 mitigation. The court shall state its reasons for the enhancement  
5 choice on the record at the time of sentencing.

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

10 (c) This section shall become operative on January 1, ~~2014~~  
11 ~~2017~~.

12 SEC. 5. Section 1170 of the Penal Code, as amended by Section  
13 1 of Chapter 828 of the Statutes of 2012, is amended to 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, except as  
14 provided in paragraph (2) of subdivision (d). In any case in which  
15 the amount of preimprisonment credit under Section 2900.5 or any  
16 other provision of law is equal to or exceeds any sentence imposed  
17 pursuant to this chapter, the entire sentence shall be deemed to  
18 have been served and the defendant shall not be actually delivered  
19 to the custody of the secretary. The court shall advise the defendant  
20 that he or she shall serve a period of parole and order the defendant  
21 to report to the parole office closest to the defendant's last legal  
22 residence, unless the in-custody credits equal the total sentence,  
23 including both confinement time and the period of parole. The  
24 sentence shall be deemed a separate prior prison term under Section  
25 667.5, 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 court resentencing under this subdivision shall apply  
21 the sentencing rules of the Judicial Council so as to eliminate  
22 disparity of sentences and to promote uniformity of sentencing.  
23 Credit shall be given for time served.

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

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

39 (B) The defendant shall file the original petition with the  
40 sentencing court. A copy of the petition shall be served on the

1 agency that prosecuted the case. The petition shall include the  
2 defendant's statement that he or she was under 18 years of age at  
3 the time of the crime and was sentenced to life in prison without  
4 the possibility of parole, the defendant's statement describing his  
5 or her remorse and work towards rehabilitation, and the defendant's  
6 statement that one of the following is true:

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

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

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

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

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

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

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

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



- 1 (i) The defendant was convicted pursuant to felony murder or  
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications  
4 for assault or other felony crimes with a significant potential for  
5 personal harm to victims prior to the offense for which the sentence  
6 is being considered for recall.
- 7 (iii) The defendant committed the offense with at least one adult  
8 codefendant.
- 9 (iv) Prior to the offense for which the sentence is being  
10 considered for recall, the defendant had insufficient adult support  
11 or supervision and had suffered from psychological or physical  
12 trauma, or significant stress.
- 13 (v) The defendant suffers from cognitive limitations due to  
14 mental illness, developmental disabilities, or other factors that did  
15 not constitute a defense, but influenced the defendant's  
16 involvement in the offense.
- 17 (vi) The defendant has performed acts that tend to indicate  
18 rehabilitation or the potential for rehabilitation, including, but not  
19 limited to, availing himself or herself of rehabilitative, educational,  
20 or vocational programs, if those programs have been available at  
21 his or her classification level and facility, using self-study for  
22 self-improvement, or showing evidence of remorse.
- 23 (vii) The defendant has maintained family ties or connections  
24 with others through letter writing, calls, or visits, or has eliminated  
25 contact with individuals outside of prison who are currently  
26 involved with crime.
- 27 (viii) The defendant has had no disciplinary actions for violent  
28 activities in the last five years in which the defendant was  
29 determined to be the aggressor.
- 30 (G) The court shall have the discretion to recall the sentence  
31 and commitment previously ordered and to resentence the  
32 defendant in the same manner as if the defendant had not  
33 previously been sentenced, provided that the new sentence, if any,  
34 is not greater than the initial sentence. The discretion of the court  
35 shall be exercised in consideration of the criteria in subparagraph  
36 (B). Victims, or victim family members if the victim is deceased,  
37 shall be notified of the resentencing hearing and shall retain their  
38 rights to participate in the hearing.
- 39 (H) If the sentence is not recalled, the defendant may submit  
40 another petition for recall and resentencing to the sentencing court

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

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

12 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

39 (7) Any recommendation for recall submitted to the court by  
40 the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant  
2 to paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

20 (B) (i) For a term as determined in accordance with the  
21 applicable sentencing law, but suspend execution of a concluding  
22 portion of the term selected in the court's discretion, during which  
23 time the defendant shall be supervised by the county probation  
24 officer in accordance with the terms, conditions, and procedures  
25 generally applicable to persons placed on probation, for the  
26 remaining unserved portion of the sentence imposed by the court.  
27 The period of supervision shall be mandatory, and may not be  
28 earlier terminated except by court order. Any proceeding to revoke  
29 or modify mandatory supervision under this subparagraph shall  
30 be conducted pursuant to either subdivisions (a) and (b) of Section  
31 1203.2 or Section 1203.3. During the period when the defendant  
32 is under such supervision, unless in actual custody related to the  
33 sentence imposed by the court, the defendant shall be entitled to  
34 only actual time credit against the term of imprisonment imposed  
35 by the court. Any time period which is suspended because a person  
36 has absconded shall not be credited toward the period of  
37 supervision.

38 (ii) The portion of a defendant's sentenced term during which  
39 time he or she is supervised by the county probation officer

1 pursuant to this subparagraph shall be known as mandatory  
2 supervision.

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

6 (i) This section shall remain in effect only until January 1, ~~2014~~  
7 2017, and as of that date is repealed, unless a later enacted statute,  
8 that is enacted before that date, deletes or extends that date.

9 SEC. 6. Section 1170 of the Penal Code, as amended by Section  
10 2 of Chapter 828 of the Statutes of 2012, is amended to 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 court resentencing under this subdivision shall apply  
20 the sentencing rules of the Judicial Council so as to eliminate  
21 disparity of sentences and to promote uniformity of sentencing.  
22 Credit shall be given for time served.

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

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

38 (B) The defendant shall file the original petition with the  
39 sentencing court. A copy of the petition shall be served on the  
40 agency that prosecuted the case. The petition shall include the



1 defendant's statement that he or she was under 18 years of age at  
2 the time of the crime and was sentenced to life in prison without  
3 the possibility of parole, the defendant's statement describing his  
4 or her remorse and work towards rehabilitation, and the defendant's  
5 statement that one of the following is true:

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

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

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

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

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

- 1 (i) The defendant was convicted pursuant to felony murder or  
2 aiding and abetting murder provisions of law.
- 3 (ii) The defendant does not have juvenile felony adjudications  
4 for assault or other felony crimes with a significant potential for  
5 personal harm to victims prior to the offense for which the sentence  
6 is being considered for recall.
- 7 (iii) The defendant committed the offense with at least one adult  
8 codefendant.
- 9 (iv) Prior to the offense for which the sentence is being  
10 considered for recall, the defendant had insufficient adult support  
11 or supervision and had suffered from psychological or physical  
12 trauma, or significant stress.
- 13 (v) The defendant suffers from cognitive limitations due to  
14 mental illness, developmental disabilities, or other factors that did  
15 not constitute a defense, but influenced the defendant's  
16 involvement in the offense.
- 17 (vi) The defendant has performed acts that tend to indicate  
18 rehabilitation or the potential for rehabilitation, including, but not  
19 limited to, availing himself or herself of rehabilitative, educational,  
20 or vocational programs, if those programs have been available at  
21 his or her classification level and facility, using self-study for  
22 self-improvement, or showing evidence of remorse.
- 23 (vii) The defendant has maintained family ties or connections  
24 with others through letter writing, calls, or visits, or has eliminated  
25 contact with individuals outside of prison who are currently  
26 involved with crime.
- 27 (viii) The defendant has had no disciplinary actions for violent  
28 activities in the last five years in which the defendant was  
29 determined to be the aggressor.
- 30 (G) The court shall have the discretion to recall the sentence  
31 and commitment previously ordered and to resentence the  
32 defendant in the same manner as if the defendant had not  
33 previously been sentenced, provided that the new sentence, if any,  
34 is not greater than the initial sentence. The discretion of the court  
35 shall be exercised in consideration of the criteria in subparagraph  
36 (B). Victims, or victim family members if the victim is deceased,  
37 shall be notified of the resentencing hearing and shall retain their  
38 rights to participate in the hearing.
- 39 (H) If the sentence is not recalled, the defendant may submit  
40 another petition for recall and resentencing to the sentencing court

1 when the defendant has been committed to the custody of the  
2 department for at least 20 years. If recall and resentencing is not  
3 granted under that petition, the defendant may file another petition  
4 after having served 24 years. The final petition may be submitted,  
5 and the response to that petition shall be determined, during the  
6 25th year of the defendant’s sentence.

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

12 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

39 (7) Any recommendation for recall submitted to the court by  
40 the secretary or the Board of Parole Hearings shall include one or

1 more medical evaluations, a postrelease plan, and findings pursuant  
2 to paragraph (2).

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

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

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

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

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

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

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

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

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

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

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

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

20 (B) (i) For a term as determined in accordance with the  
21 applicable sentencing law, but suspend execution of a concluding  
22 portion of the term selected in the court's discretion, during which  
23 time the defendant shall be supervised by the county probation  
24 officer in accordance with the terms, conditions, and procedures  
25 generally applicable to persons placed on probation, for the  
26 remaining unserved portion of the sentence imposed by the court.  
27 The period of supervision shall be mandatory, and may not be  
28 earlier terminated except by court order. Any proceeding to revoke  
29 or modify mandatory supervision under this subparagraph shall  
30 be conducted pursuant to either subdivisions (a) and (b) of Section  
31 1203.2 or Section 1203.3. During the period when the defendant  
32 is under such supervision, unless in actual custody related to the  
33 sentence imposed by the court, the defendant shall be entitled to  
34 only actual time credit against the term of imprisonment imposed  
35 by the court. Any time period which is suspended because a person  
36 has absconded shall not be credited toward the period of  
37 supervision.

38 (ii) The portion of a defendant's sentenced term during which  
39 time he or she is supervised by the county probation officer

1 pursuant to this subparagraph shall be known as mandatory  
2 supervision.

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, ~~2014~~ 2017.

7 SEC. 7. Section 1170.1 of the Penal Code, as amended by  
8 Section 8.7 of Chapter 361 of the Statutes of 2011, is amended to  
9 read:

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

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

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

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

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

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

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

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



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

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

8 (i) This section shall remain in effect only until January 1, ~~2014~~  
9 2017, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
11 that date.

12 SEC. 8. Section 1170.1 of the Penal Code, as amended by  
13 Section 9.7 of Chapter 361 of the Statutes of 2011, is amended to  
14 read:

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

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

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

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

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

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

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

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

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

13 (i) This section shall become operative on January 1, ~~2014~~ 2017.

14 SEC. 9. Section 1170.3 of the Penal Code, as amended by  
15 Section 10 of Chapter 361 of the Statutes of 2011, is amended to  
16 read:

17 1170.3. The Judicial Council shall seek to promote uniformity  
18 in sentencing under Section 1170 by:

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

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

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

30 (c) This section shall remain in effect only until January 1, ~~2014~~  
31 2017, and as of that date is repealed, unless a later enacted statute,  
32 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
33 that date.

34 SEC. 10. Section 1170.3 of the Penal Code, as amended by  
35 Section 11 of Chapter 361 of the Statutes of 2011, is amended to  
36 read:

37 1170.3. The Judicial Council shall seek to promote uniformity  
38 in sentencing under Section 1170 by:

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

4 (1) Grant or deny probation.

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

6 (3) Impose concurrent or consecutive sentences.

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

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

12 (c) This section shall become operative on January 1, ~~2014~~  
13 ~~2017~~.

14 SEC. 11. Section 12021.5 of the Penal Code, as added by  
15 Section 13 of Chapter 361 of the Statutes of 2011, is amended to  
16 read:

17 12021.5. (a) Every person who carries a loaded or unloaded  
18 firearm on his or her person, or in a vehicle, during the commission  
19 or attempted commission of any street gang crimes described in  
20 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
21 the felony or attempted felony, be punished by an additional term  
22 of imprisonment in the state prison for one, two, or three years.  
23 The court shall select the sentence enhancement which, in the  
24 court's discretion, best serves the interests of justice and shall state  
25 the reasons for its choice on the record at the time of sentence, in  
26 accordance with the provisions of subdivision (d) of Section  
27 1170.1.

28 (b) Every person who carries a loaded or unloaded firearm  
29 together with a detachable shotgun magazine, a detachable pistol  
30 magazine, a detachable magazine, or a belt-feeding device on his  
31 or her person, or in a vehicle, during the commission or attempted  
32 commission of any street gang crimes described in subdivision (a)  
33 or (b) of Section 186.22, shall, upon conviction of the felony or  
34 attempted felony, be punished by an additional term of  
35 imprisonment in the state prison for two, three, or four years. The  
36 court shall select the sentence enhancement which, in the court's  
37 discretion, best serves the interests of justice and shall state the  
38 reasons for its choice on the record at the time of sentence, in  
39 accordance with the provisions of subdivision (d) of Section  
40 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (5) “Rifle” shall have the same meaning as specified in  
34 paragraph (20) of subdivision (c) of Section 12020 until January  
35 1, 2012, and, on or after that date, Section 17090.

36 (6) “Shotgun” shall have the same meaning as specified in  
37 paragraph (21) of subdivision (c) of Section 12020 until January  
38 1, 2012, and, on or after that date, Section 17190.

39 (d) This section shall remain in effect only until January 1, ~~2014~~  
40 ~~2017~~, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
2 that date.

3 SEC. 12. Section 12021.5 of the Penal Code, as amended by  
4 Section 12.3 of Chapter 361 of the Statutes of 2011, is amended  
5 to read:

6 12021.5. (a) Every person who carries a loaded or unloaded  
7 firearm on his or her person, or in a vehicle, during the commission  
8 or attempted commission of any street gang crimes described in  
9 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
10 the felony or attempted felony, be punished by an additional term  
11 of imprisonment pursuant to subdivision (h) of Section 1170 for  
12 one, two, or three years in the court's discretion. The court shall  
13 impose the middle term unless there are circumstances in  
14 aggravation or mitigation. The court shall state the reasons for its  
15 enhancement choice on the record at the time of sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (5) “Rifle” shall have the same meaning as specified in Section  
22 17090.

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

25 (d) This section shall become operative on January 1, ~~2014~~  
26 *2017*.

27 SEC. 13. Section 12022.2 of the Penal Code, as added by  
28 Section 15 of Chapter 361 of the Statutes of 2011, is amended to  
29 read:

30 12022.2. (a) Any person who, while armed with a firearm in  
31 the commission or attempted commission of any felony, has in his  
32 or her immediate possession ammunition for the firearm designed  
33 primarily to penetrate metal or armor, shall upon conviction of  
34 that felony or attempted felony, in addition and consecutive to the  
35 punishment prescribed for the felony or attempted felony, be  
36 punished by an additional term of 3, 4, or 10 years. The court shall  
37 select the sentence enhancement which, in the court’s discretion,  
38 best serves the interests of justice and shall state the reasons for  
39 its choice on the record at the time of the sentence in accordance  
40 with the provisions of subdivision (d) of Section 1170.1.

1 (b) Any person who wears a body vest in the commission or  
2 attempted commission of a violent offense, as defined in  
3 subdivision (b) of Section 12021.1, until January 1, 2012, and, on  
4 or after that date, Section 29905, shall, upon conviction of that  
5 felony or attempted felony, in addition and consecutive to the  
6 punishment prescribed for the felony or attempted felony of which  
7 he or she has been convicted, be punished by an additional term  
8 of one, two, or five years. The court shall select the sentence  
9 enhancement which, in the court's discretion, best serves the  
10 interests of justice and shall state the reasons for its choice on the  
11 record at the time of the sentence in accordance with the provisions  
12 of subdivision (d) of Section 1170.1.

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

16 (d) This section shall remain in effect only until January 1, ~~2014~~  
17 ~~2017~~, and as of that date is repealed, unless a later enacted statute,  
18 that is enacted before January 1, ~~2014~~ 2017, deletes or extends  
19 that date.

20 SEC. 14. Section 12022.2 of the Penal Code, as amended by  
21 Section 14 of Chapter 361 of the Statutes of 2011, is amended to  
22 read:

23 12022.2. (a) Any person who, while armed with a firearm in  
24 the commission or attempted commission of any felony, has in his  
25 or her immediate possession ammunition for the firearm designed  
26 primarily to penetrate metal or armor, shall upon conviction of  
27 that felony or attempted felony, in addition and consecutive to the  
28 punishment prescribed for the felony or attempted felony, be  
29 punished by an additional term of 3, 4, or 10 years. The court shall  
30 order the middle term unless there are circumstances in aggravation  
31 or mitigation. The court shall state the reasons for its enhancement  
32 choice on the record at the time of the sentence.

33 (b) Any person who wears a body vest in the commission or  
34 attempted commission of a violent offense, as defined in Section  
35 29905, shall, upon conviction of that felony or attempted felony,  
36 in addition and consecutive to the punishment prescribed for the  
37 felony or attempted felony of which he or she has been convicted,  
38 be punished by an additional term of one, two, or five years. The  
39 court shall order the middle term unless there are circumstances



1 in aggravation or mitigation. The court shall state the reasons for  
2 its enhancement choice on the record at the time of the sentence.

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

6 (d) This section shall become operative on January 1, ~~2014~~  
7 ~~2017~~.

8 SEC. 15. Section 12022.4 of the Penal Code, as added by  
9 Section 17 of Chapter 361 of the Statutes of 2011, is amended to  
10 read:

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

26 (b) This section shall remain in effect only until January 1, ~~2014~~  
27 ~~2017~~, and as of that date is repealed, unless a later enacted statute,  
28 that is enacted before January 1, ~~2014~~ ~~2017~~, deletes or extends  
29 that date.

30 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
31 Section 16 of Chapter 361 of the Statutes of 2011, is amended to  
32 read:

33 12022.4. (a) Any person who, during the commission or  
34 attempted commission of a felony, furnishes or offers to furnish  
35 a firearm to another for the purpose of aiding, abetting, or enabling  
36 that person or any other person to commit a felony shall, in addition  
37 and consecutive to the punishment prescribed by the felony or  
38 attempted felony of which the person has been convicted, be  
39 punished by an additional term of one, two, or three years in the  
40 state prison. The court shall order the middle term unless there are

1 circumstances in aggravation or mitigation. The court shall state  
2 the reasons for its enhancement choice on the record at the time  
3 of the sentence. The additional term provided in this section shall  
4 not be imposed unless the fact of the furnishing is charged in the  
5 accusatory pleading and admitted or found to be true by the trier  
6 of fact.

7 (b) This section shall become operative on January 1, ~~2014~~  
8 *2017*.