

AMENDED IN ASSEMBLY SEPTEMBER 6, 2013

**SENATE BILL**

**No. 463**

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**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 amended, 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~~ *sentencing generally*, 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

1 a circumstance in aggravation of the crime in imposing a term  
2 under paragraph (1).

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

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

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

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

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

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

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

39 (d) Any person who is convicted of a public offense punishable  
40 as a felony or a misdemeanor, which is committed for the benefit

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

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

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

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

26 (3) Unlawful homicide or manslaughter, as defined in Chapter  
27 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

34 (6) Discharging or permitting the discharge of a firearm from  
35 a motor vehicle, as defined in subdivisions (a) and (b) of Section  
36 12034 until January 1, 2012, and, on or after that date, subdivisions  
37 (a) and (b) of Section 26100.

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

- 1 (8) The intimidation of witnesses and victims, as defined in  
2 Section 136.1.
- 3 (9) Grand theft, as defined in subdivision (a) or (c) of Section  
4 487.
- 5 (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- 6 (11) Burglary, as defined in Section 459.
- 7 (12) Rape, as defined in Section 261.
- 8 (13) Looting, as defined in Section 463.
- 9 (14) Money laundering, as defined in Section 186.10.
- 10 (15) Kidnapping, as defined in Section 207.
- 11 (16) Mayhem, as defined in Section 203.
- 12 (17) Aggravated mayhem, as defined in Section 205.
- 13 (18) Torture, as defined in Section 206.
- 14 (19) Felony extortion, as defined in Sections 518 and 520.
- 15 (20) Felony vandalism, as defined in paragraph (1) of  
16 subdivision (b) of Section 594.
- 17 (21) Carjacking, as defined in Section 215.
- 18 (22) The sale, delivery, or transfer of a firearm, as defined in  
19 Section 12072 until January 1, 2012, and, on or after that date,  
20 Article 1 (commencing with Section 27500) of Chapter 4 of  
21 Division 6 of Title 4 of Part 6.
- 22 (23) Possession of a pistol, revolver, or other firearm capable  
23 of being concealed upon the person in violation of paragraph (1)  
24 of subdivision (a) of Section 12101 until January 1, 2012, and, on  
25 or after that date, Section 29610.
- 26 (24) Threats to commit crimes resulting in death or great bodily  
27 injury, as defined in Section 422.
- 28 (25) Theft and unlawful taking or driving of a vehicle, as defined  
29 in Section 10851 of the Vehicle Code.
- 30 (26) Felony theft of an access card or account information, as  
31 defined in Section 484e.
- 32 (27) Counterfeiting, designing, using, or attempting to use an  
33 access card, as defined in Section 484f.
- 34 (28) Felony fraudulent use of an access card or account  
35 information, as defined in Section 484g.
- 36 (29) Unlawful use of personal identifying information to obtain  
37 credit, goods, services, or medical information, as defined in  
38 Section 530.5.
- 39 (30) Wrongfully obtaining Department of Motor Vehicles  
40 documentation, as defined in Section 529.7.

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

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

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

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

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

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

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

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

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

12 SEC. 2. Section 186.22 of the Penal Code, as amended by  
13 Section 2 of Chapter 361 of the Statutes of 2011, is amended to  
14 read:

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) If the court grants probation or suspends the execution of  
39 sentence imposed upon the defendant for a violation of subdivision  
40 (a), or in cases involving a true finding of the enhancement

1 enumerated in subdivision (b), the court shall require that the  
2 defendant serve a minimum of 180 days in a county jail as a  
3 condition thereof.

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

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

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

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

31 (3) Unlawful homicide or manslaughter, as defined in Chapter  
32 1 (commencing with Section 187) of Title 8 of Part 1.

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

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

39 (6) Discharging or permitting the discharge of a firearm from  
40 a motor vehicle, as defined in subdivisions (a) and (b) of Section

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

1 (29) Unlawful use of personal identifying information to obtain  
2 credit, goods, services, or medical information, as defined in  
3 Section 530.5.

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

6 (31) Prohibited possession of a firearm in violation of Section  
7 12021 until January 1, 2012, and, on or after that date, Chapter 2  
8 (commencing with Section 29800) of Division 9 of Title 4 of Part  
9 6.

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

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

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

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

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

38 (i) In order to secure a conviction or sustain a juvenile petition,  
39 pursuant to subdivision (a) it is not necessary for the prosecution  
40 to prove that the person devotes all, or a substantial part, of his or

1 her time or efforts to the criminal street gang, nor is it necessary  
2 to prove that the person is a member of the criminal street gang.  
3 Active participation in the criminal street gang is all that is  
4 required.

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

13 (k) This section shall become operative on January 1, 2017.

14 SEC. 3. Section 186.33 of the Penal Code, as amended by  
15 Section 3 of Chapter 361 of the Statutes of 2011, is amended to  
16 read:

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

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

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

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

37 SEC. 4. Section 186.33 of the Penal Code, as amended by  
38 Section 4 of Chapter 361 of the Statutes of 2011, is amended to  
39 read:

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

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

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

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

18 SEC. 5. Section 1170 of the Penal Code, as amended by Section  
19 1 of Chapter 828 of the Statutes of 2012, is amended to read:

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

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

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

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

34 (b) When a judgment of imprisonment is to be imposed and the  
35 statute specifies three possible terms, the choice of the appropriate  
36 term shall rest within the sound discretion of the court. At least  
37 four days prior to the time set for imposition of judgment, either  
38 party or the victim, or the family of the victim if the victim is  
39 deceased, may submit a statement in aggravation or mitigation. In  
40 determining the appropriate term, the court may consider the record

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (B) (i) For a term as determined in accordance with the  
29 applicable sentencing law, but suspend execution of a concluding  
30 portion of the term selected in the court's discretion, during which  
31 time the defendant shall be supervised by the county probation  
32 officer in accordance with the terms, conditions, and procedures  
33 generally applicable to persons placed on probation, for the  
34 remaining unserved portion of the sentence imposed by the court.  
35 The period of supervision shall be mandatory, and may not be  
36 earlier terminated except by court order. Any proceeding to revoke  
37 or modify mandatory supervision under this subparagraph shall  
38 be conducted pursuant to either subdivisions (a) and (b) of Section  
39 1203.2 or Section 1203.3. During the period when the defendant  
40 is under such supervision, unless in actual custody related to the

1 sentence imposed by the court, the defendant shall be entitled to  
2 only actual time credit against the term of imprisonment imposed  
3 by the court. Any time period which is suspended because a person  
4 has absconded shall not be credited toward the period of  
5 supervision.

6 (ii) The portion of a defendant's sentenced term during which  
7 time he or she is supervised by the county probation officer  
8 pursuant to this subparagraph shall be known as mandatory  
9 supervision.

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

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

16 SEC. 6. ~~Section 1170 of the Penal Code, as amended by Section~~  
17 ~~2 of Chapter 828 of the Statutes of 2012, is amended to read:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~(B) (i) For a term as determined in accordance with the~~  
29 ~~applicable sentencing law, but suspend execution of a concluding~~  
30 ~~portion of the term selected in the court's discretion, during which~~  
31 ~~time the defendant shall be supervised by the county probation~~  
32 ~~officer in accordance with the terms, conditions, and procedures~~  
33 ~~generally applicable to persons placed on probation, for the~~  
34 ~~remaining unserved portion of the sentence imposed by the court.~~  
35 ~~The period of supervision shall be mandatory, and may not be~~  
36 ~~earlier terminated except by court order. Any proceeding to revoke~~  
37 ~~or modify mandatory supervision under this subparagraph shall~~  
38 ~~be conducted pursuant to either subdivisions (a) and (b) of Section~~  
39 ~~1203.2 or Section 1203.3. During the period when the defendant~~  
40 ~~is under such supervision, unless in actual custody related to the~~

1 sentence imposed by the court, the defendant shall be entitled to  
2 only actual time credit against the term of imprisonment imposed  
3 by the court. Any time period which is suspended because a person  
4 has absconded shall not be credited toward the period of  
5 supervision.

6 (ii) ~~The portion of a defendant's sentenced term during which~~  
7 ~~time he or she is supervised by the county probation officer~~  
8 ~~pursuant to this subparagraph shall be known as mandatory~~  
9 ~~supervision.~~

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

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

14 *SEC. 6. Section 1170 of the Penal Code, as amended by Section*  
15 *6 of Chapter 32 of the Statutes of 2013, is amended to read:*

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

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

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

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

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

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

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

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

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

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

1 enforcement who is employed by the federal government, the state,  
2 or any of its political subdivisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (J) This subdivision shall have retroactive application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 by the court. Any time period which is suspended because a person  
2 has absconded shall not be credited toward the period of  
3 supervision.

4 (ii) The portion of a defendant's sentenced term during which  
5 time he or she is supervised by the county probation officer  
6 pursuant to this subparagraph shall be known as mandatory  
7 supervision, and shall begin upon release from custody.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 SEC. 8. Section 1170.1 of the Penal Code, as amended by  
17 Section 9.7 of Chapter 361 of the Statutes of 2011, is amended to  
18 read:

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

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

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

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

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

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

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

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

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

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

17 (i) This section shall become operative on January 1, 2017.

18 SEC. 9. Section 1170.3 of the Penal Code, as amended by  
19 Section 10 of Chapter 361 of the Statutes of 2011, is amended to  
20 read:

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

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

26 (1) Grant or deny probation.

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

28 (3) Impose concurrent or consecutive sentences.

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

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

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

37 SEC. 10. Section 1170.3 of the Penal Code, as amended by  
38 Section 11 of Chapter 361 of the Statutes of 2011, is amended to  
39 read:

1 1170.3. The Judicial Council shall seek to promote uniformity  
2 in sentencing under Section 1170 by:

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

6 (1) Grant or deny probation.

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

8 (3) Impose concurrent or consecutive sentences.

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

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

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

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

18 12021.5. (a) Every person who carries a loaded or unloaded  
19 firearm on his or her person, or in a vehicle, during the commission  
20 or attempted commission of any street gang crimes described in  
21 subdivision (a) or (b) of Section 186.22, shall, upon conviction of  
22 the felony or attempted felony, be punished by an additional term  
23 of imprisonment in the state prison for one, two, or three years.  
24 The court shall select the sentence enhancement which, in the  
25 court's discretion, best serves the interests of justice and shall state  
26 the reasons for its choice on the record at the time of sentence, in  
27 accordance with the provisions of subdivision (d) of Section  
28 1170.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (5) “Rifle” shall have the same meaning as specified in  
36 paragraph (20) of subdivision (c) of Section 12020 until January  
37 1, 2012, and, on or after that date, Section 17090.

38 (6) “Shotgun” shall have the same meaning as specified in  
39 paragraph (21) of subdivision (c) of Section 12020 until January  
40 1, 2012, and, on or after that date, Section 17190.

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

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

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

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

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

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

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

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

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

39 (2) "Detachable pistol magazine" means a device that is  
40 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, 2017.

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

29 12022.2. (a) Any person who, while armed with a firearm in  
30 the commission or attempted commission of any felony, has in his  
31 or her immediate possession ammunition for the firearm designed  
32 primarily to penetrate metal or armor, shall upon conviction of  
33 that felony or attempted felony, in addition and consecutive to the  
34 punishment prescribed for the felony or attempted felony, be  
35 punished by an additional term of 3, 4, or 10 years. The court shall  
36 select the sentence enhancement which, in the court’s discretion,  
37 best serves the interests of justice and shall state the reasons for  
38 its choice on the record at the time of the sentence in accordance  
39 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, 2017,  
17 and as of that date is repealed, unless a later enacted statute, that  
18 is enacted before January 1, 2017, deletes or extends that date.

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

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

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

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

4 (d) This section shall become operative on January 1, 2017.

5 SEC. 15. Section 12022.4 of the Penal Code, as added by  
6 Section 17 of Chapter 361 of the Statutes of 2011, is amended to  
7 read:

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

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

26 SEC. 16. Section 12022.4 of the Penal Code, as amended by  
27 Section 16 of Chapter 361 of the Statutes of 2011, is amended to  
28 read:

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

- 1 accusatory pleading and admitted or found to be true by the trier
- 2 of fact.
- 3 (b) This section shall become operative on January 1, 2017.

O