AMENDED IN ASSEMBLY APRIL 21, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL No. 1509

Introduced by Assembly Member Lee
(Coauthors: Assembly Members Carrillo, Kalra, and Stone)
(Coauthor: Senator Wiener)

February 19, 2021

An act to amend Section 7282.5 of the Government Code, and to amend Sections 190, ~~206, 368,~~ 422.75, ~~550, 600,~~ 667.5, 667.61, ~~667.7,~~ 1170.11, 1174.4, ~~1203.055,~~ 1203.06, ~~1203.09,~~ 1269b, ~~2933.5,~~ 2962, ~~3003,~~ 3057, 12022.2, 12022.53, 12022.55, and 12022.8 of, to add Section 1170.23 to, and to repeal Sections 12021.5, 12022, 12022.4, ~~12022.5, and 12022.7~~ *and 12022.5* of, the Penal Code, relating to enhancements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as amended, Lee. Enhancements: firearms.

Existing law imposes various sentence enhancements, consisting of additional and consecutive terms of imprisonment, including, among others, enhancements for being armed with a firearm during the commission of a felony, being armed with a firearm during the commission of a street gang crime, as defined, being armed with ammunition designed to penetrate armor during the commission of a felony, furnishing a firearm to another for the purpose of aiding, abetting, or enabling that person to commit a felony, *and* using a firearm during the commission of a ~~felony, and the infliction of great bodily injury on any other person during the commission of a~~ felony.

This bill would repeal those enhancements and make conforming changes.

Existing law imposes a sentence enhancement in the state prison of 10 years for personally using a firearm in the commission of specified felonies, 20 years for personally and intentionally discharging a firearm in the commission of those felonies, and 25 years to life for personally and intentionally discharging a firearm and causing great bodily injury or death to any other person during the commission of those felonies.

This bill would reduce those enhancements to 1, 2, and 3 years, respectively.

Existing law imposes a sentence enhancement of 5, 6, or 10 years in the state prison for, with intent to inflict great bodily injury or death, discharging a firearm from a motor vehicle in the commission of a felony and inflicting great bodily injury or death in the commission of a felony.

This bill would reduce that enhancement to 1, 2, or 3 years in the state prison.

This bill would additionally authorize a person serving a term for those provisions as they read on or before December 31, 2021, to petition the court for a recall of sentence and to request resentencing in accordance with these changes.

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

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

SECTION 1. Section 7282.5 of the Government Code is amended to read:

7282.5. (a) A law enforcement official shall have discretion to cooperate with immigration authorities only if doing so would not violate any federal, state, or local law, or local policy, and where permitted by the California Values Act (Chapter 17.25 (commencing with Section 7284)). Additionally, the specific activities described in subparagraph (C) of paragraph (1) of subdivision (a) of, and in paragraph (4) of subdivision (a) of, Section 7284.6 shall only occur under the following circumstances:

(1) The individual has been convicted of a serious or violent felony identified in subdivision (c) of Section 1192.7 of, or subdivision (c) of Section 667.5 of, the Penal Code.

(2) The individual has been convicted of a felony punishable by imprisonment in the state prison.

(3) The individual has been convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony for, or has been convicted within the last 15 years of a felony for, any of the following offenses:

(A) Assault, as specified in, but not limited to, Sections 217.1, 220, 240, 241.1, 241.4, 241.7, 244, 244.5, 245, 245.2, 245.3, 245.5, 4500, and 4501 of the Penal Code.

(B) Battery, as specified in, but not limited to, Sections 242, 243.1, 243.3, 243.4, 243.6, 243.7, 243.9, 273.5, 347, 4501.1, and 4501.5 of the Penal Code.

(C) Use of threats, as specified in, but not limited to, Sections 71, 76, 139, 140, 422, 601, and 11418.5 of the Penal Code.

(D) Sexual abuse, sexual exploitation, or crimes endangering children, as specified in, but not limited to, Sections 266, 266a, 266b, 266c, 266d, 266f, 266g, 266h, 266i, 266j, 267, 269, 288, 288.5, 311.1, 311.3, 311.4, 311.10, 311.11, and 647.6 of the Penal Code.

(E) Child abuse or endangerment, as specified in, but not limited to, Sections 270, 271, 271a, 273a, 273ab, 273d, 273.4, and 278 of the Penal Code.

(F) Burglary, robbery, theft, fraud, forgery, or embezzlement, as specified in, but not limited to, Sections 211, 215, 459, 463, 470, 476, 487, 496, 503, 518, 530.5, 532, and 550 of the Penal Code.

(G) Driving under the influence of alcohol or drugs, but only for a conviction that is a felony.

(H) Obstruction of justice, as specified in, but not limited to, Sections 69, 95, 95.1, 136.1, and 148.10 of the Penal Code.

(I) Bribery, as specified in, but not limited to, Sections 67, 67.5, 68, 74, 85, 86, 92, 93, 137, 138, and 165 of the Penal Code.

(J) Escape, as specified in, but not limited to, Sections 107, 109, 110, 4530, 4530.5, 4532, 4533, 4534, 4535, and 4536 of the Penal Code.

(K) Unlawful possession or use of a weapon, firearm, explosive device, or weapon of mass destruction, as specified in, but not limited to, Sections 171b, 171c, 171d, 246, 246.3, 247, 417, 417.3, 417.6, 417.8, 4574, 11418, 11418.1, 12022.2, 12022.3, 12022.53, 12022.55, 18745, 18750, and 18755 of, and subdivisions (c) and (d) of Section 26100 of, the Penal Code.

(L) Possession of an unlawful deadly weapon, under the Deadly Weapons Recodification Act of 2010 (Part 6 (commencing with Section 16000) of the Penal Code).

(M) An offense involving the felony possession, sale, distribution, manufacture, or trafficking of controlled substances.

(N) Vandalism with prior convictions, as specified in, but not limited to, Section 594.7 of the Penal Code.

(O) Gang-related offenses, as specified in, but not limited to, Sections 186.22, 186.26, and 186.28 of the Penal Code.

(P) An attempt, as defined in Section 664 of, or a conspiracy, as defined in Section 182 of, the Penal Code, to commit an offense specified in this section.

(Q) A crime resulting in death, or involving the personal infliction of great bodily injury, as specified in, but not limited to, subdivision (d) of Section 245.6 of, and Sections 187, 191.5, 192, 192.5, 12022.7, 12022.8, and 12022.9 of, the Penal Code.

(R) Possession or use of a firearm in the commission of an offense.

(S) An offense that would require the individual to register as a sex offender pursuant to Section 290, 290.002, or 290.006 of the Penal Code.

(T) False imprisonment, slavery, and human trafficking, as specified in, but not limited to, Sections 181, 210.5, 236, 236.1, and 4503 of the Penal Code.

(U) Criminal profiteering and money laundering, as specified in, but not limited to, Sections 186.2, 186.9, and 186.10 of the Penal Code.

(V) Torture and mayhem, as specified in, but not limited to, Section 203 of the Penal Code.

(W) A crime threatening the public safety, as specified in, but not limited to, Sections 219, 219.1, 219.2, 247.5, 404, 404.6, 405a, 451, and 11413 of the Penal Code.

(X) Elder and dependent adult abuse, as specified in, but not limited to, Section 368 of the Penal Code.

(Y) A hate crime, as specified in, but not limited to, Section 422.55 of the Penal Code.

(Z) Stalking, as specified in, but not limited to, Section 646.9 of the Penal Code.

(AA) Soliciting the commission of a crime, as specified in, but not limited to, subdivision (c) of Section 286 of, and Sections 653j and 653.23 of, the Penal Code.

(AB) An offense committed while on bail or released on their own recognizance, as specified in, but not limited to, Section 12022.1 of the Penal Code.

(AC) Rape, sodomy, oral copulation, or sexual penetration, as specified in, but not limited to, paragraphs (2) and (6) of subdivision (a) of Section 261 of, paragraphs (1) and (4) of subdivision (a) of Section 262 of, Section 264.1 of, subdivisions (c) and (d) of Section 286 of, subdivisions (c) and (d) of Section 287 or of former Section 288a of, and subdivisions (a) and (j) of Section 289 of, the Penal Code.

(AD) Kidnapping, as specified in, but not limited to, Sections 207, 209, and 209.5 of the Penal Code.

(AE) A violation of subdivision (c) of Section 20001 of the Vehicle Code.

(4) The individual is a current registrant on the California Sex and Arson Registry.

(5) The individual has been convicted of a federal crime that meets the definition of an aggravated felony as set forth in subparagraphs (A) to (P), inclusive, of paragraph (43) of subsection (a) of Section 101 of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101), or is identified by the United States Department of Homeland Security's Immigration and Customs Enforcement as the subject of an outstanding federal felony arrest warrant.

(6) In no case shall cooperation occur pursuant to this section for individuals arrested, detained, or convicted of misdemeanors that were previously felonies, or were previously crimes punishable as either misdemeanors or felonies, prior to passage of the Safe Neighborhoods and Schools Act of 2014 as it amended the Penal Code.

(b) In cases in which the individual is arrested and taken before a magistrate on a charge involving a serious or violent felony, as identified in subdivision (c) of Section 1192.7 or subdivision (c) of Section 667.5 of the Penal Code, respectively, or a felony that is punishable by imprisonment in state prison, and the magistrate makes a finding of probable cause as to that charge pursuant to Section 872 of the Penal Code, a law enforcement official shall

additionally have discretion to cooperate with immigration officials pursuant to subparagraph (C) of paragraph (1) of subdivision (a) of Section 7284.6.

SEC. 2. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall be punished by death, imprisonment in the state prison for life without the possibility of parole, or imprisonment in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

Except as provided in subdivision (b), (c), or (d), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 15 years to life.

(b) Except as provided in subdivision (c), every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of their duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties.

(c) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of life without the possibility of parole if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a), (b), or (c) of Section 830.2, subdivision (a) of Section 830.33, or Section 830.5, who was killed while engaged in the performance of their duties, and the defendant knew, or reasonably should have known, that the victim was a peace officer engaged in the performance of their duties, and any of the following facts has been charged and found true:

(1) The defendant specifically intended to kill the peace officer.

(2) The defendant specifically intended to inflict great bodily ~~injury~~ *injury, as defined in Section 12022.7,* on a peace officer.

(3) The defendant personally used a dangerous or deadly weapon in the commission of the offense, in violation of subdivision (b) of Section 12022.

(4) The defendant personally used a firearm in the commission of the offense.

(d) Every person guilty of murder in the second degree shall be punished by imprisonment in the state prison for a term of 20 years to life if the killing was perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury.

(e) Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply to reduce any minimum term of a sentence imposed pursuant to this section. A person sentenced pursuant to this section shall not be released on parole prior to serving the minimum term of confinement prescribed by this section.

~~(f) As used in this section, "great bodily injury" means a significant or substantial physical injury.~~

~~SEC. 3. Section 206 of the Penal Code is amended to read:~~

~~206. Every person who, with the intent to cause cruel or extreme pain and suffering for the purpose of revenge, extortion, persuasion, or for any sadistic purpose, inflicts great bodily injury as defined in Section 190 upon the person of another, is guilty of torture.~~

~~The crime of torture does not require any proof that the victim suffered pain.~~

~~SEC. 4. Section 368 of the Penal Code is amended to read:~~

~~368. (a) The Legislature finds and declares that elders, adults whose physical or mental disabilities or other limitations restrict their ability to carry out normal activities or to protect their rights, and adults admitted as inpatients to a 24-hour health facility deserve special consideration and protection.~~

~~(b) (1) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation in which their person or health is endangered, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not to exceed six thousand dollars ($6,000), or by both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years.~~

~~(2) If, in the commission of an offense described in paragraph (1), the victim suffers great bodily injury, as defined in Section 190, the defendant shall receive an additional term in the state prison as follows:~~

~~(A) Three years if the victim is under 70 years of age.~~

~~(B) Five years if the victim is 70 years of age or older.~~

~~(3) If, in the commission of an offense described in paragraph (1), the defendant proximately causes the death of the victim, the defendant shall receive an additional term in the state prison as follows:~~

~~(A) Five years if the victim is under 70 years of age.~~

~~(B) Seven years if the victim is 70 years of age or older.~~

~~(c) A person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation in which their person or health may be endangered, is guilty of a misdemeanor. A second or subsequent violation of this subdivision is punishable by a fine not to exceed two thousand dollars ($2,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.~~

~~(d) A person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:~~

~~(1) By a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950).~~

~~(2) By a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).~~

~~(e) A caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder or dependent adult, is punishable as follows:~~

~~(1) By a fine not exceeding two thousand five hundred dollars ($2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars ($950).~~

~~(2) By a fine not exceeding one thousand dollars ($1,000), by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding nine hundred fifty dollars ($950).~~

~~(f) A person who commits the false imprisonment of an elder or a dependent adult by the use of violence, menace, fraud, or deceit is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.~~

~~(g) As used in this section, "elder" means a person who is 65 years of age or older.~~

~~(h) As used in this section, "dependent adult" means a person, regardless of whether the person lives independently, who is between the ages of 18 and 64, who has physical or mental limitations which restrict their ability to carry out normal activities or to protect their rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. "Dependent adult" includes a person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.~~

~~(i) As used in this section, "caretaker" means a person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.~~

~~(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for a single offense.~~

~~(k) In any case in which a person is convicted of violating these provisions, the court may require them to receive appropriate counseling as a condition of probation. A defendant ordered to be placed in a counseling program shall be responsible for paying the expense of their participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of their inability to pay.~~

~~(*l*) Upon conviction for a violation of subdivision (b), (c), (d), (e), or (f), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and their immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation.~~

~~SEC. 5.~~

SEC. 3. Section 422.75 of the Penal Code is amended to read:

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony that is a hate crime, or attempts to commit a felony that is a hate crime, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall

receive an additional two, three, or four years in the state prison, at the court's discretion.

(c) For the purpose of imposing an additional term under subdivision (a) or (b), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from also imposing a sentence enhancement pursuant to Section 12022.53 or 12022.55, or any other law.

(d) A person who is punished pursuant to this section also shall receive an additional term of one year in the state prison for each prior felony conviction on charges brought and tried separately in which it was found by the trier of fact or admitted by the defendant that the crime was a hate crime. This additional term shall only apply where a sentence enhancement is not imposed pursuant to Section 667 or 667.5.

(e) Any additional term authorized by this section shall not be imposed unless the allegation is charged in the accusatory pleading and admitted by the defendant or found to be true by the trier of fact.

(f) Any additional term imposed pursuant to this section shall be in addition to any other punishment provided by law.

(g) Notwithstanding any other provision of law, the court may strike any additional term imposed by this section if the court determines that there are mitigating circumstances and states on the record the reasons for striking the additional punishment.

~~SEC. 6. Section 550 of the Penal Code is amended to read:~~

~~550. (a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:~~

~~(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss or injury, including payment of a loss or injury under a contract of insurance.~~

~~(2) Knowingly present multiple claims for the same loss or injury, including presentation of multiple claims to more than one insurer, with an intent to defraud.~~

~~(3) Knowingly cause or participate in a vehicular collision, or any other vehicular accident, for the purpose of presenting any false or fraudulent claim.~~

~~(4) Knowingly present a false or fraudulent claim for the payments of a loss for theft, destruction, damage, or conversion~~

~~of a motor vehicle, a motor vehicle part, or contents of a motor vehicle.~~

~~(5) Knowingly prepare, make, or subscribe any writing, with the intent to present or use it, or to allow it to be presented, in support of any false or fraudulent claim.~~

~~(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.~~

~~(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.~~

~~(8) Knowingly present multiple claims for payment of the same health care benefit with an intent to defraud.~~

~~(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.~~

~~(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.~~

~~(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:~~

~~(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.~~

~~(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.~~

~~(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.~~

~~(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured~~

~~resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.~~

~~(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, and by a fine not exceeding fifty thousand dollars ($50,000), or double the amount of the fraud, whichever is greater.~~

~~(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.~~

~~(A) When the claim or amount at issue exceeds nine hundred fifty dollars ($950), the offense is punishable by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.~~

~~(B) When the claim or amount at issue is nine hundred fifty dollars ($950) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, or by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds nine hundred fifty dollars ($950) in any 12-consecutive-month period, in which case the claims or amounts may be charged as in subparagraph (A).~~

~~(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or five years, or by a fine not exceeding fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater, or by both that imprisonment and fine, or by imprisonment in a county jail not to exceed one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that imprisonment and fine.~~

~~(4) Restitution shall be ordered for a person convicted of violating this section, including restitution for any medical evaluation or treatment services obtained or provided. The court shall determine the amount of restitution and the person or persons to whom the restitution shall be paid.~~

~~(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact that would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.~~

~~Except when the existence of the fact was not admitted or found to be true or the court finds that a prior felony conviction was invalid, the court shall not strike or dismiss any prior felony convictions alleged in the information or indictment.~~

~~This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(e) Except as otherwise provided in subdivision (f), any person who violates subdivision (a) or (b) and who has a prior felony conviction of an offense set forth in either subdivision (a) or (b), in Section 548, in Section 1871.4 of the Insurance Code, in former Section 556 of the Insurance Code, or in former Section 1871.1 of the Insurance Code shall receive a two-year enhancement for each prior felony conviction in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury. Any person who violates this section shall be subject to appropriate orders of restitution pursuant to Section 13967 of the Government Code.~~

~~(f) Any person who violates paragraph (3) of subdivision (a) and who has two prior felony convictions for a violation of paragraph (3) of subdivision (a) shall receive a five-year~~

~~enhancement in addition to the sentence provided in subdivision (c). The existence of any fact that would subject a person to a penalty enhancement shall be alleged in the information or indictment and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.~~

~~(g) Any person who violates paragraph (3) of subdivision (a) shall receive a two-year enhancement for each person other than an accomplice who suffers serious bodily injury resulting from the vehicular collision or accident in a violation of paragraph (3) of subdivision (a).~~

~~(h) This section shall not be construed to preclude the applicability of any other provision of criminal law or equitable remedy that applies or may apply to any act committed or alleged to have been committed by a person.~~

~~(i) Any fine imposed pursuant to this section shall be doubled if the offense was committed in connection with any claim pursuant to any automobile insurance policy in an auto insurance fraud crisis area designated by the Insurance Commissioner pursuant to Article 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2 of Division 1 of the Insurance Code.~~

~~SEC. 7. Section 600 of the Penal Code is amended to read:~~

~~600. (a) Any person who willfully and maliciously and with no legal justification strikes, beats, kicks, cuts, stabs, shoots with a firearm, administers any poison or other harmful or stupefying substance to, or throws, hurls, or projects at, or places any rock, object, or other substance which is used in such a manner as to be capable of producing injury and likely to produce injury, on or in the path of, a horse being used by, or a dog under the supervision of, a peace officer in the discharge or attempted discharge of their duties, or a volunteer who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of their assigned volunteer duties, is guilty of a public offense. If the injury inflicted is a serious injury, as described in subdivision (c), the person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, two or three years, or in a county jail for not exceeding one year, or by a fine not exceeding two thousand dollars ($2,000), or by both a fine and imprisonment. If the injury inflicted is not a serious injury, the person shall be~~

~~punished by imprisonment in the county jail for not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both a fine and imprisonment.~~

~~(b) Any person who willfully and maliciously and with no legal justification interferes with or obstructs a horse or dog being used by a peace officer in the discharge or attempted discharge of their duties, or a volunteer who is acting under the direct supervision of a peace officer in the discharge or attempted discharge of their assigned volunteer duties, by frightening, teasing, agitating, harassing, or hindering the horse or dog shall be punished by imprisonment in a county jail for not exceeding one year, or by a fine not exceeding one thousand dollars ($1,000), or by both a fine and imprisonment.~~

~~(c) Any person who, in violation of this section, and with intent to inflict that injury or death, personally causes the death, destruction, or serious physical injury including bone fracture, loss or impairment of function of any bodily member, wounds requiring extensive suturing, or serious crippling, of a horse or dog, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment pursuant to subdivision (h) of Section 1170 for one year.~~

~~(d) Any person who, in violation of this section, and with the intent to inflict that injury, personally causes great bodily injury, as defined in Section 190, to any person not an accomplice, shall, upon conviction of a felony under this section, in addition and consecutive to the punishment prescribed for the felony, be punished by an additional term of imprisonment in the state prison for two years unless the conduct described in this subdivision is an element of any other offense of which the person is convicted.~~

~~(e) A defendant convicted of a violation of this section shall be ordered to make restitution to the agency owning the animal and employing the peace officer, to a volunteer who is acting under the direct supervision of a peace officer who is using their horse or supervising their dog in the performance of their assigned duties, or to the agency that provides, or the individual who provides, veterinary health care coverage or veterinary care for a horse or dog being used by, or under the supervision of, a volunteer who is acting under the direct supervision of a peace officer for any veterinary bills, replacement costs of the animal if it is disabled~~

~~or killed, and, if applicable, the salary of the peace officer for the period of time their services are lost to the agency.~~

~~SEC. 8.~~

SEC. 4. Section 667.5 of the Penal Code is amended to read:

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

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

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code, provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended.

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

(1) Murder or voluntary manslaughter.

(2) Mayhem.

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

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

(5) Oral copulation as defined in subdivision (c) or (d) of Section 287 or of former Section 288a.

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

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

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

(9) Any robbery.

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

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

(12) Attempted murder.

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

(14) Kidnapping.

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

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

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

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

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22.

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

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

(22) Any violation of Section 12022.53.

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

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

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

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

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

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

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following

a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

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

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

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

~~SEC. 9.~~

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

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

(b) Except as provided in subdivision (a), (j), (*l*), or (m), any person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for 15 years to life.

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

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

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

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

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

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

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

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 287 or former Section 288a.

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

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

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

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

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

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

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

(5) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 287 or former Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (2), (3), or (4) of this subdivision.

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

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

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

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

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

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

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

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

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

(7) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 287 or former Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (5), or (6) of this subdivision or paragraph (6) of subdivision (d).

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) that are required for the punishment provided in subdivision (a), (b), (j), (*l*), or (m) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a), (b), (j), (*l*), or (m) whichever is greater, rather than being used to impose the punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or the punishment under another provision of law can be imposed in addition to the punishment provided by this section. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in subdivision (a), (j), or (*l*) and any other additional circumstance or circumstances shall be used to impose

any punishment or enhancement authorized under any other provision of law.

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

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

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

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

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

(k) As used in this section, “bodily harm” means any substantial physical injury resulting from the use of force that is more than the force necessary to commit an offense specified in subdivision (c).

(*l*) Any person who is convicted of an offense specified in subdivision (n) under one or more of the circumstances specified in subdivision (d) or under two or more of the circumstances specified in subdivision (e), upon a victim who is a minor 14 years of age or older shall be punished by imprisonment in the state

prison for life without the possibility of parole. If the person who was convicted was under 18 years of age at the time of the offense, they shall be punished by imprisonment in the state prison for 25 years to life.

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

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

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

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

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

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

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

(6) Oral copulation, in violation of paragraph (2) of subdivision (c) of Section 287 or former Section 288a, or in violation of subdivision (d) of Section 287 or former Section 288a.

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

~~SEC. 10. Section 667.7 of the Penal Code is amended to read:~~

~~667.7. (a) Any person convicted of a felony in which the person inflicted great bodily injury as defined in Section 190, or personally used force which was likely to produce great bodily injury, who has served two or more prior separate prison terms as defined in Section 667.5 for the crime of murder; attempted murder; voluntary manslaughter; mayhem; rape by force, violence, or fear of immediate and unlawful bodily injury on the victim or another person; oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or~~

~~another person; lewd acts on a child under the age of 14 years by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; a violation of subdivision (a) of Section 289 where the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person; kidnapping as punished in former subdivision (d) of Section 208, or for ransom, extortion, or robbery; robbery involving the use of force or a deadly weapon; carjacking involving the use of a deadly weapon; assault with intent to commit murder; assault with a deadly weapon; assault with a force likely to produce great bodily injury; assault with intent to commit rape, sodomy, oral copulation, sexual penetration in violation of Section 289, or lewd and lascivious acts on a child; arson of a structure; escape or attempted escape by an inmate with force or violence in violation of subdivision (a) of Section 4530, or of Section 4532; exploding a destructive device with intent to murder in violation of Section 18745; exploding a destructive device which causes bodily injury in violation of Section 18750, or mayhem or great bodily injury in violation of Section 18755; exploding a destructive device with intent to injure, intimidate, or terrify, in violation of Section 18740; any felony in which the person inflicted great bodily injury as provided in Section 190; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall be punished as follows:~~

~~(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 20 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046, whichever is greatest. Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time.~~

~~(2) Any person convicted of a felony specified in this subdivision who has served three or more prior separate prison terms, as defined in Section 667.5, for the crimes specified in~~

~~subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.~~

~~(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.~~

~~SEC. 11.~~

SEC. 6. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term "specific enhancement" means an enhancement that relates to the circumstances of the crime. It includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26, 186.33, 192.5, 273.4, 289.5, 290.4, 290.45, 290.46, 347, and 368, subdivisions (a) and (b) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10, 667.15, 667.16, 667.17, 674, 675, 12022.2, 12022.3, 12022.53, 12022.55, *12022.7,* 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 27590, 30600, and 30615 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 11380.7, 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and Institutions Code.

~~SEC. 12.~~

SEC. 7. Section 1170.23 is added to the Penal Code, to read:

1170.23. (a) A person who, on or before January 1, 2022, was serving a sentence for a conviction, whether by trial or plea, of an enhancement under Section 12021.5, 12022, 12022.4, 12022.5,

12022.53, 12022.55, ~~12022.7,~~ or subdivision (a) of Section 12022.2, as those sections read on or before December 31, 2021, or under Section 667.5 due to a violation of Section ~~12022.5 or 12022.7,~~ *12022.5,* as charged and proved pursuant to paragraph (8) of subdivision (c) of Section 667.5, as that section read on or before December 31, 2021, may petition for a recall of sentence before the trial court that entered the judgment of conviction in their case to request resentencing.

(b) Upon receiving a petition under subdivision (a), the court shall determine whether the petitioner satisfies the criteria in subdivision (a). If the petitioner satisfies the criteria in subdivision (a), the petitioner's sentence associated with the enhancement shall be stricken or resentenced in accordance with those sections as they read on January 1, 2022, and no additional or substitute term of imprisonment shall be added in its place.

(c) A person who is resentenced pursuant to subdivision (b) shall be given credit for time served and shall be subject to parole for one year following completion of their sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole. The person shall be subject to parole supervision by the Department of Corrections and Rehabilitation pursuant to Section 3000.08 and the jurisdiction of the court in the county in which the parolee is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke parole and impose a term of custody.

(d) Resentencing pursuant to this section shall result in a lesser sentence, unless the original enhancement was imposed concurrently or stayed. The term associated with an enhancement which was repealed shall be stricken and no additional or substitute term shall be added in its place during resentencing. Resentencing shall not alter any term other than the enhancement.

(e) A person who has completed their sentence for a conviction, whether by trial or plea, of an enhancement described in subdivision (a) which has been repealed may file an application before the trial court that entered the judgment of conviction in their case to have the enhancement conviction or convictions vacated.

(f) If the application satisfies the criteria in subdivision (e), the court shall vacate the enhancement convictions.

(g) Unless the applicant requests a hearing, a hearing is not necessary to grant or deny an application filed under subdivision (e).

(h) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.

(i) This section does not diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(j) Resentencing pursuant to this section does not diminish or abrogate the finality of judgments in any case that does not come within the purview of this section.

(k) A resentencing hearing ordered under this section shall constitute a "post conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

(*l*) (1) A person who is committed to a state hospital after being found not guilty by reason of insanity pursuant to Section 1026 may petition the court to have their maximum term of commitment, as established by Section 1026.5, reduced to the length it would have been under the enhancements described in subdivision (a) as they read on January 1, 2022. In order for the maximum term of commitment to be reduced, the person shall have met all of the criteria for a modification of sentence pursuant to this section, had the person been found guilty.

(2) If a petitioner's maximum term of confinement is ordered reduced under this subdivision, the new term of confinement must provide opportunity to meet requirements provided in subdivision (b) of Section 1026.5. If a petitioner's new maximum term of confinement ordered under this section does not provide sufficient time to meet requirements provided in subdivision (b) of Section 1026.5, the new maximum term of confinement may be extended, not more than 240 days from the date the petition is granted, in order to meet requirements provided in subdivision (b) of Section 1026.5.

~~SEC. 13.~~

SEC. 8. Section 1174.4 of the Penal Code is amended to read:

1174.4. (a) Persons eligible for participation in this alternative sentencing program shall meet all of the following criteria:

(1) Pregnant women with an established history of substance abuse, or pregnant or parenting women with an established history

of substance abuse who have one or more children under six years old at the time of entry into the program. For women with children, at least one eligible child shall reside with the mother in the facility.

(2) Never served a prior prison term for, nor been convicted in the present proceeding of, committing or attempting to commit, any of the following offenses:

(A) Murder or voluntary manslaughter.

(B) Mayhem.

(C) Rape.

(D) Kidnapping.

(E) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(F) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(G) Lewd acts on a child under 14 years of age, as defined in Section 288.

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

(I) Any felony in which the defendant inflicts great bodily injury on any person, other than an accomplice, that has been charged and proved as provided for in Section ~~12022.53~~ *12022.53, 12022.7,* or 12022.9, or any felony in which the defendant uses a firearm, as provided in Section 12022.53 or 12022.55, in which the use has been charged and proved.

(J) Robbery.

(K) Any robbery perpetrated in an inhabited dwelling house or trailer coach as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.

(L) Arson in violation of subdivision (a) of Section 451.

(M) Sexual penetration in violation of subdivision (a) of Section 289 if the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(N) Rape or sexual penetration in concert, in violation of Section 264.1.

(O) Continual sexual abuse of a child in violation of Section 288.5.

(P) Assault with intent to commit mayhem, rape, sodomy, oral copulation, rape in concert with another, lascivious acts upon a child, or sexual penetration.

(Q) Assault with a deadly weapon or with force likely to produce great bodily injury in violation of subdivision (a) of Section 245.

(R) Any violent felony defined in Section 667.5.

(S) A violation of Section 12022.

(T) A violation of Section 18745.

(U) Burglary of the first degree.

(V) A violation of Section 11351, 11351.5, 11352, 11353, 11358, 11359, 11360, 11370.1, 11370.6, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, or 11383 of the Health and Safety Code.

(3) Has not been sentenced to state prison for a term exceeding 36 months.

(b) Prior to sentencing, if the court proposes to give consideration to a placement, the court shall consider a written evaluation by the probation department, which shall include the following:

(1) Whether the defendant is eligible for participation pursuant to this section.

(2) Whether participation by the defendant and her eligible children is deemed to be in the best interests of the children.

(3) Whether the defendant is amenable to treatment for substance abuse and would benefit from participation in the program.

(4) Whether the program is deemed to be in the best interests of an eligible child of the defendant, as determined by a representative of the appropriate child welfare services agency of the county if the child is a dependent child of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(c) The district attorney shall make a recommendation to the court as to whether or not the defendant would benefit from the program, which the court shall consider in making its decision. If the court's decision is without the concurrence of the district attorney, the court shall specify its reasons in writing and enter them into the record.

(d) If the court determines that the defendant may benefit from participation in this program, the court may impose a sentence of imprisonment pursuant to subdivision (h) of Section 1170 with

the recommendation that the defendant participate in the program pursuant to this chapter. The court shall notify the department within 48 hours of imposition of this sentence.

(e) The Secretary of the Department of Corrections and Rehabilitation shall consider the court's recommendation in making a determination on the inmate's placement in the program.

(f) Women accepted for the program by the Secretary of the Department of Corrections and Rehabilitation shall be delivered by the county, pursuant to Section 1202a, to the facility selected by the department. Before the secretary accepts a woman for the program, the county shall provide to the secretary the necessary information to determine her eligibility and appropriate placement status. Priority for services and aftercare shall be given to inmates who are incarcerated in a county, or adjacent to a county, in which a program facility is located.

(g) Prior to being admitted to the program, each participant shall voluntarily sign an agreement specifying the terms and conditions of participation in the program.

(h) The department may refer inmates back to the sentencing court if the department determines that an eligible inmate has not been recommended for the program. The department shall refer the inmate to the court by an evaluative report so stating the department's assessment of eligibility, and requesting a recommendation by the court.

(i) Women who successfully complete the program, including the minimum of one year of transition services under intensive parole supervision, shall be discharged from parole. Women who do not successfully complete the program shall be returned to imprisonment pursuant to subdivision (h) of Section 1170 where they shall serve their original sentences. These persons shall receive full credit against their original sentences for the time served in the program, pursuant to Section 2933.

~~SEC. 14. Section 1203.055 of the Penal Code is amended to read:~~

~~1203.055. (a) Notwithstanding any other law, in sentencing a person convicted of committing or of attempting to commit one or more of the offenses listed in subdivision (b) against a person who is a passenger, operator, driver, or other occupant of any public transit vehicle whether the offense or attempt is committed within the vehicle or directed at the vehicle, the court shall require~~

~~that the person serve some period of confinement. If probation is granted, it shall be a condition of probation that the person shall be confined in the county jail for some period of time. If the time spent in jail prior to arraignment is less than 24 hours, it shall not be considered to satisfy the requirement that some period of confinement be imposed.~~

~~As used in this subdivision, "public transit vehicle" means any motor vehicle, streetcar, trackless trolley, bus, shuttle, light rail system, rapid transit system, subway, train, taxi cab, or jitney, which transports members of the public for hire.~~

~~(b) Subdivision (a) applies to the following crimes:~~

~~(1) Murder.~~

~~(2) A violation of Section 241, 241.3, 241.4, 244, 245, 245.2, or 246.~~

~~(3) Robbery, in violation of Section 211.~~

~~(4) Kidnapping, in violation of Section 207.~~

~~(5) Kidnapping, in violation of Section 209.~~

~~(6) Battery, in violation of Section 243, 243.1, or 243.3.~~

~~(7) Rape, in violation of Section 261, 262, 264, or 264.1.~~

~~(8) Assault with intent to commit rape or sodomy, in violation of Section 220.~~

~~(9) Any other offense in which the defendant inflicts great bodily injury on any person other than an accomplice. As used in this paragraph, "great bodily injury" means "great bodily injury" as defined in Section 190.~~

~~(10) Grand theft, in violation of subdivision (1) of Section 487.~~

~~(11) Throwing of a hard substance or shooting a missile at a transit vehicle, in violation of Section 219.2.~~

~~(12) Unlawfully causing a fire, in violation of Section 452.~~

~~(13) Drawing, exhibiting, or using a firearm or deadly weapon, in violation of Section 417.~~

~~(14) A violation of Section 214.~~

~~(15) A violation of Section 215.~~

~~(16) Kidnapping, in violation of Section 209.5.~~

~~(c) Probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of a felony offense falling within this section if the person has been previously convicted and sentenced pursuant to this section.~~

~~(d) (1) The existence of any fact which would make a person ineligible for probation under subdivisions (a) and (c) shall be~~

~~alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.~~

~~A finding bringing the defendant within this section shall not be stricken pursuant to Section 1385 or any provision of law.~~

~~(2) This subdivision does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.~~

~~(e) The court shall require, as a condition of probation for any person convicted of committing a crime which took place on a public transit vehicle, except in any case in which the court makes a finding and states on the record clear and compelling reasons why the condition would be inappropriate, that the person make restitution to the victim. If restitution is found to be inappropriate, the court shall require as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, that the defendant perform specified community service. Nothing in this subdivision shall be construed to limit the authority of a court to provide additional conditions of probation.~~

~~(f) In any case in which a person is convicted of committing a crime which took place on a public transit vehicle, the probation officer shall immediately investigate and report to the court at a specified time whether, as a result of the crime, property damage or loss or personal injury was caused by the defendant, the amount of the damage, loss, or injury, and the feasibility of requiring restitution to be made by the defendant. When a probation report is required pursuant to Section 1203 the information required by this subdivision shall be added to that probation report.~~

~~SEC. 15.~~

SEC. 9. Section 1203.06 of the Penal Code is amended to read:

1203.06. (a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, nor shall a finding bringing the defendant within this section be stricken pursuant to Section 1385 for, any of the following persons:

(1) Any person who personally used a firearm during the commission or attempted commission of any of the following crimes:

(A) Murder.

(B) Robbery, in violation of Section 211.

(C) Kidnapping, in violation of Section 207, 209, or 209.5.

(D) Lewd or lascivious act, in violation of Section 288.

(E) Burglary of the first degree, as defined in Section 460.

(F) Rape, in violation of Section 261, 262, or 264.1.

(G) Assault with intent to commit a specified sexual offense, in violation of Section 220.

(H) Escape, in violation of Section 4530 or 4532.

(I) Carjacking, in violation of Section 215.

(J) Aggravated mayhem, in violation of Section 205.

(K) Torture, in violation of Section 206.

(L) Continuous sexual abuse of a child, in violation of Section 288.5.

(M) A felony violation of Section 136.1 or 137.

(N) Sodomy, in violation of Section 286.

(O) Oral copulation, in violation of Section 287 or former Section 288a.

(P) Sexual penetration, in violation of Section 289 or 264.1.

(Q) Aggravated sexual assault of a child, in violation of Section 269.

(2) Any person previously convicted of a felony specified in paragraph (1), or assault with intent to commit murder under former Section 217, who is convicted of a subsequent felony and who was personally armed with a firearm at any time during its commission or attempted commission or was unlawfully armed with a firearm at the time of their arrest for the subsequent felony.

(3) Aggravated arson, in violation of Section 451.5.

(b) (1) The existence of any fact that would make a person ineligible for probation under subdivision (a) shall be alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the trier of fact.

(2) As used in subdivision (a), “used a firearm” means to display a firearm in a menacing manner, to intentionally fire it, to intentionally strike or hit a human being with it, or to use it in the commission of a felony or attempted felony.

(3) As used in subdivision (a), "armed with a firearm" means to knowingly carry or have available for use a firearm as a means of offense or defense.

~~SEC. 16. Section 1203.09 of the Penal Code is amended to read:~~

~~1203.09. (a) Notwithstanding any other law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, a quadriplegic, or a person confined to a wheelchair and that disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon the person.~~

~~(b) Subdivision (a) applies to the following crimes:~~

~~(1) Murder.~~

~~(2) Robbery, in violation of Section 211.~~

~~(3) Kidnapping, in violation of Section 207.~~

~~(4) Kidnapping, in violation of Section 209.~~

~~(5) Burglary of the first degree, as defined in Section 460.~~

~~(6) Rape by force or violence, in violation of paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.~~

~~(7) Assault with intent to commit rape or sodomy, in violation of Section 220.~~

~~(8) Carjacking, in violation of Section 215.~~

~~(9) Kidnapping, in violation of Section 209.5.~~

~~(c) The existence of any fact which would make a person ineligible for probation under either subdivision (a) or (f) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.~~

~~(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 190.~~

~~(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.~~

~~(f) Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person convicted of having committed one or more of the following crimes against a person who is 60 years of age or older: assault with a deadly weapon or instrument, battery which results in physical injury which requires professional medical treatment, carjacking, robbery, or mayhem.~~

~~SEC. 17.~~

SEC. 10. Section 1269b of the Penal Code is amended to read:

1269b. (a) The officer in charge of a jail in which an arrested person is held in custody, an officer of a sheriff's department or police department of a city who is in charge of a jail or is employed at a fixed police or sheriff's facility and is acting under an agreement with the agency that keeps the jail in which an arrested person is held in custody, an employee of a sheriff's department or police department of a city who is assigned by the department to collect bail, the clerk of the superior court of the county in which the offense was alleged to have been committed, and the clerk of the superior court in which the case against the defendant is pending may approve and accept bail in the amount fixed by the warrant of arrest, schedule of bail, or order admitting to bail in cash or surety bond executed by a certified, admitted surety insurer as provided in the Insurance Code, to issue and sign an order for the release of the arrested person, and to set a time and place for the appearance of the arrested person before the appropriate court and give notice thereof.

(b) If a defendant has appeared before a judge of the court on the charge contained in the complaint, indictment, or information, the bail shall be in the amount fixed by the judge at the time of the appearance. If that appearance has not been made, the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been issued, the amount of bail shall be pursuant to the uniform countywide schedule of bail for the county in which the defendant is required to appear, previously fixed and approved as provided in subdivisions (c) and (d).

(c) It is the duty of the superior court judges in each county to prepare, adopt, and annually revise a uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor and infraction offenses except Vehicle Code infractions. The

penalty schedule for infraction violations of the Vehicle Code shall be established by the Judicial Council in accordance with Section 40310 of the Vehicle Code.

(d) A court may, by local rule, prescribe the procedure by which the uniform countywide schedule of bail is prepared, adopted, and annually revised by the judges. If a court does not adopt a local rule, the uniform countywide schedule of bail shall be prepared, adopted, and annually revised by a majority of the judges.

(e) In adopting a uniform countywide schedule of bail for all bailable felony offenses the judges shall consider the seriousness of the offense charged. In considering the seriousness of the offense charged the judges shall assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts that would bring a person within any of the following sections: Section 667.5, 667.51, 667.6, 667.8, 667.85, 667.9, 667.10, 12022.1, 12022.2, 12022.3, 12022.53, *12022.7*, 12022.8, or 12022.9 of this code, or Section 11356.5, 11370.2, or 11370.4 of the Health and Safety Code.

In considering offenses in which a violation of Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code is alleged, the judge shall assign an additional amount of required bail for offenses involving large quantities of controlled substances.

(f) The countywide bail schedule shall contain a list of the offenses and the amounts of bail applicable for each as the judges determine to be appropriate. If the schedule does not list all offenses specifically, it shall contain a general clause for designated amounts of bail as the judges of the county determine to be appropriate for all the offenses not specifically listed in the schedule. A copy of the countywide bail schedule shall be sent to the officer in charge of the county jail, to the officer in charge of each city jail within the county, to each superior court judge and commissioner in the county, and to the Judicial Council.

(g) Upon posting bail, the defendant or arrested person shall be discharged from custody as to the offense on which the bail is posted.

All money and surety bonds so deposited with an officer authorized to receive bail shall be transmitted immediately to the judge or clerk of the court by which the order was made or warrant

issued or bail schedule fixed. If, in the case of felonies, an indictment is filed, the judge or clerk of the court shall transmit all of the money and surety bonds to the clerk of the court.

(h) If a defendant or arrested person so released fails to appear at the time and in the court so ordered upon their release from custody, Sections 1305 and 1306 apply.

~~SEC. 18. Section 2933.5 of the Penal Code is amended to read:~~

~~2933.5. (a) (1) Notwithstanding any other law, every person who is convicted of any felony offense listed in paragraph (2), and who previously has been convicted two or more times, on charges separately brought and tried, and who previously has served two or more separate prior prison terms, as defined in subdivision (g) of Section 667.5, of any offense or offenses listed in paragraph (2), shall be ineligible to earn credit on their term of imprisonment pursuant to this article.~~

~~(2) As used in this subdivision, "felony offense" includes any of the following:~~

~~(A) Murder, as defined in Sections 187 and 189.~~

~~(B) Voluntary manslaughter, as defined in subdivision (a) of Section 192.~~

~~(C) Mayhem as defined in Section 203.~~

~~(D) Aggravated mayhem, as defined in Section 205.~~

~~(E) Kidnapping, as defined in Section 207, 209, or 209.5.~~

~~(F) Assault with vitriol, corrosive acid, or caustic chemical of any nature, as described in Section 244.~~

~~(G) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.~~

~~(H) Sodomy by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 286.~~

~~(I) Sodomy while voluntarily acting in concert, as described in subdivision (d) of Section 286.~~

~~(J) Lewd or lascivious acts on a child under the age of 14 years, as described in subdivision (b) of Section 288.~~

~~(K) Oral copulation by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, as described in subdivision (c) of Section 287 or of former Section 288a.~~

~~(L) Continuous sexual abuse of a child, as described in Section 288.5.~~

~~(M) Sexual penetration, as described in subdivision (a) of Section 289.~~

~~(N) Exploding a destructive device or explosive with intent to injure, as described in Section 18740, with intent to murder, as described in Section 18745, or resulting in great bodily injury or mayhem, as described in Section 18750.~~

~~(O) Any felony in which the defendant personally inflicted great bodily injury, as defined in Section 190.~~

~~(b) A prior conviction of an offense listed in subdivision (a) shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law.~~

~~(c) This section shall apply whenever the present felony is committed on or after the effective date of this section, regardless of the date of commission of the prior offense or offenses resulting in credit-earning ineligibility.~~

~~(d) This section shall be in addition to, and shall not preclude the imposition of, any applicable sentence enhancement terms, or probation ineligibility and habitual offender provisions authorized under any other section.~~

~~SEC. 19.~~

SEC. 11. Section 2962 of the Penal Code is amended to read:

2962. As a condition of parole, a prisoner who meets the following criteria shall be provided necessary treatment by the State Department of State Hospitals as follows:

(a) (1) The prisoner has a severe mental health disorder that is not in remission or that cannot be kept in remission without treatment.

(2) The term “severe mental health disorder” means an illness or disease or condition that substantially impairs the person’s thought, perception of reality, emotional process, or judgment; or that grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term “severe mental health disorder,” as used in this section, does not include a personality or adjustment disorder, epilepsy, intellectual disability or other developmental disabilities, or addiction to or abuse of intoxicating substances.

(3) The term "remission" means a finding that the overt signs and symptoms of the severe mental health disorder are controlled either by psychotropic medication or psychosocial support. A person "cannot be kept in remission without treatment" if during the year prior to the question being before the Board of Parole Hearings or a trial court, the person has been in remission and has been physically violent, except in self-defense, or has made a serious threat of substantial physical harm upon the person of another so as to cause the target of the threat to reasonably fear for their safety or the safety of their immediate family, or the person has intentionally caused property damage, or has not voluntarily followed the treatment plan. In determining if a person has voluntarily followed the treatment plan, the standard is whether the person has acted as a reasonable person would in following the treatment plan.

(b) The severe mental health disorder was one of the causes of, or was an aggravating factor in, the commission of a crime for which the prisoner was sentenced to prison.

(c) The prisoner has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the prisoner's parole or release.

(d) (1) Prior to release on parole, the person in charge of treating the prisoner and a practicing psychiatrist or psychologist from the State Department of State Hospitals have evaluated the prisoner at a facility of the Department of Corrections and Rehabilitation, and a chief psychiatrist of the Department of Corrections and Rehabilitation has certified to the Board of Parole Hearings that the prisoner has a severe mental health disorder, that the disorder is not in remission, or cannot be kept in remission without treatment, that the severe mental health disorder was one of the causes or was an aggravating factor in the prisoner's criminal behavior, that the prisoner has been in treatment for the severe mental health disorder for 90 days or more within the year prior to the prisoner's parole release day, and that by reason of the prisoner's severe mental health disorder the prisoner represents a substantial danger of physical harm to others.

(A) For prisoners being treated by the State Department of State Hospitals pursuant to Section 2684, the certification shall be by a chief psychiatrist of the Department of Corrections and Rehabilitation, and the evaluation shall be conducted at a state

hospital by the person at the state hospital in charge of treating the prisoner and a practicing psychiatrist or psychologist from the Department of Corrections and Rehabilitation.

(B) For the evaluation of Department of Corrections and Rehabilitation prisoners who are temporarily housed at a county correctional facility, a county medical facility, or a state-assigned mental health provider, a practicing psychiatrist or psychologist from the State Department of State Hospitals, the Department of Corrections and Rehabilitation, or the Board of Parole Hearings shall be afforded prompt and unimpeded access to the prisoner and their records for the period of confinement at that facility upon submission of current and valid proof of state employment and a departmental letter or memorandum arranging the appointment.

(2) If the professionals doing the evaluation pursuant to paragraph (1) do not concur that (A) the prisoner has a severe mental health disorder, (B) that the disorder is not in remission or cannot be kept in remission without treatment, or (C) that the severe mental health disorder was a cause of, or aggravated, the prisoner's criminal behavior, and a chief psychiatrist has certified the prisoner to the Board of Parole Hearings pursuant to this paragraph, the Board of Parole Hearings shall order a further examination by two independent professionals, as provided for in Section 2978.

(3) If at least one of the independent professionals who evaluate the prisoner pursuant to paragraph (2) concurs with the chief psychiatrist's certification of the issues described in paragraph (2), this subdivision shall be applicable to the prisoner. The professionals appointed pursuant to Section 2978 shall inform the prisoner that the purpose of their examination is not treatment, but to determine if the prisoner meets certain criteria to be involuntarily treated as an offender with a mental health disorder. It is not required that the prisoner appreciate or understand that information.

(e) The crime referred to in subdivision (b) meets both of the following criteria:

(1) The defendant received a determinate sentence pursuant to Section 1170 for the crime.

(2) The crime is one of the following:

(A) Voluntary manslaughter.

(B) Mayhem.

(C) Kidnapping in violation of Section 207.

(D) A robbery wherein it was charged and proved that the defendant personally used a deadly or dangerous weapon in the commission of that robbery.

(E) Carjacking, as defined in subdivision (a) of Section 215, if it is charged and proved that the defendant personally used a deadly or dangerous weapon in the commission of the carjacking.

(F) Rape, as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(G) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(H) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(I) Lewd acts on a child under 14 years of age in violation of Section 288.

(J) Continuous sexual abuse in violation of Section 288.5.

(K) The offense described in subdivision (a) of Section 289 if the act was accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(L) Arson in violation of subdivision (a) of Section 451, or arson in violation of any other provision of Section 451 or in violation of Section 455 if the act posed a substantial danger of physical harm to others.

(M) A felony in which the defendant used a firearm which use was charged and proved as provided in Section 12022.53 or 12022.55.

(N) A violation of Section 18745.

(O) Attempted murder.

(P) A crime not enumerated in subparagraphs (A) to (O), inclusive, in which the prisoner used force or violence, or caused serious bodily injury as defined in paragraph (4) of subdivision (f) of Section 243.

(Q) A crime in which the perpetrator expressly or impliedly threatened another with the use of force or violence likely to produce substantial physical harm in a manner that a reasonable person would believe and expect that the force or violence would be used. For purposes of this subparagraph, substantial physical

harm does not require proof that the threatened act was likely to cause great or serious bodily injury.

(f) For purposes of meeting the criteria set forth in this section, the existence or nature of the crime, as defined in paragraph (2) of subdivision (e), for which the prisoner has been convicted may be shown with documentary evidence. The details underlying the commission of the offense that led to the conviction, including the use of force or violence, causing serious bodily injury, or the threat to use force or violence likely to produce substantial physical harm, may be shown by documentary evidence, including, but not limited to, preliminary hearing transcripts, trial transcripts, probation and sentencing reports, and evaluations by the State Department of State Hospitals.

(g) As used in this chapter, "substantial danger of physical harm" does not require proof of a recent overt act.

~~SEC. 20. Section 3003 of the Penal Code is amended to read:~~

~~3003. (a) Except as otherwise provided in this section, an inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) shall be returned to the county that was the last legal residence of the inmate prior to the inmate's incarceration. An inmate who is released on parole or postrelease community supervision as provided by Title 2.05 (commencing with Section 3450) and who was committed to prison for a sex offense for which registration is required pursuant to Section 290, shall, through all efforts reasonably possible, be returned to the city that was the last legal residence of the inmate prior to incarceration or a close geographic location in which the inmate has family, social ties, or economic ties and access to reentry services, unless return to that location would violate any other law or pose a risk to the inmate's victim. For purposes of this subdivision, "last legal residence" shall not be construed to mean the county or city wherein the inmate committed an offense while confined in a state prison or local jail facility or while confined for treatment in a state hospital.~~

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

~~conditions of parole for inmates sentenced pursuant to Section 1170, decides on a return to another county or city, it shall place its reasons in writing in the parolee's permanent record and include these reasons in the notice to the sheriff or chief of police pursuant to Section 3058.6. In making its decision, the paroling authority shall consider, among others, the following factors, giving the greatest weight to the protection of the victim and the safety of the community:~~

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

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

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

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

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

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

~~(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing the inmate to the county where the joint venture program employer is located if that employer states to the paroling authority that the employer intends to employ the inmate upon release.~~

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

~~(A) Last, first, and middle names.~~

~~(B) Birth date.~~

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

~~(D) Date of parole or placement on postrelease community supervision and discharge.~~

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

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

~~(G) County of commitment.~~

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

~~(I) Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.~~

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

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

~~(ii) City and ZIP Code.~~

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

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

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

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

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

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

~~(2) Unless the information is unavailable, the Department of Corrections and Rehabilitation shall electronically transmit to the county agency identified in subdivision (a) of Section 3451 the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision pursuant to Section 3450, for the purpose of identifying the medical and mental health needs of the individual. All transmissions to the county agency shall be in compliance with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191), the federal Health Information Technology for Economic and Clinical Health Act (HITECH) (Public Law~~

~~111-005), and the implementing of privacy and security regulations in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. This paragraph shall not take effect until the Secretary of the United States Department of Health and Human Services, or the secretary's designee, determines that this provision is not preempted by HIPAA.~~

~~(3) Except for the information required by paragraph (2), the information required by this subdivision shall come from the statewide parolee database. The information obtained from each source shall be based on the same timeframe.~~

~~(4) All of the information required by this subdivision shall be provided utilizing a computer-to-computer transfer in a format usable by a desktop computer system. The transfer of this information shall be continually available to local law enforcement agencies upon request.~~

~~(5) The unauthorized release or receipt of the information described in this subdivision is a violation of Section 11143.~~

~~(f) Notwithstanding any other law, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation finds that there is a need to protect the life, safety, or well-being of the victim or witness, an inmate who is released on parole shall not be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, any of the following crimes:~~

~~(1) A violent felony as defined in paragraphs (1) to (7), inclusive, and paragraphs (11) and (16) of subdivision (c) of Section 667.5.~~

~~(2) A felony in which the defendant inflicts great bodily injury on a person, other than an accomplice, that has been charged and proved as provided for in Section 12022.53 or 12022.9.~~

~~(3) A violation of paragraph (1), (3), or (4) of subdivision (a) of Section 261, subdivision (f), (g), or (i) of Section 286, subdivision (f), (g), or (i) of Section 287 or of former Section 288a, or subdivision (b), (d), or (e) of Section 289.~~

~~(g) Notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the Department of Corrections and Rehabilitation determines poses a high risk to the public shall not be placed or reside, for the duration of the inmate's parole, within one-half mile of a public or private~~

~~school including any or all of kindergarten and grades 1 to 12, inclusive.~~

~~(h) Notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's or witness' actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the Department of Corrections and Rehabilitation, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in the inmate's county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county.~~

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

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

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

~~agencies have been designated as the local entity responsible for providing that supervision.~~

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

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

~~SEC. 21.~~

SEC. 12. Section 3057 of the Penal Code is amended to read:

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

(b) Upon completion of confinement pursuant to parole revocation without a new commitment to prison, the inmate shall be released on parole for a period which shall not extend beyond that portion of the maximum statutory period of parole specified by Section 3000 which was unexpired at the time of each revocation.

(c) Notwithstanding the limitations in subdivision (a) and in Section 3060.5 upon confinement pursuant to a parole revocation, the parole authority may extend the confinement pursuant to parole revocation for a maximum of an additional 12 months for subsequent acts of misconduct committed by the parolee while confined pursuant to that parole revocation. Upon a finding of good cause to believe that a parolee has committed a subsequent act of misconduct and utilizing procedures governing parole revocation proceedings, the parole authority may extend the period of confinement pursuant to parole revocation as follows: (1) not more than 180 days for an act punishable as a felony, whether or not prosecution is undertaken, (2) not more than 90 days for an act punishable as a misdemeanor, whether or not prosecution is undertaken, and (3) not more than 30 days for an act defined as a

serious disciplinary offense pursuant to subdivision (a) of Section 2932.

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

Worktime credit forfeited shall not be restored.

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

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

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

(C) Parolees who were revoked for conduct described in, or that could be prosecuted under any of the following sections, whether or not prosecution is undertaken: Section 189, Section 191.5, subdivision (a) of Section 192, subdivision (a) of Section 192.5, Section 203, 207, 211, 215, 217.1, or 220, subdivision (b) of Section 241, Section 244, paragraph (1) or (2) of subdivision (a) of Section 245, paragraph (2) or (6) of subdivision (a) of Section 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (c) or (d) of Section 286, subdivision (c) or (d) of Section 287 or of former Section 288a, Section 288, subdivision (a) of Section 289, 347, or 404, subdivision (a) of Section 451, Section 12022.53, *12022.7*, 12022.8, or 25400, Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6, any provision listed in Section 16590, or Section 664 for any attempt to engage in conduct described in or that could be prosecuted under any of the above-mentioned sections.

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

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

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

~~SEC. 22.~~

SEC. 13. Section 12021.5 of the Penal Code, as amended by Section 12 of Chapter 887 of the Statutes of 2016, is repealed.

~~SEC. 23.~~

SEC. 14. Section 12022 of the Penal Code is repealed.

~~SEC. 24.~~

SEC. 15. Section 12022.2 of the Penal Code, as amended by Section 14 of Chapter 887 of the Statutes of 2016, is amended to read:

12022.2. (a) Any person who wears a body vest in the commission or attempted commission of a violent offense, as defined in Section 29905, shall, upon conviction of that felony or attempted felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the person has been convicted, be punished by an additional term of one, two, or five years. The court shall order the middle term unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its enhancement choice on the record at the time of the sentence.

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

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

~~SEC. 25.~~

SEC. 16. Section 12022.4 of the Penal Code, as amended by Section 16 of Chapter 887 of the Statutes of 2016, is repealed.

~~SEC. 26.~~

SEC. 17. Section 12022.5 of the Penal Code is repealed.

~~SEC. 27.~~

SEC. 18. Section 12022.53 of the Penal Code is amended to read:

12022.53. (a) This section applies to the following felonies:

(1) Section 187 (murder).

(2) Section 203 or 205 (mayhem).

(3) Section 207, 209, or 209.5 (kidnapping).

(4) Section 211 (robbery).
(5) Section 215 (carjacking).
(6) Section 220 (assault with intent to commit a specified felony).
(7) Subdivision (d) of Section 245 (assault with a firearm on a peace officer or firefighter).
(8) Section 261 or 262 (rape).
(9) Section 264.1 (rape or sexual penetration in concert).
(10) Section 286 (sodomy).
(11) Section 287 or former Section 288a (oral copulation).
(12) Section 288 or 288.5 (lewd act on a child).
(13) Section 289 (sexual penetration).
(14) Section 4500 (assault by a life prisoner).
(15) Section 4501 (assault by a prisoner).
(16) Section 4503 (holding a hostage by a prisoner).
(17) Any felony punishable by death or imprisonment in the state prison for life.
(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for one year. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for two years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), Section 246, or subdivision (c) or (d) of Section 26100, personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in Section ~~190,~~ *12022.7*, or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for three years.

(e) (1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated subdivision (b) of Section 186.22.

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in Section 12022.3 or 12022.55 shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in Section ~~12022.8~~ *12022.7, 12022.8,* or 12022.9 shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in

the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(*l*) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

~~SEC. 28.~~

SEC. 19. Section 12022.55 of the Penal Code is amended to read:

12022.55. Notwithstanding Section 12022.5, any person who, with the intent to inflict great bodily injury or death, inflicts great bodily injury, as defined in Section 12022.7, or causes the death of a person, other than an occupant of a motor vehicle, as a result of discharging a firearm from a motor vehicle in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for one, two, or three years.

~~SEC. 29. Section 12022.7 of the Penal Code is repealed.~~

~~SEC. 30.~~

SEC. 20. Section 12022.8 of the Penal Code is amended to read:

12022.8. Any person who inflicts great bodily injury, as defined in Section ~~190,~~ *12022.7,* on any victim in a violation of Section 220 involving a specified sexual offense, or a violation or attempted violation of paragraph (2), (3), or (6) of subdivision (a) of Section 261, paragraph (1), (2), or (4) of subdivision (a) of Section 262, Section 264.1, subdivision (b) of Section 288, subdivision (a) of Section 289, or sodomy or oral copulation by force, violence,

duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person as provided in Section 286 or 287, or former Section 288a, shall receive a five-year enhancement for each violation in addition to the sentence provided for the felony conviction.

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