

**ADDA**

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Office of the Attorney General  
Attention: Patricia Galvan, Initiative Coordinator  
1300 "I" Street  
Sacramento, CA 95814

February 1, 2006

**RECEIVED**  
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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Re: Request for Title and Summary, "The Repeat Criminal Offender/  
Three Strikes Fair Sentencing Act of 2006" (version 2)

Dear Ms. Galvan:

Please find enclosed with this letter a text of the proposed initiative measure, titled

**"The Repeat Criminal Offender/ Three Strikes Fair Sentencing Act of 2006"**

along with signed and dated statements as required by Section 9608 of the Elections Code, and a check for \$200.00 made payable to the Department of Justice. We request that the Attorney Generals Office prepare a title and summary for this initiative measure in as expeditious manner as possible. Please return a filed stamped copy of the initiative in the enclosed self-addressed envelope. We can be reached for media inquiries at (213) 700-4133 or can be contacted at [www.deputyda.com](http://www.deputyda.com). Please feel free to make this information publicly available for inquiries.

Very truly yours,

Steven J. Ipsen  
President  
Association of Deputy District Attorneys\*

Lawanda Hawkins  
Victim's Rights Leader\*

Steve Remige  
President,  
Association for Los Angeles Deputy Sheriffs (ALADS))\*

\*Signed and submitted in our individual capacities.

**THE REPEAT CRIMINAL OFFENDER/THREE STRIKES  
FAIR SENTENCING ACT OF 2006 [Version 2]**

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

TO THE HONORABLE SECRETARY OF THE STATE OF CALIFORNIA:

We, the undersigned, registered, qualified voters of California, residents of the afore-described County (or City and County), on the signature page of this petition section, hereby propose amendments to the California Penal Code and Vehicle Code, relating to repeat criminal offenders and their sentences, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or otherwise provided by law. The proposed statutory amendments (full title and text of the measure) read as follows:

**SECTION 1. TITLE**

This Act shall be known and may be cited as "The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006."

**SECTION 2. FINDINGS AND DECLARATIONS**

The People of the State of California hereby find and declare all of the following:

(a) Although "Three Strikes," recidivist sex offender statutes, and other efforts to reduce repeat criminal offenses have helped to reduce California's crime rate, additional efforts are needed to ensure that persons who commit multiple criminal offenses of all kinds and criminals who repeat their criminal acts after they have been punished, who constitute the class of "repeat criminal offenders," are fairly sentenced and sufficiently deterred from future criminal conduct .

(b) California's sentencing laws that target repeat criminal offenders need to be modified to give judges and prosecutors the tools to provide greater protection to our most vulnerable residents from certain types of repeat criminal offenders, such as registered sex offenders who harbor persisting criminal impulses that result in the repeat criminal behavior that plagues those most vulnerable. Judges must have a greater range of sentencing options, and the criminal justice system must have more effective parole monitoring techniques, in order to properly address the problem of repeat criminal activity.

(1) Children are particularly vulnerable victims of criminals who commit registerable sex offense crimes, who profit from the child pornography industry, who solicit on the internet, who engage in human trafficking for prostitution, who injure others while driving under the influence, who engage in high speed felony evading of the

police, who engage in illegal drug trafficking, and who participate in other forms of criminal activity that are not now defined as "serious felonies" under California law.

(2) The elderly who often live on fixed or limited incomes or pension funds are more vulnerable to victimization by white collar criminals who profit by fraud and criminal profiteering and by means of other crimes that are not now defined as "serious felonies" under California law.

(3) Citizens of diverse multicultural backgrounds are often vulnerable to hate-motivated crimes that are not currently listed as "serious felonies" under California law.

(4) Studies show that sex offenders have a particularly high rate of repeat felony conduct, and that such conduct is difficult to detect because of the vulnerable nature of their victims over whom they often have power based on greater strength, a position of trust, or economic advantage.

(5) Electronic monitoring by Global Positioning technology is an increasingly cost-effective technique for monitoring California's 65,000 registered sex offenders living anonymously among us and the 22,000 sex offenders awaiting release from our state prison system, and would provide an effective method of deterring crimes by such offenders against those who are vulnerable to sexual offenses. Lifetime electronic monitoring by this technology should be used to control registered sex offenders who demonstrate a propensity to commit new felonies.

(c) California's sentencing laws, like "Three Strikes" and other statutes which target repeat criminal offenders, must be modified to give judges and prosecutors a wider choice of sentencing options than are provided by current law. Courts must have greater discretion when sentencing a repeat criminal offender whose background and whose instant criminal offense merit either a more severe or a more moderate sentence than otherwise provided by these repeat criminal offender statutes.

(1) California's judges and prosecutors often face a "Hobson's Choice" when attempting to determine a fair and just punishment for a defendant under our "Three Strikes" laws – to either impose 25 years to life sentence or to dismiss a "felony strike" prior conviction and thereby impose a disproportionately low sentence of 4 or 6 years in prison. Often a fair and just punishment is a sentence somewhere in between these two extremes that is not allowed by existing "Three Strikes" laws.

(2) Retaining the presumption that third-strikers should receive a life sentence upon conviction under "Three Strikes," but allowing for shorter minimum terms before parole consideration, or allowing for fixed determinate term sentences, would allow prosecutors to more proportionately exercise discretion in settling these cases without trials, and would allow courts more flexibility to impose fair and just sentences.

(3) Expanding the 25 years to life "one size fits all" prison sentence of "Three Strikes" to include a range of proportionate sentencing options would eliminate this "Hobson's Choice" and would likely result in the elimination of many sentencing disparities among California's counties.

(d) California's laws must address criminal recidivism by educating imprisoned felons about the repeat criminal offender laws such as "Three Strikes," so that these imprisoned felons are clearly informed of the consequences of their repeated criminal behavior.

(1) Felons must be taught that sentencing discounts, such as "good conduct credits" of 50% off the court-imposed prison sentence, and sentencing formulas that

give discounted sentences for multiple offenses, are available only for their first term in prison. The law currently calculates the sentence for multiple felonies at just 1/3 the rate of the first sentence.

(2) Felons released from prison, having benefited by these "early release" and "good conduct credits," must be taught that if they have not learned from the prison experience and continue to commit crimes, they will face significantly decreased credits, and no further "volume" discounts for a multiple offense "crime spree."

(3) Failure to remove these generous first time credits and sentence discounts sends the wrong message to felons, many of whom learn to take advantage of the generous credits and discounts and thereafter continue their criminal activity, rather than learning that the cost of a criminal lifestyle becomes increasingly strict.

(4) Requiring all convicted felons sentenced to state prison to take a course given at grade level detailing California's tough sentencing laws for repeat criminal offenders, will deter many from repeating their criminal activity, and will give fair notice to those who choose to continue to plague California's citizens by returning to their criminal lifestyles.

(e) California's "Three Strikes" laws have faced unfair criticism based on the misperceptions that they are used excessively by prosecutors, that the highest sentences under "Three Strikes" are imposed excessively by judges, and that punishments imposed under these laws are unfairly harsh on criminals whose crimes are not serious or violent offenses. These perceptions are not accurate.

(1) The California Department of Justice estimates that more than 2 million crimes are committed in California each year. The number of third-strikers serving 25 years to life sentences in California prisons grew by only 741 over the four year period between the end of 2001 and the end of 2005, according to statistical reports of the California Department of Corrections and Rehabilitation. The increase shows that an average of only 185 third-strikers are sentenced to life terms in prison under "Three Strikes" each year.

(2) California's judges have the right to impose lesser sentences in all "Three Strikes" cases and they often do so at the request of California's prosecutors or on their own independent review of the facts of a case, when the current offense is not serious enough to justify the strictest punishments allowed by "Three Strikes."

(3) These misperceptions are largely caused by the public's assumption that crimes that are not in the list of "serious felonies" in the Penal Code must be trivial or minor crimes. In fact, dozens of crimes that the average citizen would agree are very serious crimes are not included in the serious felony list.

(4) The list of serious felonies does not include many of the heinous crimes it should, such as felonies that are serious enough to require lifetime registration as a sex offender.

(5) It is important that the list of "serious felonies" be amended to include these heinous crimes, because this list is used to target repeat criminal offenders for sentence credit reductions and increased punishments for continued felony criminal behavior.

(6) The incomplete character of the serious and violent felony lists has created a misperception that a crime that is not included in the serious felony or violent felony list is neither serious nor violent.

(7) The incomplete nature of the serious felony list produces unfair consequences. While the list effectively addresses street-level felonies, it largely ignores white-collar crimes and white-collar criminals whose felonious conduct inflicts large-scale financial damage upon California's citizens.

(8) The serious felony list must be expanded to include the felonious conduct of criminal profiteers, money launderers, purveyors who prey upon and profit from drug addicts, and white-collar felons who profit from child pornography and sexual exploitation of women and children.

(9) The serious felony list must better reflect the dangers posed by these other felonious offenses and the damage they inflict upon vulnerable citizens.

(f) The most important purpose of California's criminal laws is to protect the safety of the citizens of California by appropriately and fairly punishing criminal offenders for their crimes. In order for California's criminal laws to protect the public from repeat criminal offenders, these laws must recognize that:

(1) Repeat offenders present an increased level of threat to the public safety and welfare.

(2) The criminal histories of repeat offenders are an important component in determining the appropriate punishments for their new crimes.

(3) Criminals who commit multiple criminal offenses and who continue to commit criminal acts following conviction should receive more serious and individually-tailored punishments for these criminal acts.

(4) The fair and just punishment of repeat criminal offenders cannot be achieved by "one size fits all" sentences, and punishments for repeat criminal offenders must reflect their entire criminal history.

(5) Courts must have sufficient discretion to impose individualized sentences upon repeat criminal offenders that are based upon the offender's instant felony, criminal background, and prospects for future criminal conduct.

(6) Repeat offenders who do not have a history of violent conduct and who do not continue to commit violent acts should not receive excessively long sentences.

(7) Repeat offenders should be sentenced to terms of imprisonment that adequately protect the public safety, but which are not unnecessarily harsh and do not waste the taxpayers' money.

(g) The goal of an improved statutory structure for repeat criminal offenders is to reduce and eliminate repeat criminal conduct by subjecting repeat criminal offenders to appropriate and fair punishments for their new crimes that will also deter others who might want to engage in similar conduct. The purpose and intent of The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006 is to enact new criminal statutes and to amend existing criminal statutes to achieve this goal.

### **SECTION 3.           Section 17.5 is added to the Penal Code to read:**

17.5.   (a) Felonies are classified into three categories, as follows:

(1) Class A Felonies. Class A felonies are those felonies that are listed or described in subdivision (c) of Section 667.5, as amended by this Act. A Class A felony may also be listed or described as a Class B felony in subdivision (c) of Section 1192.7.

The inclusion of a Class A felony in subdivision (c) of Section 1192.7 does not change its character or the consequences attendant to its character as a Class A felony.

(2) Class B Felonies. Class B felonies are those felonies that are listed or described in subdivision (c) of Section 1192.7 and Section 1192.8, as amended by this Act.

(3) Class C Felonies. Class C felonies are those felonies that are neither Class A nor Class B felonies.

(b) Wherever the term "violent felony" is used in this or any other California statute, that term shall be deemed to read "Class A felony." The term "Class A felony" shall be construed as an alternative description of any felony that is listed or described in subdivision (c) of Section 667.5, as amended by this Act.

(c) Wherever the term "serious felony" is used in this or any other California statute, that term shall be deemed to read "Class B felony." The term "Class B felony" shall be construed as an alternative description of any felony that is listed or described in subdivision (c) of Section 1192.7, as amended by this Act.

(d) The term "Class C felony" shall be construed as an alternative description of any felony that is not listed or described in either subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, as amended by this Act.

(e) The classifications and definitions provided in this section shall apply to any conviction in any other jurisdiction of an offense for which, if committed within this state, the person could have been punished under the laws of this state by imprisonment in the state prison. The determination whether a conviction in another state, government, country, or jurisdiction is a Class A, a Class B, or a Class C felony shall be made by comparing both the statutory elements of the other jurisdiction felony and the conduct of the defendant in the commission of the other jurisdiction felony as contained in the record of conviction of the other jurisdiction felony, with the statutory elements of felonies committed in California. As provided in Section 668, a person with a conviction in any other jurisdiction of an offense for which, if committed within this state, the person could have been punished under the laws of this state by imprisonment in the state prison shall be punishable for any subsequent crime committed within this state in the manner prescribed by law and to the same extent as if that prior conviction had taken place in a court of this state.

(f) The classifications and definitions provided in this section shall apply to any felony conviction without regard to the date of that conviction and without regard to the sentence imposed, unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor.

#### **SECTION 4. Section 191.5 of the Penal Code is amended to read:**

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(b) Gross vehicular manslaughter while intoxicated also includes operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of an unlawful act, not amounting to felony, and with gross negligence; or operating a vessel in violation of subdivision (b), (c), (d), (e), or (f) of Section 655 of the Harbors and Navigation Code, and in the commission of a lawful act which might produce death, in an unlawful manner, and with gross negligence.

(c) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(d) Any person convicted of violating this section who has one or more prior convictions of this section or of paragraph (1) or (3) of subdivision (c) of Section 192, subdivision (a) or (c) of Section 192.5 of this code, or of violating Section 23152 punishable under Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or convicted of Section 23153 of, the Vehicle Code, shall be punished by imprisonment in the state prison for a term of 15 years to life. ~~[Article 2.5 (commencing with Section 2030) of Chapter 7 of Title 1 of Part 3 shall apply to reduce the term imposed pursuant to this subdivision.]~~

(e) This section shall not be construed as prohibiting or precluding a charge of murder under Section 188 upon facts exhibiting wantonness and a conscious disregard for life to support a finding of implied malice, or upon facts showing malice consistent with the holding of the California Supreme Court in *People v. Watson*, 30 Cal.3d 290.

(f) This section shall not be construed as making any homicide in the driving of a vehicle or the operation of a vessel punishable which is not a proximate result of the commission of an unlawful act, not amounting to felony, or of the commission of a lawful act which might produce death, in an unlawful manner.

(g) For the penalties in subdivision (d) to apply, the existence of any fact required under subdivision (d) shall be alleged in the ~~[information or indictment]~~ accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. *The existence of any fact required under subdivision (d) need not be alleged in the felony complaint or proved either at a preliminary examination or a grand jury proceeding as a prerequisite to its being charged in the information or indictment.*

## **SECTION 5. Section 654 of the Penal Code is amended to read:**

654. (a) An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other. *Multiple punishment is barred under this section only when a single act involving a single victim violates more than one statute.*

(b) Notwithstanding subdivision (a), a defendant sentenced pursuant to subdivision (a) shall not be granted probation if any of the provisions that would otherwise apply to the defendant prohibits the granting of probation.

## SECTION 6. INTENT OF SECTION 5.

This amendment of Section 654 provided in Section 5 of this Act is intended to abrogate the "intent and objective" test of *People v. Neal* (1960) 55 Cal.2d 11, and to require that Section 654 be interpreted to permit multiple punishments for multiple criminal acts committed during a single course of conduct regardless of the offender's intent, and to permit multiple punishments for a single criminal act which involves multiple victims.

## SECTION 7. Section 667 of the Penal Code is amended to read:

667. (a) (1) In compliance with subdivision (b) of Section 1385, any person convicted of a ~~[serious]~~ Class B felony who previously has been convicted of a ~~[serious]~~ Class B felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any ~~[serious]~~ Class B felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction ~~[on charges brought and tried separately]~~ for which the defendant could have been sentenced pursuant to Section 654, as amended by this Act. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, ~~["serious felony"]~~ Class B felony means a ~~[serious]~~ felony listed in subdivision (c) of Section 1192.7.

~~[(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.]~~

(b) It is the intent of the Legislature and the People of the State of California in enacting subdivisions (b) to ~~[(4)]~~ (j), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of ~~[serious and/or violent]~~ Class A and/or Class B felony offenses.

(c) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any current or prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.



(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) ~~[The]~~ If conduct credits are otherwise authorized by law, the total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed ~~[one-fifth]~~ 20 percent of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. The total amount of credits awarded pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 20 percent of the actual period of presentence confinement.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one ~~[serious or violent]~~ Class A or Class B felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) ~~[will]~~ shall be imposed ~~[consecutive]~~ consecutively to any other sentence which the defendant is already serving, unless otherwise provided by law.

(9) The subordinate term for each offense for which a consecutive sentence is imposed pursuant to subdivisions (b) to (j), inclusive, shall consist of a full term of imprisonment for the offense plus a full term of imprisonment for each specific enhancement, as defined in Section 1170.11, applicable to that subordinate offense.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to ~~[(+)]~~ (j), inclusive, a prior conviction of a felony shall be defined as:

(1) Any offense defined or described in subdivision (c) of Section 667.5 as a ~~[violent]~~ Class A felony or any offense defined or described in subdivision (c) of Section 1192.7 as a ~~[serious]~~ Class B felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to ~~[(+)]~~ (j), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to ~~[(+)]~~ (j), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(E) The commitment to the Department of the Youth Authority or the Division of Juvenile Facilities.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison ~~[— A prior conviction of a particular~~

~~felony shall include a conviction in another jurisdiction for an offense]~~ and that includes all of the elements of ~~[the particular]~~ any Class A or Class B felony [as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7].

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of ~~[sentence enhancement]~~ subdivisions (b) to (j), inclusive, if:

(A) The juvenile was 16 years of age or older at the time he or she committed the prior offense.

(B) ~~[The prior offense is listed in subdivision (b) of Section 707 of the Welfare and Institutions Code or described in paragraph (1) or (2) as a felony.~~

~~—(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.~~

~~—(D)]~~ The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code, or a comparable provision in another jurisdiction, because the ~~[person]~~ juvenile committed an offense ~~[listed in subdivision (b) of Section 707 of the Welfare and Institutions Code]~~ described in paragraph (1) or (2).

(e) For purposes of subdivisions (b) to ~~[(4)]~~ (j), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1)~~(A)~~ If a defendant has one prior felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or the minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for ~~the~~ each current felony conviction, and, in the discretion of the court, any applicable specific enhancement as defined in Section 1170.11 may be twice the term otherwise provided as punishment for that enhancement.

(B) Notwithstanding subdivision (b) of Section 1170, if the term otherwise provided as punishment for the current felony conviction is a determinate term of imprisonment and the statute specifies three possible terms, the court shall impose the upper term, unless the court finds and sets forth on the record unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term. In determining whether there are unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term, the court shall consider the facts of the current offenses, the facts of the prior conviction, and the entire record of the defendant.

(2) ~~[(A)]~~ If a defendant has two or more prior felony convictions as defined in subdivision (d) that have been pled and proved, the term for ~~[the]~~ each current felony conviction shall be as follows:

(A) Except as provided in subparagraphs (B) to (E), inclusive, an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~[greater]~~ greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction, as described in paragraph (1), subsequent to the two or more prior felony convictions.

(ii) ~~[Imprisonment in the state prison for 25]~~ Twenty-five years.

(iii) 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.

(B) If the defendant is convicted of any current Class A felony for which an indeterminate term of life imprisonment is otherwise provided by law, the term for that felony conviction shall be either imprisonment in the state prison for life without the possibility of parole or imprisonment for the term provided in subparagraph (A), in the discretion of the court.

(C) If the defendant is convicted of any current Class A felony for which a determinate term of imprisonment is otherwise provided by law, the court may impose a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 15 years. The indeterminate term provided in subparagraph (A) shall be the presumptive term. The reasons for imposing the 15-year minimum term, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(D) If the defendant is convicted of any current Class B felony that is not also included in subdivision (c) of Section 667.5, and for which a determinate term of imprisonment is otherwise provided by law, the court may impose either a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 15 years, or a determinate term of 15 years in the state prison. The indeterminate term provided in subparagraph (A) shall be the presumptive term. The reasons for imposing either the indeterminate term provided in this subparagraph or the determinate term provided in this subparagraph, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(E) If the defendant is convicted of any current Class C felony, the court may impose either a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 10 years, or a determinate term of fifteen years. The indeterminate term provided in this subparagraph shall be the presumptive term. The reasons for imposing either the indeterminate term provided in subparagraph (A) or the determinate term provided in this subparagraph, instead of the presumptive indeterminate term provided in this subparagraph, must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(3) If any specific enhancement defined in Section 1170.11 is alleged in conjunction with a current felony offense subject to punishment of three times the term otherwise provided for that felony under paragraph (2) and is determined to be true, the term for that enhancement may, in the discretion of the court, be a term that is three times the term otherwise provided as punishment for that enhancement.

(4) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this subdivision shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law.

~~(B)~~ (5) The ~~[indeterminate term]~~ terms described in ~~[subparagraph (A)]~~ this subdivision shall be served ~~[consecutive]~~ consecutively to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any ~~[indeterminate]~~ term described in ~~[subparagraph (A)]~~ this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(f) (1) Notwithstanding any other provision of law, subdivisions (b) to ~~[(h)]~~ (j), inclusive, shall be applied in every case in which a defendant has a prior felony conviction as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) ~~[(The)]~~ Except as provided in paragraph (3), the prosecuting attorney may move to dismiss or strike a prior felony conviction allegation either in the furtherance of justice pursuant to Section 1385~~[-]~~ or if there is insufficient evidence to prove the prior conviction. ~~[If upon the satisfaction of]~~ Except as provided in paragraph (3), if the court is satisfied that justice would be furthered, as described in subdivision (h), or there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(3) No judge or magistrate shall strike or order to be dismissed, pursuant to Section 1385, a prior conviction as defined in subdivision (d) alleged in conjunction with any current Class A felony offense or a finding bringing a person within the provisions of subdivision (e) on any current Class A felony. This paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (e).

(g) Prior felony convictions shall not be used in plea bargaining as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) In making any discretionary sentencing choice described in subdivision (e), or in determining whether to exercise the discretionary power described in subdivision (f), the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior Class A and Class B felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the exercise of any discretionary powers described in subdivisions (e) and (f), protecting the safety of the public shall be the most important consideration.

(i) All references to existing statutes in subdivisions (c) to ~~[(g)]~~ (h), inclusive, are to statutes as they existed on ~~[June 30, 1993]~~ the effective date of this Act, including amendments made to those statutes by this Act.

~~[(h)]~~ (j) If any provision of subdivisions (b) to ~~[(h)]~~ (j), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

~~[(j)]~~ (k) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors. However, the Legislature may amend the provisions of this section to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

**SECTION 8. Section 667.1 of the Penal Code is repealed.**

~~[667.1. Notwithstanding subdivision (h) of Section 667, for all offenses committed on or after the effective date of this act, all references to existing statutes in subdivisions (c) to (g), inclusive, of Section 667, are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act.]~~

**SECTION 9. Section 667.2 is added to the Penal Code to read:**

667.2 (a) In addition to any other applicable enhancement or punishment provisions, a person who is convicted of any current felony offense and who has previously served one or more terms of imprisonment in the state prison, shall be punished as follows:

(1) The determinate term, or the minimum term of an indeterminate term, may be twice the term otherwise provided as punishment for each current felony conviction, in the discretion of the court. If any specific enhancement as defined in Section 1170.11 is alleged in conjunction with a current felony offense and is determined to be true, the sentence for that enhancement may be twice the term otherwise provided as punishment for that enhancement, in the discretion of the court.

(2) Notwithstanding the provisions of subdivision (a) of Section 1170.1 or of any other law, the term for each offense for which a consecutive sentence is imposed shall consist of a full term of imprisonment for the offense and shall include the full term of imprisonment imposed for each specific enhancement applicable to that consecutively-sentenced offense, without regard to whether the consecutive sentence is imposed in a single case or in multiple cases. The one-third the mid-term sentence calculation formula of subdivision (a) of Section 1170.1 shall not apply to any person who has previously served one or more terms of imprisonment in the state prison.

(b) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law if the defendant served a term in prison for the offense in the other jurisdiction.

(c) 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.

(d) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony shall be deemed to be a term served in state prison.

(e) 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 Facilities, that incarceration shall be deemed to be a term served in state prison.

**SECTION 10. Section 667.3 is added to the Penal Code to read:**

667.3. (a) Except as provided in subdivision (d), in addition to any other applicable enhancement or punishment provisions, a person who is convicted of any current felony offense and who has one prior conviction for a Class A felony listed in subdivision (b) that has been pled and proved, shall be punished by an indeterminate term of life imprisonment, with a minimum term of the indeterminate life sentence of imprisonment in the state prison for twenty-five years.

(b) This section shall apply to the following Class A offenses as a prior conviction:

- (1) A violation of Section 187 (murder).
- (2) A violation of Section 220 (assault with intent to commit a specified felony).
- (3) A violation of paragraph (2) of subdivision (a) of Section 261 (forcible rape).
- (4) A violation of paragraph (6) of subdivision (a) of Section 261 (rape by threat).
- (5) A violation of paragraph (4) of subdivision (a) of Section 262 (spousal rape by threat).
- (6) A violation of Section 264.1 (rape or sexual penetration in concert).
- (7) A violation of Section 269 (aggravated sexual assault of child).
- (8) A violation of paragraph (1) of subdivision (c) of Section 286 (sodomy of child).
- (9) A violation of paragraph (2) of subdivision (c) of Section 286 (sodomy by force).
- (10) A violation of paragraph (3) of subdivision (c) of Section 286 (sodomy by threat).
- (11) A violation of subdivision (d) of Section 286 (sodomy in concert).
- (12) A violation of subdivision (a) of Section 288 (lewd act on child).
- (13) A violation of paragraph (1) of subdivision (b) of Section 288 (lewd act by force or threat).
- (14) A violation of Section 288.5 (continuous sexual abuse of child).
- (15) A violation of paragraph (1) of subdivision (c) of Section 288a (oral copulation of child).
- (16) A violation of paragraph (2) of subdivision (c) of Section 288a (forcible oral copulation).
- (17) A violation of paragraph (3) of subdivision (c) of Section 288a (oral copulation by threat).
- (18) A violation of subdivision (d) of Section 288a (oral copulation in concert).
- (19) A violation of paragraph (1) of subdivision (a) of Section 289 (sexual penetration by force).
- (20) A violation of paragraph (2) of subdivision (a) of Section 289 (sexual penetration by threat).

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

(c) A prior conviction of a felony described in subdivision (b) shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony described in subdivision (b) as defined under California law.

(d) If the defendant is convicted pursuant to this section of any current felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in addition to any other applicable enhancement or punishment provisions and in the furtherance of justice, impose an indeterminate term of life imprisonment, with a minimum term of the indeterminate life sentence of imprisonment in the state prison for 15 years. The minimum term provided in subdivision (a) shall be the presumptive minimum term. The reasons for imposing a 15-year minimum term, instead of the

presumptive 25-year minimum term of subdivision (a), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(e) In determining whether to exercise its power pursuant to Section 1385 in any case described in this section, either upon the motion of the court or upon the motion or request of any party, the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the dismissal or striking pursuant to Section 1385 of a prior felony conviction listed in subdivision (b), protecting the safety of the public shall be the most important consideration.

(f) If an act or omission is punishable in different ways by this section and other provisions of law, the act or omission shall be punished under the provision that provides for the longest potential term of imprisonment, including enhancements.

(g) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this section shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law.

(h) Every inmate who has been convicted of any current felony offense, who has been committed to prison pursuant to this section, and who has been released on parole pursuant to Section 3000 or Section 3000.1 shall be monitored for life by global positioning system technology, or any other more advanced technology developed subsequent to the effective date of this Act. The inmate shall be required to pay for the costs associated with the monitoring by such technology. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for monitoring by such technology.

## **SECTION 11. Section 667.4 is added to the Penal Code to read:**

667.4. (a) Except as provided in subdivision (d), in addition to any other applicable enhancement or punishment provisions, a person who is convicted of any current felony offense and who has previously been convicted of a felony violation of a registerable sex offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 which has been pled and proved, shall be punished by an indeterminate term of life imprisonment, with a minimum term of the indeterminate life sentence of imprisonment in the state prison for ten years.

(b) A prior conviction of a felony violation of a registerable sex offense shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law for which registration is required pursuant to subdivision (a) of Section 290.

(c) The determination of whether a prior conviction is a prior conviction of a felony violation of a registerable sex offense for purposes of this section shall be made upon

the date of that prior conviction and is not affected by the sentence imposed, unless the sentence automatically, upon the initial sentencing, converted the felony to a misdemeanor.

(d) If the defendant is convicted pursuant to this section of any current felony for which a determinate term of imprisonment is otherwise provided by law, the court may, in addition to any other applicable enhancement or punishment provisions and in the furtherance of justice, impose a determinate term of imprisonment in the state prison for 15 years. The term provided in subdivision (a) shall be the presumptive term. The reasons for imposing a determinate 15-year term, instead of the presumptive term of subdivision (a), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(e) In determining whether to exercise its power pursuant to Section 1385 in any case described in this section, either upon the motion of the court or upon the motion or request of any party, the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the dismissal or striking pursuant to Section 1385 of a prior felony conviction listed in subdivision (b), protecting the safety of the public shall be the most important consideration.

(f) If an act or omission is punishable in different ways by this section and other provisions of law, the act or omission shall be punished under the provision that provides for the longest potential term of imprisonment, including enhancements.

(g) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this section shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law.

(h) If conduct credits are otherwise authorized by law, the total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed 20 percent of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. The total amount of credits awarded pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 20 percent of the actual period of presentence confinement.

(i) Every inmate who has been convicted of any current felony offense, who has been committed to prison pursuant to this section, and who has been released on parole pursuant to Section 3000 shall be monitored for life by global positioning system technology, or any other more advanced technology developed subsequent to the effective date of this Act. The inmate shall be required to pay for the costs associated with the monitoring by such technology. However, the Department of Corrections and Rehabilitation shall waive any or all of that payment upon a finding of an inability to pay. The department shall consider any remaining amounts the inmate has been ordered to pay in fines, assessments and restitution fines, fees, and orders, and shall give priority to the payment of those items before requiring that the inmate pay for monitoring by such technology.



**SECTION 12. 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]~~ Class A felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a ~~[three-year]~~ ten-year term for each prior separate prison term served by the defendant where the prior offense was one of the ~~[violent]~~ Class A 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 is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony ~~[: 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 prison custody and the commission of an offense which results in a felony conviction].~~

(c) For the purpose of this section, ~~["violent felony"]~~ Class A 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 ~~[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person]~~ as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation ~~[by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person]~~ as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd ~~[acts on a child under the age of 14 years.]~~ or lascivious acts 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 12022.5 or 12022.55.

(9) Any robbery.

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

(11) ~~[The offense]~~ Sexual penetration as defined in subdivision (a) or (j) of Section 289 ~~[where 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].~~

- (12) Attempted murder.
- (13) A violation of Section 12308, 12309, or 12310.
- (14) Kidnapping.
- (15) Assault with the intent to commit ~~[mayhem, rape, sodomy, or oral copulation]~~ 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) **[A]** 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 of the Penal Code.
- (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.
- (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
- (22) Any violation of Section 12022.53.
- (23) A violation of subdivision (b) or (c) of Section 11418.
- (24) A violation of Section 210.5.

The Legislature ~~[finds and declares]~~ and the People of the State of California find and declare that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

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

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.

(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 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]~~ that includes all of the elements of ~~[the particular]~~ any felony as defined under California law if the defendant served ~~[one year or more]~~ a term in prison for the offense in the other jurisdiction.

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

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a

hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

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

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

(k) 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.

~~[This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.]~~

### **SECTION 13. 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 provided in Section 12022.53 or 12022.7, 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; ~~[assault with intent to commit murder; assault with 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 12308; exploding a destructive device which causes bodily injury in violation of Section 12309, or mayhem or great bodily injury in violation of Section 12310; exploding a

destructive device with intent to injure, intimidate, or terrify, in violation of Section 12303.3; any felony in which the person inflicted great bodily injury as provided in Section 12022.53 or 12022.7; or any felony punishable by death or life imprisonment with or without the possibility of parole is a habitual offender and shall, in addition to any other applicable enhancements or punishment provisions, be punished as follows:

(1) A person who served two prior separate prison terms shall be punished by imprisonment in the state prison for 25 years to 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 or punishment under any other applicable provision of law which provides for a greater punishment. ~~[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 or the Division of Juvenile Facilities 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]~~ trier of fact.

#### **SECTION 14. Section 667.75 of the Penal Code is amended to read:**

667.75. Any person convicted of a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code who has previously served two or more prior separate prison terms, as defined in Section 667.5, for a violation of ~~[Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code, may]~~ any of those offenses, shall, in addition to any other applicable enhancements or punishment provisions, be punished by imprisonment in the state prison for 20 years to life ~~[and shall not be eligible for release on parole for 17 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, whichever is greatest. The provisions of 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. 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 or the Division of Juvenile Facilities 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] trier of fact.~~

**SECTION 15. Section 969a of the Penal Code is amended to read:**

969a. (a) Whenever it shall be discovered that a pending indictment or information does not charge all prior felonies of which the defendant has been convicted either in this State or elsewhere, said indictment or information may be forthwith amended to charge such prior conviction or convictions, and if such amendment is made it shall be made upon order of the court, and no action of the grand jury (in the case of an indictment) shall be necessary. Notwithstanding any other provision of law, the pending indictment or information may be amended in the discretion of the court at any time prior to judgment, including after discharge of the jury in a jury trial, after the verdict of the court in a non-jury trial, or after the entry of a guilty or no contest plea.

(b) Defendant shall promptly be arraigned on such information or indictment as amended and be required to plead thereto.

(c) The amendment to this section is intended to abrogate the holding of People v. Tindall (2000) 24 Cal.4th 757.

**SECTION 16. Section 1025 of the Penal Code is amended to read:**

1025. (a) When a defendant who is charged in the accusatory pleading with having suffered a prior conviction pleads either guilty or not guilty of the offense charged against him or her, he or she shall be asked whether he or she has suffered the prior conviction. If the defendant enters an admission, his or her answer shall be entered in the minutes of the court, and shall, unless withdrawn by consent of the court, be conclusive of the fact of his or her having suffered the prior conviction in all subsequent proceedings. If the defendant enters a denial, his or her answer shall be entered in the minutes of the court. The refusal of the defendant to answer is equivalent to a denial that he or she has suffered the prior conviction.

(b) Except as provided in subdivision (c), or in subdivision (a) of Section 969a, the question of whether or not the defendant has suffered the prior conviction shall be tried by the jury that tries the issue upon the plea of not guilty, or in the case of a plea of guilty or nolo contendere, by a jury impaneled for that purpose, or by the court if a jury is waived.

(c) Notwithstanding the provisions of subdivision (b), the question of whether the defendant is the person who has suffered the prior conviction shall be tried by the court without a jury.

(d) Subdivision (c) shall not apply to prior convictions alleged pursuant to Section 190.2 or to prior convictions alleged as an element of a charged offense.

(e) If the defendant pleads not guilty, and answers that he or she has suffered the prior conviction, the charge of the prior conviction shall neither be read to the jury nor alluded to during trial, except as otherwise provided by law.

(f) Nothing in this section alters existing law regarding the use of prior convictions at trial.

## **SECTION 17. Section 1170.12 of the Penal Code is amended to read:**

1170.12. (a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any current or prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) ~~[The]~~ If conduct credits are otherwise authorized by law, the total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed ~~[one-fifth]~~ 20 percent of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison. The total amount of credits awarded pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 20 percent of the actual period of presentence confinement.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

(7) If there is a current conviction for more than one ~~[serious or violent]~~ Class A or Class B felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to this section ~~[will]~~ shall be imposed ~~[consecutive]~~ consecutively to any other sentence which the defendant is already serving, unless otherwise provided by law.

(9) The subordinate term for each offense for which a consecutive sentence is imposed pursuant to this section shall consist of a full term of imprisonment for the offense plus a full term of imprisonment for each specific enhancement, as defined in Section 1170.11, applicable to that subordinate offense.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:

(1) Any offense defined or described in subdivision (c) of Section 667.5 as a ~~[violent]~~ Class A felony or any offense defined or described in subdivision (c) of Section 1192.7 as a ~~[serious]~~ Class B felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. None of the following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(E) The commitment to the Department of the Youth Authority or the Division of Juvenile Facilities.

(2) A conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison ~~[A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense]~~ and that includes all of the elements of ~~[the particular]~~ any Class A or Class B felony ~~[as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7].~~

(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of ~~[sentence enhancement]~~ this section if:

(A) The juvenile was sixteen years of age or older at the time he or she committed the prior offense ~~[, and]~~.

(B) ~~[The prior offense is~~  
~~(i) listed in subdivision (b) of Section 707 of the Welfare and Institutions Code, or~~  
~~(ii) listed in this subdivision as a felony, and~~

~~(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and~~

~~(D)]~~ The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code, or a comparable provision in another jurisdiction, because the ~~[person]~~ juvenile committed an offense ~~[listed in subdivision (b) of Section 707 of the Welfare and Institutions Code]~~ described in paragraph 1 or 2.

(c) For purposes of this section, and in addition to any other ~~[enhancements]~~ enhancement or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:

(1) (A) If a defendant has one prior felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or the minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for ~~[the]~~

each current felony conviction, and, in the discretion of the court, any applicable specific enhancement as defined in Section 1170.11 may be twice the term otherwise provided as punishment for that enhancement.

(B) Notwithstanding subdivision (b) of Section 1170, if the term otherwise provided as punishment for the current felony conviction is a determinate term of imprisonment and the statute specifies three possible terms, the court shall impose the upper term, unless the court finds and sets forth on the record unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term. In determining whether there are unusual or exceptional circumstances in mitigation that justify imposition of the middle or lower term, the court shall consider the facts of the current offenses, the facts of the prior conviction, and the entire record of the defendant.

(2) ~~[(A)]~~ If a defendant has two or more prior felony convictions, as defined in ~~[paragraph (1) of]~~ subdivision (b), that have been pled and proved, the term for ~~[the]~~ each current felony conviction shall be as follows:

(A) Except as provided in subparagraphs (B) to (E), inclusive, an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the ~~[greater]~~ greatest of:

(i) ~~[three]~~ Three times the term otherwise provided as punishment for each current felony conviction, as described in paragraph (1), subsequent to the two or more prior felony convictions~~[, or]~~.

(ii) ~~[twenty-five]~~ Twenty-five years~~[or]~~.

(iii) ~~[the]~~ 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.

(B) If the defendant is convicted of any current Class A felony for which an indeterminate term of life imprisonment is otherwise provided by law, the term for that felony conviction shall be either imprisonment in the state prison for life without the possibility of parole or imprisonment for the term provided in subparagraph (A), in the discretion of the court.

(C) If the defendant is convicted of any current Class A felony for which a determinate term of imprisonment is otherwise provided by law, the court may impose a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 15 years. The indeterminate term provided in subparagraph (A) shall be the presumptive term. The reasons for imposing the 15-year minimum term, instead of the presumptive indeterminate term provided in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(D) If the defendant is convicted of any current Class B felony that is not also included in subdivision (c) of Section 667.5, and for which a determinate term of imprisonment is otherwise provided by law, the court may impose either a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 15 years, or a determinate term of 15 years in the state prison. The indeterminate term provided in subparagraph (A) shall be the presumptive term. The reasons for imposing either the indeterminate term provided in this subparagraph or the determinate term provided in this subparagraph, instead of the presumptive indeterminate term provided



in subparagraph (A), must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(E) If the defendant is convicted of any current Class C felony, the court may impose either a minimum term for the indeterminate life sentence of subparagraph (A) of imprisonment in the state prison for 10 years, or a determinate term of fifteen years. The indeterminate term provided in this subparagraph shall be the presumptive term. The reasons for imposing either the indeterminate term provided in subparagraph (A) or the determinate term provided in this subparagraph, instead of the presumptive indeterminate term provided in this subparagraph, must be in the furtherance of justice and must be set forth in an order entered upon the minutes.

(3) If any specific enhancement defined in Section 1170.11 is alleged in conjunction with a current felony offense subject to punishment of three times the term otherwise provided for that felony under paragraph (2) and is determined to be true, the term for that enhancement may, in the discretion of the court, be a term that is three times the term otherwise provided as punishment for that enhancement.

(4) Notwithstanding any other provision of law, a defendant serving an indeterminate term of imprisonment pursuant to this section shall not receive work or conduct credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, Section 4019 of Chapter 1 of Title 4 of Part 3, or any other provision of law

~~[(B)]~~ (5) The [indeterminate term] terms described in [subparagraph (A) of paragraph (2) of] this subdivision shall be served [consecutive] consecutively to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any [indeterminate] term described in [subparagraph (A) of paragraph (2) of] this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(d) (1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has a prior felony conviction as defined in this section. The prosecuting attorney shall plead and prove each prior felony conviction except as provided in paragraph (2).

(2) ~~[(The)]~~ Except as provided in paragraph 3, the prosecuting attorney may move to dismiss or strike a prior felony conviction allegation either in the furtherance of justice pursuant to Section 1385~~[-]~~ or if there is insufficient evidence to prove the prior conviction. ~~[If upon the satisfaction of]~~ Except as provided in subdivision (3), if the court is satisfied that justice would be furthered, as described in subdivision (f), or there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.

(3) No judge or magistrate shall strike or order to be dismissed pursuant to Section 1385 a prior conviction as defined in subdivision (b) alleged in conjunction with any current Class A felony offense or a finding bringing a person within the provisions of subdivision (c) on any current Class A felony. This paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (c).

(e) Prior felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior felony convictions and shall not enter into any agreement to strike or seek the dismissal of any prior felony conviction allegation except as provided in paragraph

(2) of subdivision (d).

(f) In making any discretionary sentencing choice described in subdivision (c), or in determining whether to exercise the discretionary power described in subdivision (d), the court shall consider the nature and circumstances of the current offenses, the nature and circumstances of the defendant's prior Class A and Class B felony convictions, and the particulars of the defendant's background, character, and prospects. In determining whether justice would be furthered by the exercise of any discretionary powers described in subdivisions (c) and (d), protecting the safety of the public shall be the most important consideration.

(g) All references to existing statutes in this section are to statutes as they existed on the effective date of this Act, including amendments made to those statutes by this Act.

(h) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(i) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors. However, the Legislature may amend the provisions of this section to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.

(j) It is the intent of the People of the State of California in enacting this section to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of Class A and/or Class B felony offenses.

## **SECTION 18. Section 1170.125 of the Penal Code is repealed.**

~~[1170.125. Notwithstanding Section 2 of Proposition 184, as adopted at the November 8, 1994, General Election, for all offenses committed on or after the effective date of this act, all references to existing statutes in Section 1170.12 are to those statutes as they existed on the effective date of this act, including amendments made to those statutes by this act.]~~

## **SECTION 19. Section 1170.14 is added to the Penal Code to read:**

1170.14 (a) Notwithstanding subdivision (b) of Section 1170, and unless otherwise provided by statute, when the punishment to be imposed for a current felony conviction is for a determinate term of imprisonment and the statute specifies three possible terms, the upper term shall be the presumptive term for any defendant who has suffered a conviction of any felony prior to the commission of the current felony.

(b) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law.

(c) The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed, unless the sentence automatically, upon the initial sentencing, converted the felony to a misdemeanor.

## **SECTION 20. Statement of Intent in Establishing Presumptive Terms.**

It is the intent of the People of the State of California in enacting the presumptive terms of imprisonment and the presumptive minimum terms of imprisonment in Sections 7, 10, 11, 17, and 19 of this Act to establish presumptive sentences that ensure uniformly fair and equitable treatment of individuals in all parts of the State. In order to ensure the fair and uniform application of these statutes, it is the intent of the People of the State of California that no contrary policy, guideline, or presumption be established by any judge, prosecuting attorney or other official in the state.

The People of the State of California further intend that the discretion exercised in selecting greater or lesser terms of imprisonment, and the discretion exercised when considering the exercise of discretionary powers in the furtherance of justice be based solely on an individual review and assessment of the particular defendant, the instant case, the nature and specific facts of the alleged prior convictions, and the criminal record of the particular defendant. In establishing presumptive terms of imprisonment and presumptive minimum terms of imprisonment, the People of the State of California do not intend to limit the power of the courts to exercise Section 1385 discretion in the furtherance of justice, and do not intend to limit the power of a prosecuting attorney to request that such discretion be exercised by the court. It is, however, the intent of the People of the State of California that such discretion be exercised only after an individual review of the case as described above.

Accordingly, the People of the State of California intend that no court shall establish, nor shall any prosecuting attorney set a policy to define, a presumptive term that is different from the presumptive term of imprisonment or the presumptive minimum term of imprisonment that is set forth in any statute, including, but not limited to, Penal Code Sections 667, 667.3, 667.4, 1170.12, and 1170.14.

## **SECTION 21. Section 1192.7 of the Penal Code is amended to read:**

1192.7. (a) Plea bargaining in any case in which the indictment or information charges any ~~[serious]~~ Class A or Class B felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people's case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.

(b) As used in this section "plea bargaining" means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, ~~["serious felony"]~~ Class B felony means any of the following:

(1) Murder or voluntary manslaughter; (2) mayhem; (3) rape; (4) sodomy ~~[by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person], in violation of subdivision (c) or (d) of Section 286;~~ (5) oral copulation ~~[by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person], in violation of subdivision (c) or (d) of Section 288a;~~ (6) lewd or lascivious act on a child under the age of 14 years or on a dependent person; (7) any felony punishable by death or imprisonment in the state prison for life; (8) any felony in which ~~[the defendant]~~ any principal personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which ~~[the defendant]~~ any principal personally uses a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly weapon or instrument on a peace officer; (12) assault by a life prisoner on a noninmate; (13) assault with a deadly weapon by an inmate; (14) arson; (15) exploding a destructive device or any explosive with intent to injure; (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem; (17) exploding a destructive device or any explosive with intent to murder; (18) any burglary of ~~[the first degree]~~ a residence or of any structure or object specified in subdivision (a) of Section 460; (19) robbery or bank robbery; (20) kidnapping; (21) holding of a hostage by a person confined in a state prison; (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life; (23) any felony in which ~~[the defendant]~~ any principal personally ~~[used]~~ uses a dangerous or deadly weapon; (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of Section 11055 of the Health and Safety Code, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of Section 11055 or subdivision (a) of Section 11100 of the Health and Safety Code; (25) ~~[any] sexual penetration, in violation of subdivision (a) or (j) of Section 289 [where 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];~~ (26) grand theft involving a firearm; (27) carjacking; (28) any felony offense, which would also constitute a felony violation of Section 186.22; (29) assault with the intent to commit ~~[mayhem, rape, sodomy, or oral copulation]~~ a specified felony, in violation of Section 220; (30) ~~[throwing acid or flammable substances, in]~~ any violation of Section 244; (31) ~~[assault with a deadly weapon, firearm, machinogun, assault weapon, or semiautomatic firearm, or assault on a peace officer or firefighter, in]~~ any violation of Section 245; (32) ~~[assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in]~~ any violation of ~~[Sections]~~ Section 245.2, 245.3, or 245.5; (33)

~~[discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in]~~ any violation of Section 246; (34) ~~[commission of]~~ rape or sexual penetration in concert with another person, in violation of Section 264.1; (35) continuous sexual abuse of a child, in violation of Section 288.5; (36) shooting from a vehicle, in violation of subdivision (c) or (d) of Section 12034; (37) intimidation or dissuasion of victims or witnesses, in violation of Section 136.1, 139, or 140; (38) criminal threats, in violation of Section 422; (39) any attempt to commit a crime listed in this subdivision other than an assault; (40) any violation of Section 12022.53; (41) a violation of subdivision (b) or (c) of Section 11418; ~~[and]~~ (42) any conspiracy to commit an offense described in this subdivision; ~~(43)~~ human trafficking, in violation of Section 236.1; (44) any felony violation of a registerable sex offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290; (45) child abuse likely to produce great bodily injury, in violation of subdivision (a) of Section 273a; (46) physical child abuse, in violation of Section 273d, if the defendant served a term in state prison therefor; (47) intentionally killing, mutilating, or torturing a domestic animal, in violation of subdivision (a) to (c), inclusive, of Section 597, if the defendant served a term in state prison therefor; (48) stalking, in violation of Section 646.9; (49) solicitation to commit murder or a designated sexual assault, in violation of subdivisions (b) or (c) of Section 653f; (50) any felony in which the hate crime enhancement of Section 422.75 is pled and proved; (51) elder abuse, in violation of paragraph (1) of subdivision (b), subdivision (c) or subdivision (f) of Section 368, if the defendant served a term in state prison therefor; (52) fleeing or evading a pursuing peace officer, in violation of Vehicle Code section 2800.2 or 2800.3; (53) escape by force or violence with great bodily injury not personally inflicted by the defendant, in violation of subdivision (b) of Section 4532; (54) manufacturing a controlled substance, in violation of Health and Safety Code Section 11379.6; (55) any felony in which an allegation pursuant to Health and Safety Code Section 11370.4 or 11379.8 is pled and proved; (56) any burglary in which the defendant is armed with a deadly weapon or assaults any person; (57) safe burglary by torch or explosives, in violation of Section 464; (58) felon in possession of a firearm, in violation of Section 12021; (59) any felony specified in Section 1192.8; (60) counterfeit mark causing death or great bodily injury, in violation of subdivision (c) of Section 350; (61) money laundering exceeding \$50,000.00, in violation of Section 186.10; (62) any felonies in relation to which an aggravated white collar crime enhancement allegation pursuant to Section 186.11 is pled and proved; (63) a violation of subdivision (c) of Section 502, Section 550, or Insurance Code Section 1871.4, in which an allegation pursuant to Section 12022.6 is pled and proved; and (64) any felony in which an allegation pursuant to paragraph (2), (3) or (4) of subdivision (a) of Section 12022.6 is pled and proved.

(d) As used in this section, "bank robbery" means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

(1) "Bank" means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized

or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(2) "Savings and loan association" means any federal savings and loan association and any "insured institution" as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors. However, the Legislature may amend the provisions of this section to expand the definition of offenses that qualify as Class B felonies by a statute passed by a majority vote of each house thereof.

## **SECTION 22. Statement of Intent in Amending Penal Code Section 1192.7.**

It is the intent of the People of the State of California in amending Penal Code Section 1192.7 in Section 21 of this measure that to clarify, improve, and expand the definition of offenses that qualify as Class B felonies. The amendments to paragraph (18) of subdivision (c) of Section 1192.7 that include all residential burglaries as Class B felonies are intended to be declaratory of existing law and to conform the language of subdivision (c) of Section 1192.7 to the decisions of the California Supreme Court in *People v. Jackson* (1985) 37 Cal.3d 826, *People v. Guerrero* (1988) 44 Cal.3d 343, *People v. Myers* (1993) 5 Cal.4th 1193, *People v. Cruz* (1996) 13 Cal.4th 764, and *People v. Avery* (2002) 27 Cal.4th 49, 53 fn. 3, and the decision of the Court of Appeal in *People v. Garrett* (2001) 92 Cal.App.4th 1417.

## **SECTION 23. Section 1385 of the Penal Code is amended to read:**

1385. (a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal must be set forth in an order entered upon the minutes. No dismissal shall be made for any cause which would be ground of demurrer to the accusatory pleading.

(b) This section does not authorize a judge or magistrate to strike or to order to be dismissed any of the following:

(1) A prior conviction of a ~~[serious]~~ Class B felony for purposes of enhancement of a sentence under paragraph (1) of subdivision (a) of Section 667.

(2) A prior conviction, as defined in subdivision (d) of Section 667 and in subdivision (b) of Section 1170.12, alleged in conjunction with any current Class A felony offense, or a finding bringing a person within the provisions of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 on any current Class A felony. This

paragraph shall not apply to additional prior convictions based on the same crime, when at least one prior conviction based on that crime is used to impose punishment under subdivision (e) of Section 667 or subdivision (c) of Section 1170.12.

(c) (1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

**SECTION 24. Section 2936 is added to the Penal Code to read:**

2936. (a) (1) Notwithstanding any other provision of law, no prisoner in the state prison who is serving a term for an offense committed on or after the effective date of this Act and is otherwise entitled to conduct or work credits pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3, or Chapter 1 (commencing with Section 4019) of Title 4 of Part 3, shall receive those conduct or work credits unless the prisoner has first taken and successfully completed a course given or approved by the Department of Corrections and Rehabilitation during his or her current state prison commitment that includes the consequences for a paroled state prisoner for his or her continuing to commit felonies following release on parole.

(2) As soon as possible, and no later than four months following the effective date of this section, the Department of Corrections and Rehabilitation shall offer and prescribe a course to inmates that includes the subjects described in subdivision (a). This course shall be given to all inmates who are eligible for parole, including those inmates who committed an offense prior to the effective date of this Act.

(b) Notwithstanding any other provision of law, the total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 to any person who has served one or more prior separate terms of imprisonment in the state prison, as described in Section 667.5, including terms of incarceration described in subdivisions (f) to (j), inclusive, of Section 667.5, shall not exceed 20 percent of the total term of imprisonment or incarceration imposed. The total amount of credits awarded to such a person pursuant to Chapter 1 (commencing with Section 4019) of Title 4 of Part 3 shall not exceed 20 percent of the actual period of presentence confinement.

(c) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense that includes all of the elements of any felony as defined under California law if the defendant served a term in prison for the offense in the other jurisdiction.

(d) The determination of whether a prior conviction is a prior felony conviction for purposes of subdivision (b) or subdivision (c) shall be made upon the date of that prior conviction and is not affected by the sentence imposed, unless the sentence automatically, upon the initial sentencing, converted the felony to a misdemeanor.

(e) The conduct credit limitations provided in this section shall apply only to inmates whose offenses are committed on or after the effective date of this Act.

**SECTION 25. Section 3007 is added to the Penal Code to read:**

3007. (a) The amendments made by this Act to Sections 667 and 1170.12 shall be prospective, except as specifically provided in this section.

(b) (1) Subject to the procedures described in paragraphs (2) to (9), inclusive, any inmate of the Department of Corrections and Rehabilitation described in subdivision (d) shall be entitled to a parole hearing after the inmate has served a term of 10 actual years in the state prison. The parole hearing shall be held not later than one year following the effective date of this Act for any inmate described in subdivision (d) who has served a term of at least 10 actual years as of the effective date of this Act.

(2) Not later than 30 days prior to the parole hearing described in paragraph (1), the Department of Corrections and Rehabilitation shall provide written notice of the hearing to the district attorney of the county of commitment. The Secretary of the Department of Corrections and Rehabilitation, or his or her designee, and/or the Board of Parole Hearings shall not conduct a parole hearing pursuant to paragraph (1) unless the Secretary or the Board has first provided written notice of the parole hearing to the prosecuting attorney on the Class C commitment offense or offenses and has also provided the prosecuting attorney with an opportunity to submit written opposition to the parole hearing.

(3) The district attorney of the county of commitment may, no later than three calendar days prior to the parole hearing, file with the Department of Corrections and Rehabilitation a written objection to the parole hearing. If a written objection to the parole hearing is filed, the district attorney shall mail a copy of the written objection to the inmate. The filing by the district attorney of a written objection to the parole hearing as provided in this section shall preclude the holding of that parole hearing.

(4) If the district attorney files a timely written objection to the parole hearing, the inmate may file with the committing court a petition requesting that the committing court recall the commitment and resentence the inmate in accordance with the life sentence provisions of subparagraph (E) of paragraph (2) of subdivision (e) of Section 667 or subparagraph (E) of paragraph (2) of subdivision (c) of Section 1170.12, as amended by this Act.

(5) Upon receipt of a resentencing request filed with the court pursuant to paragraph (4), the court shall recall the commitment and return the inmate for consideration of the request for resentencing.

(6) In any proceeding in which the court considers resentencing, the inmate shall be entitled to representation of counsel.

(7) The district attorney shall be entitled to participate as a party in resentencing proceedings. Both the district attorney and the inmate shall be entitled to present evidence, subject to the discretion of the court to prescribe the form of the proceedings, on the question whether the inmate should be resented in accordance with the life sentence provisions of subparagraph (E) of paragraph (2) of subdivision (e) of Section 667 or subparagraph (E) of paragraph (2) of subdivision (c) of Section 1170.12, as amended by this Act.

(8) If the court grants resentencing of the inmate, the court shall commit the inmate to the Department of Corrections and Rehabilitation for a term of life imprisonment with a minimum term for the indeterminate life sentence of imprisonment



in the state prison for 10 years. In resentencing an inmate pursuant to this section, the court shall not exercise the power described in Section 1385 to strike or to order to be dismissed a prior conviction, as defined in subdivision (d) of Section 667 and in subdivision (b) of Section 1170.12, or a finding bringing a person within the provisions of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12.

(9) If the court denies resentencing of the inmate pursuant to this section, the court shall reinstate the prior commitment and return the inmate to the Department of Corrections and Rehabilitation to finish serving the term originally imposed. No inmate whose petition for resentencing has been denied by the committing court following the procedures specified in this subdivision shall be entitled to file a subsequent petition for resentencing under this section

(c) (1) In determining whether the inmate should be resentenced in accordance with the life sentence provisions of subparagraph (E) of paragraph (2) of subdivision (e) of Section 667 or subparagraph (E) of paragraph (2) of subdivision (c) of Section 1170.12, as amended by this Act, the court shall consider and be guided by, but shall not be limited to a consideration of, the following factors:

(A) The length of time between the inmate's Class C commitment felony or felonies and the inmate's Class A or Class B prior felony convictions.

(B) Whether the inmate's Class C commitment felony or felonies involved any violence or threat of violence.

(C) Whether the inmate remained free of criminal activity in the period between the Class C commitment felony and the prior Class A or Class B convictions.

(D) Whether the inmate's prior convictions involved violence or the threat of violence, or were Class A felonies.

(E) The number of Class A or Class B felonies for which the inmate has been convicted.

(F) Whether the inmate might present a danger to public safety if released. The court may receive information from the prosecuting attorney or any other person in an in camera proceeding if the court determines that revealing the information would jeopardize the life or safety of another person.

(G) Whether the inmate's Class C commitment offense or offenses would have qualified the inmate for medical treatment under the provisions of Section 1210.1 et seq.

(H) Whether other offenses were dismissed in exchange for the inmate's guilty or no contest plea to the Class C commitment felony.

(I) Whether the inmate is serving a term of imprisonment for more than one Class C commitment felony.

(J) The nature and circumstances of the inmate's Class C commitment felony or felonies.

(K) The nature and circumstances of the inmate's prior Class A and Class B felonies.

(L) The nature and circumstances of the entire record of the inmate, including all felony and misdemeanor convictions and commitments to state prison.

(M) The behavior of the inmate during any state prison commitment, including whether the inmate engaged in any felonious conduct while incarcerated in state prison

on the commitment felony or while incarcerated in county jail awaiting sentencing on the commitment felony.

(N) Whether the Class C commitment felony is an offense for which an alternative punishment to county jail is authorized by law.

(O) Any other fact or particular about the background, character or prospects of the inmate that could reasonably bear on the question whether the inmate is likely to continue to commit criminal offenses if released from custody.

(2) In determining whether to recall a commitment and resentence an inmate pursuant to this section, the court shall consider and be guided by the factors itemized in paragraph (1), and shall give great weight to the nature and circumstances of the inmate's prior Class A and Class B felonies and the nature and circumstances of the entire record of the inmate.

(d) This section shall apply to any inmate of the Department of Corrections and Rehabilitation about whom all four of the following facts are true:

(1) Upon the effective date of this Act, the inmate is serving or has been sentenced to, but has not completed, an indeterminate term of life imprisonment imposed pursuant to subdivision (e) of Section 667 or pursuant to subdivision (c) of Section 1170.12 for a Class C felony for possession of drugs or a Class C felony theft offense.

(2) The inmate is not also serving or been sentenced to a term of imprisonment for a Class A or Class B felony, and the commitment offense of the inmate consists only of a Class C felony;

(3) The inmate has never previously been convicted of an offense, including an offense with a specific enhancement, that is otherwise punishable by a maximum term of life imprisonment.

(4) The inmate has never previously been convicted of a felony offense for which registration is required pursuant to subdivision (a) of Section 290, as that statute existed on the effective date of this Act.

(e) This section shall apply only to inmates described in subdivision (d). No inmate serving a term of imprisonment pursuant to paragraph (1) of subdivision (e) of Section 667 or paragraph (1) of subdivision (c) of Section 1170.12 shall be eligible to request or to receive a parole hearing or a recall of his or her sentence pursuant to this section.

(f) Any person who committed a Class C felony subject to punishment under the former provisions of paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 prior to the effective date of this Act, and who has not yet been sentenced as of the effective date of this Act, may request, in the discretion of the court, that punishment for that Class C felony be imposed under the provisions of this Act, instead of being imposed under the law applicable to that person at the time the offense was committed. This subdivision shall not apply to any person who would have been ineligible for recall of the sentence under the provisions of this section if the sentence had been imposed prior to the effective date of this Act.

**SECTION 26. Section 12022.10 is added to the Penal Code to read:**

12022.10. Notwithstanding any other provision of law, the enhancements for personal use of a firearm enumerated in subdivision (a) of Section 12022.3, subdivisions (a) and (b) of Section 12022.5, Section 12022.55, and Section 12022.53, shall apply to any person who is a principal in the commission of a felony or attempted felony offense and who at the time of the offense had previously suffered a conviction of any felony, if one or more of the principals has personally used a firearm in the commission of the current offense. The "personal use of a firearm" element of these enumerated enhancements need not be proved as to any defendant who is convicted as a principal in the underlying offense and who has previously been convicted of a felony.

**SECTION 27. Section 12022.11 is added to the Penal Code to read:**

12022.11. (a) Notwithstanding any other provision of law, the enhancements for personal infliction of great bodily injury, serious bodily injury, or injury, enumerated in subdivision (b) shall apply to any person who is a principal in the commission of a felony or attempted felony offense and who at the time of the offense had previously suffered a conviction of any felony, if one or more of the principals personally inflicted great bodily injury, serious bodily injury, or injury, as applicable, in the commission of the current offense. The "personal infliction of great bodily injury, serious bodily injury, or injury" element of these enumerated enhancements need not be proved as to any defendant who is convicted as a principal in the underlying offense and who has previously been convicted of a felony.

(b) This section applies to the following enhancements:

- (1) Subdivision (a) of Section 273.4.
- (2) Paragraph (2) of subdivision (a) of Section 347.
- (3) Paragraph (3) of subdivision (2) of Section 368.
- (4) Paragraphs (2) and (3) of subdivision (a) of Section 451.1.
- (5) Paragraphs (2) and (3) of subdivision (a) of Section 452.
- (6) Subdivision (g) of Section 550.
- (7) Subdivision (b) of Section 593a.
- (8) Subdivisions (c) and (d) of Section 600.
- (9) Section 12022.53.
- (10) Section 12022.7.
- (11) Section 12022.8.
- (12) Section 12022.9.
- (13) Section 12022.95.
- (14) Subdivision (b) of Section 11379.7 of the Health and Safety Code.
- (15) Section 11379.9 of the Health and Safety Code.
- (16) Subdivision (e) of Section 25189.5 of the Health and Safety Code.
- (17) Subdivision (c) of Section 25189.7 of the Health and Safety Code.
- (18) Section 23558 of the Vehicle Code.
- (19) Subdivision (c) of Section 23556 of the Vehicle Code.
- (20) Subdivision (c) of Section 14107 of the Welfare and Institutions Code.

**SECTION 28. Section 23550 of the Vehicle Code is amended to read:**

23550. (a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of ~~[three or more]~~ two separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the state prison, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of three or more separate violations of Section 23103, as specified in Section 23103.5, or Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the state prison. The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(c) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

**SECTION 29. Section 23550.5 of the Vehicle Code is amended to read:**

23550.5. (a) A person is guilty of a public offense, punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000) if that person is convicted of a violation of Section 23152 or 23153, and the offense occurred within 10 years of any of the following:

(1) A prior violation of Section 23152 that was punished as a felony under Section 23550 or this section, or both, or under former Section 23175 or former Section 23175.5, or both.

(2) A prior violation of Section 23153 that was punished as a felony.

(3) A prior violation of paragraph (1) of subdivision (c) of Section 192 of the Penal Code that was punished as a felony.

(b) Every person who, having previously been convicted of a violation of Section 191.5 of the Penal Code or a felony violation of paragraph (3) of subdivision (c) of Section 192 of the Penal Code, is subsequently convicted of a violation of Section 23152 or 23153 is guilty of a public offense punishable by imprisonment in the state prison or confinement in a county jail for not more than one year and by a fine of not less than three hundred ninety dollars (\$390) nor more than one thousand dollars (\$1,000).

(c) The determination of whether a prior conviction is a prior felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed, unless the sentence automatically, upon the initial sentencing, converted the felony to a misdemeanor.

~~[(e)]~~ (d) The privilege to operate a motor vehicle of a person convicted of a violation that is punishable under subdivision (a) or (b) shall be revoked by the department under paragraph (7) of subdivision (a) of Section 13352, unless paragraph (6) of subdivision (a) of Section 13352 is also applicable, in which case the privilege shall be revoked under that provision. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

~~[(d)]~~ (e) Any person convicted of a violation of Section 23152 or 23153 that is punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation under subdivision (b) of Section 13350.

### **SECTION 30. DISCLAIMER OF INTENT TO MODIFY PROPOSITION 36.**

Except as specifically provided herein, nothing in this Act is intended to affect the right of a defendant to obtain drug treatment pursuant to any applicable provision of the Substance Abuse and Crime Prevention Act of 2000, as enacted by the electorate at the General Election of November 7, 2000.

### **SECTION 31. DISCLAIMER OF INTENT TO PRODUCE IMPLIED PUNISHMENT REDUCTIONS.**

It is the intent of the People of the State of California in enacting this measure that if any provision in this Act conflicts with another section of law which provides for a greater penalty or longer period of imprisonment that the latter provision shall apply.

### **SECTION 32. RELATIONSHIP TO "THE SEXUAL PREDATOR PUNISHMENT AND CONTROL ACT: JESSICA'S LAW."**

It is the intent of the People of the State of California in enacting Section 12 of this measure that the amendments made by this measure to Section 667.5 of the Penal Code that are not also made by "The Sexual Predator Punishment and Control Act: Jessica's Law" shall supplement, complement and not conflict with the amendments made to Section 667.5 of the Penal Code by "The Sexual Predator Punishment and Control Act: Jessica's Law." This Act and "The Sexual Predator Punishment and Control Act: Jessica's Law" shall be construed as complementary and/or supplementary measures, not competing or conflicting measures.

It is the further intent of the People of the State of California that should this measure and "The Sexual Predator Punishment and Control Act: Jessica's Law" be passed by

the electorate in the same election, the amendments to Penal Code Section 667.5, made by each initiative measure be effective and have the force of law, except to the extent that amendments made by both initiatives expressly conflict with each other and the conflicts cannot be reconciled. An amendment made by only one of these initiative measures shall not be deemed to constitute an express conflict with the initiative measure that does not make the same amendment.

It is the further intent of the People of the State of California in enacting Section 3 of this measure that the alternative designations of violent felonies as "Class A felonies," serious felonies as "Class B felonies," and all other felonies as "Class C felonies," not produce any substantive changes in the manner in which these felonies are treated. Should "The Sexual Predator Punishment and Control Act: Jessica's Law " be passed by the electorate in the same election with more votes than this measure, all "Class A felonies" shall be treated as violent felonies, all "Class B felonies" shall be treated as serious felonies, and all "Class C felonies" shall be treated as the remaining felonies. It is the intent of the People of the State of California in enacting Section 3 of this measure that there be no conflict with the provisions of "The Sexual Predator Punishment and Control Act: Jessica's Law" based on the use of alternative designations for felonies.

### **SECTION 33. INTENT TO SUPERSEDE "THE THREE STRIKES REFORM ACT OF 2006."**

It is the intent of the People of the State of California in enacting this measure that if this measure and "The Three Strikes Reform Act of 2006" or any other measure relating to "Three Strikes" appears on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to conflict with the "Three Strikes" provisions of this measure. In the event that this measure and any other measure relating to "Three Strikes" are passed by the electorate in the same statewide election ballot, and this measure receives a greater or the greatest number of affirmative votes, the provisions of this measure relating to "Three Strikes" shall prevail in their entirety, and the other measure or measures shall be null and void and have no force and effect.

### **SECTION 34. APPLICATION OF THIS INITIATIVE MEASURE.**

Except as specifically provided in Section 25 of this Act, the application of this Act is prospective; its provisions shall apply only to current offenses committed on or after the effective date of this Act; and except as specifically provided in Section 25, this Act shall not be construed to benefit any person who committed a crime prior to the effective date of this Act.

### **SECTION 35. LIBERAL CONSTRUCTION.**

This Act is an exercise of the power of the People of the State of California to protect the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate the purpose of this Act as set forth in Section 2 to protect the health, safety, and welfare of the People of the State of California.

**SECTION 36. SEVERABILITY.**

If any provision of this Act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining sections shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

**SECTION 37. AMENDMENT.**

The provisions of this Act shall not be amended by the Legislature except by a statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership of each house concurring, or by a statute that becomes effective only when approved by the voters. However, the Legislature may amend the provisions of this Act to expand the scope of their application or to increase the punishments or penalties provided herein by a statute passed by majority vote of each house thereof.