

Families United for Prison Reform

August 4, 2007

Office of the Attorney General, Jerry Brown
State of California
ATTN: Initiative Coordinator
1300 I Street
Sacramento, CA 95814

RECEIVED

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE**Re: Request for Title and Summary for Proposed Initiative**

Dear Ms. Galvin:

Enclosed please find a draft of the proposed statewide initiative ballot measure to your office that we are referring to as the "California Prison Population Reduction Act of 2008". We request that you prepare a title and summary of the measure as provided by law.

Included with this submission as Appendix "A" is the required proponent affidavit signed by the proponent of this measure as pursuant to section 9608 of the California Elections Code. This Appendix also contains the address as registered to vote. We have also included a check for \$200 for the filing fee.

Thank you for your attention. If you have any questions, please contact me at the address and phone number supplied in Appendix A.

Respectfully,

Ann Smith

Date

August 4, 2007

Enclosures

THE CALIFORNIA PRISON POPULATION REDUCTION ACT OF 2008

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 the State of California, residents of the County (or City and County) described on the signature page of this petition section, hereby propose amendments to Penal Code Sections 667, 1170.12, 2933, 2933.1, 2933.3, 3041, 3041.5, and 3046, relating to the release, parole and overall reduction of the number of prisoners currently incarcerated in the State of California, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding primary or general election or at any special statewide election held prior to that primary or general election or as otherwise provided by law. The proposed statutory amendments and initiative reads as follows:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. TITLE

This initiative shall be known as and shall be cited as The California Prison Population Reduction Act of 2008.

SECTION 2. FINDINGS AND DECLARATIONS

The People of the State of California do hereby find and declare that:

(a) There are currently over 175,000 prisoners being housed in a prison system designed to accommodate half that number at a cost to taxpayers of roughly \$8 billion dollars a year;

(b) The average annual cost of incarceration is \$31,000 per prisoner;

(c) Overcrowding in California prisons has led to unsafe working conditions for staff, unsafe living conditions for prisoners and an exponential increase in prisoner on prisoner and prisoner on staff violence;

(d) The California Department of Corrections & Rehabilitation has proven to be one of the most poorly designed and poorly managed prison systems in the country which has, consequently, resulted in a 70 percent recidivism rate.

SECTION 3. PURPOSES

The People do hereby enact this measure to:

(a) Provide prison officials with a set of rules for determining whether or when it would be appropriate to allow a prisoner who is currently earning one day of worktime credit for every one day of service pursuant to Section 2933, to instead earn two days of worktime credit for every one day of service in order to reduce the prison population;

(b) Provide prison officials with a comprehensive and complete criteria for determining parole suitability and setting parole release dates in order to ensure that those who are prepared are released and the prison population further reduced;

(c) Allow those prisoners who were sentenced under Penal Code Sections 1170.12(a)-(d) or 667(b)-(i) and who are currently earning no more than 15 percent of worktime credit pursuant to Section 2933.1 to instead earn a minimum of two days of worktime credit for every one day of service as provided in Section 2933.3, and provide for the re-sentencing of those prisoners presently serving an indeterminate term of imprisonment pursuant to

Penal Code Sections 667(e)(2) or 1170.12(c)(2) to a determinate term of imprisonment in accordance with newly amended Section 667(a) in order that the prison population will be further reduced;

SECTION 4. AMENDMENTS TO SECTION 2933 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in [italics].)

Section 2933 of the California Penal Code is hereby amended to read:

§ 2933. Worktime credit; Receipt; Forfeiture; Regulations.

(a) It is the intent of the Legislature *People of the State of California* that persons convicted of a crime and sentenced to the state prison under Sections 1170, 1170.12, and/or 667 of the California Penal Code serve the entire sentence imposed by the court, except for a reduction in the time served in the custody of the Director of Corrections for performance in work, training or education programs established by the Director of Corrections. Worktime credits shall apply for performance in work assignments and performance in elementary, high school, or vocational education programs. Enrollment in a two or four-year college program leading to a degree shall result in the application of time credits equal to that provided in Section 2931. For every six months of full-time performance in a credit qualifying program, as designated by the director, a prisoner shall be awarded worktime credit reductions from his or her term of confinement of ~~six months~~ *one year*. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous performance. Less than maximum credit should be awarded pursuant to regulations adopted by the director for prisoners not assigned to a full-time credit qualifying program. Every prisoner who refuses to accept a full-time credit qualifying assignment or who is denied the opportunity to earn worktime credits pursuant to subdivision (a) of Section 2932 shall be awarded no worktime credit reduction. Every prisoner who voluntarily accepts a half-time credit qualifying assignment in lieu of a full-time shall be awarded worktime credit reductions from his or her term of confinement of three months for each six-month period of continued performance. Except as provided in subdivision (a) of Section 2932, every prisoner willing to participate in a full-time credit qualifying assignment but who is either not assigned to a full-time assignment or is assigned to a program for less than full time, shall receive no less credit than is provided under Section 2931. ~~Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.~~ *Under no circumstances shall any prisoner receive more than one year credit reduction for any six month period under this section and Section 2933.3.*

(b) Worktime credit is a ~~privilege, not a right~~. Worktime credit must be earned *however*, and may be forfeited pursuant to the provisions of Section 2932. The application of credit to reduce the sentence of a prisoner who committed a crime on or after January 1, 1997, is subject to the provisions of Section 3067. Except as provided in subdivision (a) of Section 2932, every prisoner shall have a reasonable opportunity to participate in a full-time credit qualifying assignment in a manner consistent with institutional security and available resources.

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

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

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

SECTION 5. AMENDMENTS TO SECTION 2933.1 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 2933.1 of the California Penal Code is hereby amended to read:

§ 2933.1. Limitation on accrual of worktime credit for persons convicted of specified felonies.

(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue ~~no more than 15 percent of~~ *worktime credit, as defined set forth in Section 2933, and 2933.3 of the Penal Code.*

~~(b) The 15 percent limitation provided in subdivision (a) shall apply whether the defendant is sentenced under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2 or sentenced under some other law. However, nothing in subdivision (a) shall affect the requirement of any statute that the defendant serve a specified period of time prior to minimum parole eligibility, nor shall any offender otherwise statutorily ineligible for credit be eligible for credit pursuant to this section.~~

~~(c) Notwithstanding Section 4019 or any other provision of law, the maximum credit that may be earned against a period of confinement in, or commitment to, a county jail, industrial farm, or road camp, or a city jail, industrial farm, or road camp, following arrest and prior to placement in the custody of the Director of Corrections, shall not exceed 15 percent of the actual period of confinement for any person specified in subdivision (a).~~

~~(d) This section shall only apply to offenses listed in subdivision (a) that are committed on or after the date on which this section becomes operative.~~

SECTION 6. AMENDMENTS TO SECTION 2933.3 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 2933.3 of the California Penal Code is hereby amended to read:

§ 2933.3. Enhanced worktime credit.

Notwithstanding any other provision of law, any inmate assigned to *any state prison, correctional facility or conservation camp* by the Department of Corrections who is eligible to earn one day of worktime credit for every one day of service pursuant to Section 2933 shall instead earn two days of worktime credit for every one day of service. *This enhanced worktime credit shall only apply to service performed after January 1, 2003, January 1, 2008. If application of this section to a prisoner's sentence would make him or her overdue for release or prevent that person from complying with those "notice" or "registration" requirements as set forth in §3058.6 et seq. and §290 et seq. of the California Penal Code, this section will not be applicable.*

SECTION 7. AMENDMENTS TO SECTION 3041 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 3041 of the California Penal Code is hereby amended to read:

§ 3041. Time when determination may be made; Setting of release dates.

(a) In the case of any prisoner sentenced pursuant to any provision of law, other than Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, the Board of Prison Terms shall meet with each inmate during the third year of incarceration for the purposes of reviewing the inmate's file, making recommendations, and documenting activities and conduct pertinent to granting or withholding post-conviction credit. One year prior to the inmate's minimum eligible parole release date a panel of two or more commissioners or deputy commissioners shall again meet with the inmate and shall ~~normally~~ set a parole release date as provided in

Section 3041.5 and subdivision (c) of this section. No more than one member of the panel shall be a deputy commissioner. In the event of a tie vote, the matter shall be referred for an en banc hearing by the board. The release date shall be set in a manner that will provide uniform terms for offenses of similar gravity and magnitude in respect to their threat to the public, and that will comply with the sentencing rules that the Judicial Council may issue and any sentencing information relevant to the setting of parole release dates. The board shall establish criteria for the setting of parole release dates and in doing so shall consider the number of victims of the crime for which the prisoner was sentenced and other factors in mitigation or aggravation of the crime. In setting a parole release date for a prisoner serving an indeterminate prison term, the Board of Parole Hearings shall consider the following factors: (a) past and present mental state, (b) signs of remorse, (c) present age, (d) lack of criminal history, (e) understanding and plans for future, (f) recent institutional behavior, (g) education/vocation. At least one commissioner of the panel shall have been present at the last preceding meeting, unless it is not feasible to do so or where the last preceding meeting was the initial meeting. Any person three persons on the hearing panel may request review of any decision regarding parole for an en banc hearing by the board. In case of a review, a majority vote in favor of parole by the board members participating in an en banc hearing is required to grant parole to any inmate.

(b) A life prisoner's minimum eligible parole date shall be set in accordance with newly amended section 3046 of the California Penal Code; for those prisoners who have previously had their minimum eligible parole dates set in accordance with former section 3041(a)(2), they shall have their minimum eligible parole dates re-set in accordance with newly amended section 3046(a)(1); one year prior to the prisoner's minimum eligible parole date, when the panel of two or more commissioners or deputy commissioners meet with the inmate to set a parole release date as provided in section 3041.5, the release date shall be set in accordance with the matrix set forth in subdivision (c) below, and the time already served in prison shall be counted. In no case shall the Board of Parole Hearings set a parole release date outside those ranges delineated within subdivision (c) below, nor shall any prisoner be held in prison for a longer period than that prescribed in the matrix. Moreover, for those prisoner's who have already exceeded the maximum period of confinement set forth in §3046(a)(1) and the matrix set forth in subdivision (c) of this section, those prisoners shall be brought before the Board of Parole Hearings no later than one year following the approval of the amendments, a parole release date set for them (within six months), and those prisoners subsequently released on their parole release dates unless an independent, certified psychiatrist is able to conclude beyond a reasonable doubt that the prisoner would re-offend if released.

(b) The panel or the board, sitting en banc, shall set a release date unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual, and that a parole date, therefore, cannot be fixed at this meeting. After the effective date of this subdivision, any decision of the parole panel finding an inmate suitable for parole setting a parole release date shall become final within 120 30 days of the date of the hearing. During that period, the board may review the panel's decision. The panel's decision shall become final pursuant to this subdivision unless the board finds that the panel made an error of law, or that the panel's decision was based on an error of fact, or that new information should be presented to the board, any of which when corrected or considered by the board has a substantial likelihood of resulting in a substantially different decision upon a rehearing. In making this determination, the board shall consult with the commissioners who conducted the parole consideration hearing. No decision of the parole panel shall be disapproved and referred for rehearing except by a majority vote of the board, sitting en banc, following a public hearing.

(c) For the purpose of reviewing the suitability for parole of those prisoners eligible for parole under prior law at a date earlier than that calculated under Section 1170.2, the board shall appoint panels of at least two persons to meet annually with each prisoner until the time the person is released pursuant to proceedings or reaches the expiration of his or her term as calculated under Section 1170.2. Notwithstanding any other provision of law, the below listed ranges shall be utilized in determining the parole release date of prisoners sentenced to life terms who are currently confined in the California Department of Corrections and Rehabilitation regardless of the date of conviction. One year prior to the prisoner's minimum eligible parole release date, a panel of two or more commissioners or deputy commissioners of the Board of Parole Hearings shall set a parole release date based on the following matrix: (1) first degree murder . . . (12-20 yrs.); (2) second degree murder . . . (10-18 yrs.); (3) kidnap for robbery/ransom . . . (7-12 yrs.); (4) all other crimes for which a life sentence was imposed . . . (5-10 yrs.).

(d) It is the intent of the Legislature that during times when there is no backlog of inmates awaiting parole hearings, life parole consideration hearings or life rescission hearings, hearings will be conducted by a panel of

three or more members, the majority of whom shall be commissioners. The board shall report monthly on the number of cases where an inmate has not received a completed initial or subsequent parole consideration hearing within 30 days of the hearing date required by subdivision (a) of Section 3041.5 or paragraph (2) of subdivision (b) of Section 3041.5, unless the inmate has waived the right to those time frames. That report shall be considered the backlog of cases for the purposes of this section, and shall include information on the progress toward eliminating the backlog, and on the number of inmates who have waived their right to the above timeframes. The report shall be made public at a regularly scheduled meeting of the board and a written report shall be made available to the public and transmitted to the Legislature quarterly.

(e) For purposes of this section, an en banc hearing by the board means a hearing conducted by a committee of nine randomly selected commissioners who are specifically appointed to hear adult parole matters, selected by the chairperson. The committee shall be comprised of a majority of commissioners holding office on the date the matter is heard by the committee.

SECTION 8. AMENDMENTS TO SECTION 3041.5 OF THE PENAL CODE
(This former presents wording in [strikeout] and new wording in *italics*.)

Section 3041.5 of the California Penal Code is hereby amended to read:

§ 3041.5. Hearings; rights of prisoners; written statements by board of disposition; rehearings

(a) At all hearings for the purpose of reviewing a prisoner's parole suitability, or the setting, postponing, or rescinding of parole dates, the following shall apply:

(1) At least 10 days prior to any hearing by the Board of Prison Terms, the prisoner shall be permitted to review his or her file which will be examined by the board and shall have the opportunity to enter a written response to any material contained in the file.

(2) The prisoner shall be permitted to be present, to ask and answer questions, and to speak on his or her own behalf.

(3) Unless legal counsel is required by some other provision of law, a person designated by the Department of Corrections shall be present to insure that all facts relevant to the decision be presented, including, if necessary, contradictory assertions as to matters of fact that have not been resolved by departmental or other procedures.

(4) The prisoner shall be permitted to request and receive a stenographic record of all proceedings.

(5) If the hearing is for the purpose of postponing or rescinding of parole dates, the prisoner shall have rights set forth in paragraphs (3) and (4) of subdivision (c) of Section 2932.

(b)(1) Within 10 days following any meeting where a parole date has been set, the board shall send the prisoner a written statement setting forth his or her parole date, the conditions he or she must meet in order to be released on the date set, and the consequences of failure to meet those conditions.

(2) Within 20 days following any meeting where a parole date has not been set for the reasons stated in subdivision (b) of Section 3041, the board shall send the prisoner a written statement setting forth the reason or reasons for refusal to set a parole date, and suggest activities in which he or she might participate that will benefit him or her while he or she is incarcerated.

The board shall hear each case annually thereafter, except the board may schedule the next hearing no later than the following:

(A) Two years after any hearing at which parole is denied if the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following year and states the bases for the finding.

~~(B) Up to five years after any hearing at which parole is denied if the prisoner has been convicted of murder, and the board finds that it is not reasonable to expect that parole would be granted at a hearing during the following years and states the bases for the finding in writing. If the board defers a hearing five years, the prisoner's central file shall be reviewed by a deputy commissioner within three years at which time the deputy commissioner may direct that a hearing be held within one year. The prisoner shall be notified in writing of the deputy commissioner's decision. The board shall adopt procedures that relate to the criteria for setting the hearing between two and five years.~~

(3) Within 10 days of any board action resulting in the postponement of a previously set parole date, the board shall send the prisoner a written statement setting forth a new date and the reason or reasons for that action and shall offer the prisoner an opportunity for review of that action.

(4) Within 10 days of any board action resulting in the rescinding of a previously set parole date, the board shall send the prisoner a written statement setting forth the reason or reasons for that action, and shall schedule the prisoner's next hearing within 12 months and in accordance with paragraph (2).

SECTION 9. AMENDMENTS TO SECTION 3046 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 3046 of the California Penal Code is hereby amended to read:

§ 3046. Persons imprisoned under life sentence; minimum term; consideration of statements and recommendations; order

(a) No prisoner imprisoned under a life sentence may be paroled until he or she has served the greater of the following:

(1) A term of at least seven calendar years.

~~(2) A term as established pursuant to any other provision of law that establishes a minimum term or minimum period of confinement under a life sentence before eligibility for parole.~~

~~(b) If two or more life sentences are ordered to run consecutively to each other pursuant to Section 669, no prisoner so imprisoned may be paroled until he or she has served the term specified in subdivision (a) on each of the life sentences that are ordered to run consecutively.~~

(c) The Board of Prison Terms shall, in considering a parole for a prisoner, consider all statements and recommendations which may have been submitted by the judge, district attorney, and sheriff, pursuant to Section 1203.01, or in response to notices given under Section 3042, and recommendations of other persons interested in the granting or denying of the parole. The board shall enter on its order granting or denying parole to these prisoners, the fact that the statements and recommendations have been considered by it.

SECTION 10. AMENDMENTS TO SECTION 1170.12 OF THE PENAL CODE
(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 1170.12 of the California Penal Code is hereby amended to read:

§ 1170.12. Prior felony conviction; enhancement of sentence

(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:~~ *those enhancement of sentence provisions outlined in subdivisions (a)(1) and (2) of newly amended §667 of the California Penal Code and §667.5, subdivisions (a) and (b).*

~~(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 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 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 of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.~~

~~(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 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 be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

~~(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 in subdivision (e) of Section 667.5 as a violent felony or any offense defined in subdivision (e) of Section 1192.7 as a serious 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.~~

~~(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 that includes all of the elements of the particular felony as defined in subdivision (e) of Section 667.5 or subdivision (e) of Section 1192.7.~~

~~(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement 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 because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

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

~~(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.~~

~~(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 current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of~~

~~(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions, or~~

~~(ii) twenty-five years or~~

~~(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) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive 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 prosecuting attorney may move to dismiss or strike a prior felony conviction allegation 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 the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.~~

~~(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).~~

SECTION 11. AMENDMENTS TO 667 OF THE PENAL CODE

(This format presents struck wording in [strikeout] and new wording in *italics*.)

Section 667 of the California Penal Code is hereby amended to read:

§ 667. Habitual criminals; enhancement of sentence; amendment of section

(a)(1) In compliance with subdivision (b) of Section 1385, any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious 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. 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" 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 (e) of Section 1192.7.~~

~~(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), 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 felony offenses.~~

~~(c) Notwithstanding any other 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 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 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 of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.~~

~~(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 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 be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.~~

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

~~(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony or any offense defined in subdivision (e) of Section 1192.7 as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), 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 (i), inclusive:~~

~~* (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.~~

~~(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 that includes all of the elements of the particular felony as defined in subdivision (c) of Section 667.5 or subdivision (e) of Section 1192.7.~~

~~(3) A prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement 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 because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

~~(e) For purposes of subdivisions (b) to (i), 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) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.~~

~~* (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 current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:~~

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

~~(ii) Imprisonment in the state prison for 25 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) The indeterminate term described in subparagraph (A) shall be served consecutive 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) 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 law, subdivisions (b) to (i), 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 prosecuting attorney may move to dismiss or strike a prior felony conviction allegation 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 the court that there is insufficient evidence to prove the prior felony conviction, the court may dismiss or strike the allegation.~~

~~(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) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on June 30, 1993.~~

~~(i) If any provision of subdivisions (b) to (h), 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) 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.~~

SECTION 12. RE-SENTENCING LIMITATIONS

The re-sentencing provisions under this section are intended to apply to persons presently serving determinate and indeterminate terms of imprisonment pursuant to former California Penal Code Sections 667 and/or 1170.12.

(a) Any person serving an indeterminate term of imprisonment imposed pursuant to former Penal Code Sections 667(b)-(i) and/or 1170.12(a)-(d), whether by virtue of a trial or plea agreement, may file a petition for writ of habeas corpus within two years after the effective date of this act before the trial court that entered the judgment of conviction in his or her case, to request re-sentencing in accordance with Penal Code Section 667 as that statute has been amended and/or Penal Code Section 667.5 as it is currently written.

(b) Any person presently serving a determinate term of imprisonment where the sentence was doubled, tripled, or run consecutively pursuant to former Penal Code Sections 667(b)-(i) and/or 1170.12(a)-(d), whether by virtue of a trial or plea agreement, may file a petition for writ of habeas corpus within two years after the effective date of this act before the trial court that entered the judgment of conviction in his or her case, to request re-sentencing in accordance with Penal Code Section 667 as the statute has been amended and/or Penal Code Section 667.5 as it is currently written.

(c) The re-sentencing provisions outlined in subdivisions (a) and (b) of this section will not be applied to any person convicted of murder.

(d) If the court determines that the person filing the writ of habeas corpus meets the criteria set forth in subdivisions (a) and (b) of this section, the court shall re-sentence that person in accordance with the sentencing laws as amended by this act and/or Penal Code Section 667.5.

(e) Under no circumstances may re-sentencing under this act result in the imposition of a term longer than the original sentence.

(f) Notwithstanding subdivision (b) of section 977, a defendant petitioning for re-sentencing may waive his or her appearance in court for the re-sentencing, provided that the accusatory pleading is not amended at the re-sentencing, and that no new trial or re-trial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(g) If the court that originally sentenced the defendant is not available to re-sentence the defendant, the presiding judge may designate another judge to rule on the defendant's petition.

(h) Nothing in this Section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(i) Nothing in this and related Sections is intended to diminish or abrogate the finality of judgments of any case not falling within the purview of this Act.

SECTION 13. LIBERAL CONSTRUCTION

This Act is an exercise of the public power of the People of the State of California for the protection of the health, safety, and welfare of the People of the State of California, and shall be liberally construed to effectuate those purposes.

SECTION 14. SEVERABILITY

If any provision of this Act, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other provision or application of this Act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this Act. To this end, the provisions of this Act are severable.

SECTION 15. CONFLICTING MEASURES

If this measure is approved by the voters, but superceded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this Act shall be given the full force of law.

SECTION 16. EFFECTIVE DATE

This Act shall become effective immediately upon approval by the voters.

SECTION 17. AMENDMENT

The legislature shall not amend or repeal this initiative statute by another statute without the approval of the electors pursuant to Article II, Section 10, subdivision (c) of the California Constitution.