

October 22, 2015

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OCT 23 2015

INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

Ms. Ashley Johansson  
Initiative Coordinator  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814-2919

Re: Request for Circulating Title and Summary Based on Amendment to Text of the "Three Strikes Rehabilitation Reform Act of 2016"

Dear Ms. Johansson:

On October 12, 2015, the "Three Strikes Rehabilitation Reform Act of 2016" (15-0084) ("Initiative"), was submitted to the Attorney General with a request to prepare a circulating title and summary pursuant to Article II §10(d) of the California Constitution.

I respectfully request that the Attorney General prepare a circulating title and summary using the amended language dated today, October 22, 2015 as provided for in Section 9002(b). As proponent of the Initiative, I declare that the amendment is germane to the theme, purpose, and subject of the Initiative.

Thank you,



Julie A. Piccolotti  
Proponent

Choose1  
80 Cabrillo Hwy N. STE Q #609  
Half Moon Bay, CA 94019

**THREE STRIKES REFORM ACT OF 2016****SECTION 1.****FINDINGS & DECLARATIONS:**

The People of the state of California have demonstrated their Smart on Crime approach through their voter approval of two previous sentencing reform initiatives, Prop. 36 of (2012) and Prop. 47 of (2014) to save millions of tax payer dollars in unnecessary prison spending. Additional savings can be achieved by the approval of this initiative with the savings being allocated to high poverty middle schools and high schools, California community colleges, Universities of California and prison rehabilitation programs without negative impact on public safety.

The People hereby enact the THREE STRIKES REFORM ACT OF 2016 in that effort. This act will ensure that sentences for people convicted of violent crimes *such as* murder, rape, and child molestation are not changed.

**THIS ACT WILL:**

- (1) Continue current crime prevention and protection efforts concerning public safety.
- (2) Save hundreds of millions of tax payers dollars every year as the state will no longer finance long term health care and housing of aging low risk offenders in state prison.
- (3) Shall re-invest annual saving into high poverty middle schools & high schools, universities, community colleges and prison rehabilitation programs.
- (4) Require re-sentencing of those individuals currently serving a Three Strikes sentence under the Three Strikes law who's prior convictions were committed before March 7, 1994
- (5) The resentencing shall have retroactive affect.

**SECTION 2.**

**CHAPTER 33 commencing with Section 7599.3 is added to Division 7 of title 1 of the Government Code, to read:**

**Chapter 33. Creation of The Three Strikes Reform Act of 2016 Fund**

**7599.3.** (a) A fund to be known as "The Three Strikes Reform Act of 2016 Fund" is hereby created within the State Treasury and, notwithstanding Section 13340 of the Government Code, is continuously appropriated without regard to fiscal year for carrying out the purposes of this chapter.

(b) For purposes of the calculations required by Section 8 of Article XVI of the California

Constitution, funds transferred to The Three Strikes Reform Act of 2016 Fund shall be considered General Fund revenues which may be appropriated pursuant to Article XIII B.

#### **7599.4. Funding Appropriation**

(a) On or before July 31, 2017, and on or before July 31 of each fiscal year thereafter, the Director of Finance shall calculate the savings that accrued to the state from the implementation of the act adding this chapter ("this act") during the fiscal year ending June 30, as compared to the fiscal year preceding the enactment of this act. In making the calculation required by this subdivision, the Director of Finance shall use actual data or best available estimates where actual data is not available. The calculation shall be final and shall not be adjusted for any subsequent changes in the underlying data. The Director of Finance shall certify the results of the calculation to the Controller no later than August 1 of each fiscal year.

(b) Before August 15, 2017, and before August 15 of each fiscal year thereafter, the Controller shall transfer from the General Fund to The Three Strikes Reform Act of 2016 Fund the total amount calculated pursuant to subdivision (a).

(c) Moneys in The Three Strikes Reform Act of 2016 Fund shall be continuously appropriated for the purposes of this act. Funds transferred to the The Three Strikes Reform Act of 2016 Fund shall be used exclusively for the purposes of this act and shall not be subject to appropriation or transfer by the Legislature for any other purpose.

The funds in the The Three Strikes Reform Act of 2016 Fund may be used without regard to fiscal year.

#### **7599.5. Distribution of Moneys from The Three Strikes Reform Act of 2016 Fund**

(a) By August 15 of each fiscal year beginning in 2017, the Controller shall disburse moneys deposited in The Three Strikes Reform Act of 2016 Fund as follows:

(1) Twenty-five percent to the high poverty middle schools and high schools in California.

(2) Twenty-five percent to the California Community College to offset tuition.

(3) Twenty-five percent to the Universities of California to offset tuition.

(4) Twenty-five percent to the prison rehabilitation programs.

(b) For each program set forth in paragraphs (1) to (4), inclusive, of subdivision (a), the agency responsible for administering the programs shall not spend more than 5 percent of the total funds it receives from The Three Strikes Reform Act of 2016 Fund on an annual basis for administrative costs.

(c) Every two years, the Controller shall conduct an audit of the grant programs operated by the agencies specified in paragraphs (1) to (4), inclusive, of subdivision (a) to ensure the funds are disbursed and expended solely according to this chapter and shall report his or her findings to the Legislature and the public.

(d) Any costs incurred by the Controller and the Director of Finance in connection with the

administration of The Three Strikes Reform Act of 2016 Fund, including the costs of the calculation required by Section 7599.4(a) and the audit required by subdivision (c), as determined by the Director of Finance, shall be deducted from The Three Strikes Reform Act of 2016 Fund before the funds are disbursed pursuant to subdivision (a).

(e) The funding established pursuant to this act shall be used to fund 7599.5(a) (1) to (4). These funds shall not be used to supplant existing state or local funds utilized for these purposes.

(f) Local agencies shall not be obligated to provide programs or levels of service described in this chapter above the level for which funding has been provided.

### **SECTION 3**

**§667 of the Penal Code is amended as follows:**

**(This format presents struck wording in [STRIKEOUT] and new wording in [ITALICS])**

(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 (c) of Section 1192.7.

(b) It is the intent of the legislature in enacting subdivision (b) to (i) inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious and/or violent felony offenses *after March 7, 1994*.

(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 serious and/or violent 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 serious and/or violent felony conviction and the current felony conviction shall not affect the imposition of the 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 Institutional 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 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 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 subdivision (b) to (i), inclusive, a prior conviction of a serious and/or violent 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 (c) of Section 1192.7 as a serious felony in this state *committed before March 7, 1994, shall not constitute a prior felony conviction for the purpose of this section.* The determination of whether a prior conviction is a prior felony conviction for purposes of subdivision (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 following dispositions shall affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), 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 state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison shall constitute a prior conviction of a particular serious and/or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior serious and/or violent 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 serious and/or violent 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 one or more prior serious and/or violent felony convictions:

(1) If a defendant has one prior serious and/or violent felony conviction as defined in subdivision (d) 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) Except as provided in subparagraph (C), if a defendant has two or more prior serious and/or violent 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 greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious and/or violent felony conviction.

(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.

(C) If a defendant has two or more prior serious and/or violent convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Section 266 and 285, paragraph (1) of subdivision

(b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 288a, Section 311.11, and Section 314.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious and/or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A “sexually violent offense” as defined in subdivision (b) of Section 6600 of the Welfare and Institution Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286, or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in section 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

(f)(1) Notwithstanding any other law, subdivision (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as defined in subdivision (d) *committed after March 7, 1994*. The prosecuting attorney shall plead and prove each prior serious and/or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious and/or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious and/or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious and/or violent felony conviction, the court may dismiss or strike the allegation. Nothing in this section shall be read to alter a court’s authority under Section 1385.

(g) Prior serious and/or violent 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 serious and/or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious and/or violent 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 existed on ~~NOVEMBER 7, 2014~~ November 8, 2016.

(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 provision 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 roll call 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 4**

**§1170.12 of the Penal Code is amended to read:**

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(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 serious and/or violent felony convictions as defined in subdivision (b), *committed after November 8, 1994* 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 serious and/or violent 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 subdivision (b), 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.

(b) Notwithstanding any other provision of law and for the purposes of this section, a prior serious and/or violent 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 (c) of Section 1192.7 as a serious felony in this state *committed before November 8, 1994, shall not constitute a prior felony conviction for the purposes of this section.* The determination of whether a prior conviction is a prior serious and/or violent 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 serious and/or violent 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 prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison shall constitute a prior conviction of a particular serious and/or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in subdivision (c) of Section 667.5 or serious felony as defined in subdivision (c) of Section 1192.7.

(3) A prior juvenile adjudication shall constitute a prior serious and/or violent felony conviction for the 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, 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 serious and/or violent 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 one or more prior serious and/or violent felony convictions:

(1) If a defendant has one prior serious and/or violent felony conviction as defined in subdivision (b) 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) Except as provided in subparagraph (C), if a defendant has two or more prior serious and/or violent felony convictions, as defined in 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 greatest of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious and/or violent 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.

(C) if a defendant has two or more prior serious and/or violent felony convictions as defined in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7 that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under Section 11370.4 or 11379.8 of the Health and Safety Code was admitted or found true.

(ii) The current offense is a felony sex offense, defined in subdivision (d) of Section 261.5 or Section 262, or any other felony offense that results in mandatory registration as a sex offender pursuant to subdivision (c) of Section 290 except for violations of Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (c) of Section 288a, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined by subdivision (b) of this section, for any of the following serious and/or violent felonies:

(I) A "sexually violent offense" as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than he or she as defined by Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than he or she as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than he or she, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined by Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in paragraph (3) of

subdivision (d) of Section 245

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious and/or violent felony offense punishable in California by life imprisonment or death.

(d)(1) Notwithstanding any other provision of law, this section shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as defined in this section *after November 8, 1994*. The prosecuting attorney shall plead and prove each prior serious and/or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious and/or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious and/or violent conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious and/or violent felony conviction, the court may dismiss or strike the allegation. Nothing in this section shall be read to alter a court's authority under Section 1385.

(e) Prior serious and/or violent 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 serious and/or violent felony convictions and shall not enter any agreement to strike or seek the dismissal of any prior serious and/or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of subdivisions (a) to (e), inclusive, or of Section 1170.126, 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.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by roll call 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 5**

### **§1170.127 is added to the Penal Code to read:**

(a) Any person sentenced under the prior Three Strikes law, including but not limited to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, whose sentence under this act would not have been an indeterminate life sentence shall qualify for resentencing.

(b) Any person serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12 upon conviction, whether by trial or plea, of a felony or felonies that are defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, and those felonies not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision

(c) of Section 1192.7, may file a petition for a recall of sentence, within two years after the effective date of the act that added this section or at a later date upon a showing of good cause, before the trial court that entered the judgment of conviction in his or her case, to request resentencing in accordance with the amendment made by this act.

(c) Any person who is presently serving a term of imprisonment for a "second strike" conviction imposed pursuant to paragraph (1) of subdivision (e) of Section 667 that occurred before March 7, 1994, or paragraph (1) of subdivision (c) of Section 1170.12, that occurred before November 8, 1994, shall be eligible for resentencing under the provisions of this section.

(d) The petition for a recall of sentence described in subdivision (b) shall specify all of the currently charged felonies, which resulted in the sentence under paragraph (2) of subdivision (e) of Section 667 or paragraph (2) of subdivision (c) of Section 1170.12, or both, and shall also specify all of the prior convictions alleged and proved under subdivision (d) of Section 667 and subdivision (b) of Section 1170.12.

(e) An inmate is eligible for resentencing if:

(1) The inmate is serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 for conviction of a felony or felonies that are defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, and those felonies not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7, and the previous felony convictions occurred before November 8, 1994, the inmate is eligible.

(2) The inmate's current sentence was not imposed for the offenses appearing in clauses (ii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clauses (ii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

(f) The person agrees before the court pursuant to subdivision (b) shall, in the written motion, expressly waive double jeopardy for purposes of resentencing, in regards to any charges arising out of the same set of operative facts resulting in the plea, for charges that were not filed, or were dismissed pursuant to the plea.

(g) If the courts determines that the person was sentenced pursuant to the Three Strikes statute prior to their amendments by this act, and the person meets the requirements of either subdivision (a) to (c), the court shall order that person to be resentenced, subject to subdivision (j) and in compliance with the sentencing laws as amended by this act.

(h) If the court grants resentencing for a person meeting the requirements of subdivision (a) to (c), the district attorney may also file any charges based on the same set of operative facts that resulted in the conviction, that were not filed in connection with the conviction, and for which the statute of limitations has not expired.

(i) If the court grants resentencing for a person meeting the requirements of subdivision (a) to (c), a district attorney seeking to file or refile charges arising out of the same set of operating facts resulting in the plea that were not filed or were dismissed pursuant to the plea shall obtain the court's permission to file or refile those charges. The district attorney shall have to show by a preponderance of the evidence that the charges would have been filed, or would not have been dismissed, but for the plea.

(j) A person who meets the requirements of subdivision (a) to (c) shall be entitled to representation by counsel under this section, and for the purpose of resentencing, trial, or retrial. The person may request appointment of counsel by sending a written request to the court.

(k) Notwithstanding any other provision of law, the right to resentencing pursuant to this act is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendere.

(l) Those qualifying individuals shall be resentenced within 180 days of a filed petition.——

(m) Under no circumstances may resentencing under this act result in the imposition of a term longer than the original sentence.

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

(o) The case shall be heard by the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendere, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

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

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

## **SECTION 6**

### **§1192.7 of the Penal Code is amended as follows:**

**(This format presents struck wording in [STRIKEOUT] and new wording in [ITALICS])**

(a)(1) It is the intent of the Legislature that district attorneys prosecute violent sex crimes under statutes that provide sentencing under a "one strike," "three strikes" or habitual sex offender statute instead of engaging in plea bargaining over those offences.

(2) Plea bargaining in any case in which the indictment or information charges any serious 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 sufficient 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.

(3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of section 667.61, that could be prosecuted under section 269, 288.7, subdivision (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining 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. At the time of presenting

the agreement to the court, the district attorney shall state on the record why a sentence under one of those sections was not sought.

(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 no longer contend, 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" 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; (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; (6) lewd or lascivious act on a child under 14 years of age; (7) any felony punishable by death or imprisonment in the state prison by life; (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally used a firearm; (9) attempted murder; (10) assault with intent to commit rape or robbery; (11) assault with a deadly or instrument on a peace officer; (12) assault by a life prisoner on a nominate; (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; (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 personally used 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 violation of subdivision (a) 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 of 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, in violation of Section 220; (30) throwing acid or flammable substances, in violation of Section 244; (31) assault with a deadly weapon, firearm, machine-gun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of Section 245; (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of Section 245.2, 245.3, or 245.5; (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in 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 26100; (37)

intimidation of victims or witnesses, in violation of Section 136.1; ~~(38) criminal threats, in violation of Section 422;~~ ~~(39)~~(38) any attempt to commit a crime listed in this subdivision other than an assault; ~~(40)~~(39) any violation of Section 12022.53; ~~(41)~~(40) a violation of subdivision (b) or (c) of Section 11418; and ~~(42)~~(41) any conspiracy to commit an offense described in this subdivision.

(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 loans 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 loans association and any "insured institution" as defined in Section 401 or 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 and 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 electors.

## **SECTION 7**

**LIBERAL CONSTRUCTION:** This Act is an exercise of the public power of the People of this 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 8**

**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 9**

**CONFLICTING MEASURES:** If this measure is approved by the voters, but superseded 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 the law.

**SECTION 10**

**EFFECTIVE DATE:** This Act shall become effective on the first day after enactment by the voters.

**SECTION 11**

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